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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

City of Reynoldsburg, Ohio	:	
	:	Complaint Case
Complainant,	:	Case No. 08-846-EL-CSS
v.	:	
Columbus Southern Power,	:	
Respondent.	:	

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APPLICATION FOR REHEARING OF THE CITY OF REYNOLDSBURG

On July 1, 2008, Complainant the City of Reynoldsburg ("Reynoldsburg") filed a Complaint against Columbus Southern Power ("CSP") alleging that portions of CSP's tariff on file with the Public Utilities Commission of Ohio ("Commission") were unjust, unreasonable, and/or unlawful. Specifically, Reynoldsburg challenged Paragraph 17 of CSP's tariff, which purports to afford CSP the power to force Reynoldsburg to pay for underground relocation of CSP's overhead utility facilities located in Reynoldsburg's public right of way as part of a significant public improvement project. Reynoldsburg supported its Complaint with the testimony of two witnesses. The parties submitted a joint stipulation of facts and legal issues on November 9, 2009 (amended on November 10, 2009). The Commission held an evidentiary hearing on December 2, 2009. The parties submitted post-hearing initial briefs on January 22, 2010, and reply briefs on February 5, 2010.

On April 5, 2011, the Commission issued an Opinion and Order ("Order") finding that, among other things, Paragraph 17 of CSP's tariff is not unjust, unreasonable, or unlawful. In response to the Order, Reynoldsburg submits this Application for Rehearing pursuant to R.C.

4903.10 and Ohio Administrative Code 4901-1-35. Reynoldsburg asserts that the Commission's Order is unlawful and/or unreasonable in the following respects:

1.) The Commission erred in finding that Paragraph 17 of CSP's tariff is not unjust, unreasonable, or unlawful.

2.) The Commission erred in finding that the Commission cannot rule on the constitutionality of Paragraph 17 of CSP's tariff.

3.) The Commission erred in finding that Paragraph 17 of CSP's tariff applies to the facts of this case.

4.) The Commission erred in finding that CSP properly applied its tariff and appropriately charged Reynoldsburg for the relocation expenses.

Based upon these errors, Reynoldsburg respectfully requests that the Commission modify its Order on rehearing to find that CSP's tariff is unjust, unreasonable, and/or unlawful, as described in Reynoldsburg's Complaint and briefs. A Memorandum in Support of this Application is attached.

Respectfully submitted,

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	:	
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MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING OF THE CITY OF REYNOLDSBURG

The City of Reynoldsburg, Ohio ("Reynoldsburg") submits the following memorandum to the Public Utilities Commission of Ohio ("Commission") in support of its Application for Rehearing. Reynoldsburg alleges five errors for the Commission's consideration, and urges the Commission to grant a rehearing and reverse in their entirety the conclusions referenced herein.

I. Assignment of Error 1

The Commission erred in finding that Paragraph 17 of CSP's tariff is not unjust, unreasonable, or unlawful[1].

The Commission erroneously found that Paragraph 17 of CSP's tariff is not unjust, unreasonable, or unlawful, on the grounds that the tariff provision is "consistent with the principle that the cost causer be the cost payer," and because Reynoldsburg could have sought, but did not seek, intervention to participate in the proceeding through which CSP's tariff was originally approved by the Commission. (Order at 14-15.)

[1] The arguments contained in this application for rehearing relate primarily to Reynoldsburg's assertion that CSP's tariff is unconstitutional as applied, an argument developed through evidence, testimony, and briefing in this case. Reynoldsburg also restates and reserves its challenge to the tariff as unconstitutional on its face.

A. Whether the cost-causer is the cost-payer is irrelevant.

Nowhere in its briefing does CSP cite any authority for the proposition that a utility can alter or eliminate a municipality's power over its rights of way—powers expressly granted by the Ohio Constitution and state statutes. Article XVIII, Sections 3 and 4; R.C. 4939.01 et seq. Similarly, the Commission cites no authority for such a proposition. Instead, the Commission states that the "tariff language continues to be just and reasonable inasmuch as it is consistent with the principle that the cost causer be the cost payer." (Order at 15.)

Whether the tariff provision follows the "cost-causer, cost-payer" principle may be an interesting question for a municipality to consider and resolve in regulating its rights of way. However, the Commission is not empowered to make this decision for a municipality. The question before the Commission is whether CSP's tariff—regardless of the tariff's goal—is unjust, unreasonable, or unlawful because it infringes on clear constitutional and statutory authority of municipalities to regulate their own public rights of way. The Commission examines CSP's goals and, finding those goals sufficiently sound, neglects to analyze how CSP's tariff conflicts with Reynoldsburg's constitutional and statutory authority to regulate its public rights of way.

Reynoldsburg asserted in its Initial Brief that Paragraph 17 of CSP's tariff is unjust, unreasonable, and/or unlawful for essentially two reasons. First, the tariff provision conflicts with the *constitutional* authority granted to municipalities to regulate their public rights of way. Second, the tariff provision conflicts with the *statutory* authority granted to municipalities to regulate their public rights of way. The Commission's Order does not address either argument. The Commission expressly refused to address the constitutional issues. (Order at 18, 23.)

Even if upholding the "cost-causer, cost-payer" principle was a proper goal of the Commission, upholding CSP's tariff on these grounds would not further the goal. CSP's own witness testified that when CSP decides on its own to underground certain utility facilities, it recovers its costs for that activity through general ratemaking efforts, not through a surcharge for the particular municipality. (Dias Cross 40:1-24.) In such cases, CSP is the cost-causer, but CSP does not pay the cost out of its profits; it recoups the cost from all of its customers, not only those in the municipality at issue. Therefore, Reynoldsburg customers pay for underground facilities in other jurisdictions when CSP decides to underground those facilities.

CSP's tariff is not consistent with the "cost-causer, cost-payer" principle. In the strict sense, CSP is causing the cost in this matter, because CSP desires to operate in the public right of way. Operating in the public right of way, and constructing utility facilities there, costs money. It also saves CSP the cost of having to obtain private utility easements, and can provide lower-cost maintenance. CSP desires to operate in the public right of way precisely because it is less expensive to do so. CSP has attempted to shift the cost for its operations in the public right of way to taxpayers in the City of Reynoldsburg, who should not shoulder the burden of paying for CSP's decision, especially in light of the fact that CSP makes a substantial profit on its business. *In the Matter of the Application of Columbus Southern Power*, P.U.C.O. Case No. 10-1261-EL-UNC, Finding and Order dated January 27, 2011 at ¶ 1 (noting Commission finding that CSP had significantly excessive earnings of $42.683 million for 2009).

B. The Commission Erred Because Its Order Fails to Account for Statutory Law that Gives Reynoldsburg Power to Regulate its Public Rights of Way.

The Commission never mentions or acknowledges that Reynoldsburg requested the Commission find CSP's tariff unjust, unreasonable, or unlawful in part because the tariff conflicts with state statutory law. (Compl. ¶ 29.) The Ohio General Assembly has given

municipalities, including Reynoldsburg, express statutory power to regulate their public rights of way:

- R.C. 4939.02(A)(4) (acknowledging the state's policy of recognizing municipal authority over the use of public ways, and of promoting coordination and standardization of municipal management of occupation and use of public ways).
- R.C. 4939.03(C)(1) ("No person [including a corporation] shall occupy or use a public way without first obtaining any requisite consent of the municipal corporation owning or controlling the public way.").
- R.C. 723.01 ("Municipal corporations shall have special power to regulate the use of the streets . . . [T]he legislative authority of a municipal corporation shall have the care, supervision, and control of the public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporation.")
- R.C. 4905.65 (local regulation may reasonably restrict the construction, location, or use of certain public utility facilities).

As a result of these statutory powers over public rights of way, Reynoldsburg's right of way ordinance must control in the event of any conflict with CSP's tariff. (Reynoldsburg Initial Br. at 14.)

The Commission's failure to address Reynoldsburg's statutory argument is inexplicable in light of the fact that the Commission frequently interprets and construes statutes. *See, e.g., City of Huron v. Ohio Edison Co.*, 2006 WL 1763685, P.U.C.O. Case No. 03-1238-EL-CSS, ¶¶ 9 (discussing rules of statutory interpretation, and applying them to R.C. 4928.37); *WorldCom, Inc. v. City of Toledo*, 2003 WL 21087728, P.U.C.O. Case No. 02-3207-AU-PWC ("[T]he Commission's goal must be to interpret statutes so as to give effect to the intentions of the General Assembly.").

C. CSP's Intent in Drafting its Own Tariff Provision is not Dispositive

The Commission also bases its finding that CSP's tariff is not unjust, unreasonable, or unlawful on the fact that "the intent of the tariff provision is not to dictate Reynoldsburg's power

over its rights-of-way but, rather, to compensate the utility." (Order at 15.) It is no surprise that the intent of the tariff provision is to compensate the utility, but that is not the question the Commission must address in this case. Reynoldsburg claims that Paragraph 17 of CSP's tariff violates the City's constitutional and statutory rights to regulate its public rights of way. If the answer to that claim is found by simply asking whether the utility intended its tariff provision to provide compensation to the utility, the examination is hardly worth undertaking. "The Public Utilities Commission was established to be the intermediary between the citizen-consumer on one side and the public utility on the other." *Dayton Comm. Corp. v. Pub. Util. Comm.* (1980), 64 Ohio St.2d 302, 307. If the Commission evaluates a challenge to a tariff provision by considering only what the utility's intent was when it drafted the tariff, the Commission abdicates its role as intermediary and instead becomes an advocate for the utility.

Moreover, Paragraph 17 is not presumptively valid simply because the Commission approved CSP's tariff as a whole as a very small part of a large, complex rate proceeding. When the Commission approves a tariff, it is approving the utility's "schedule showing all rates . . . and charges for service of every kind *furnished by it*," (i.e. the public utility). R.C. 4905.30(A). Paragraph 17 of CSP's tariff does not describe a rate or charge for a service furnished by the utility. It simply requires Reynoldsburg to pay for the cost of undergrounding power lines. The Commission has no jurisdiction to approve a tariff provision such as this, which is unrelated to a rate or charge for a utility service furnished by a utility to consumers, and for good reason. If the Commission had such power, a utility could propose, and the Commission could approve, a tariff provision stating that the utility did not have to obey municipal traffic laws, or should not pay more than $2.00 per gallon for gasoline to fuel its vehicle fleet, and enforcing this "commission-approved" tariff provision until a court of law says it cannot do so. If the Commission's

approval of a tariff, regardless of the language in the tariff, means that every approved tariff provision is forever lawful, then the Commission is assuming powers never granted to it by the legislature.

D. The fact that Reynoldsburg did not Intervene in CSP's Tariff Case is Not Dispositive.

The fact that Reynoldsburg could have sought intervention in CSP's rate case where the subject tariff was approved in no way decides the issue of whether CSP's tariff is unjust, unreasonable, or unlawful. Reynoldsburg has constitutional and express statutory authority to regulate its public rights of way. Neither the Ohio Constitution nor the Revised Code requires Reynoldsburg to intervene in a Commission rate case in order to preserve its authority to regulate its public rights of way in a reasonable manner. Requiring such intervention tramples the constitutional and statutory rights of municipalities and grants to the Commission statutory authority to impose restrictions on municipalities that the legislature has never granted the Commission.

Further, the Ohio Supreme Court has expressly stated that R.C. 4905.26 is "a means of collateral attack on a prior proceeding." *Office of Consumers' Counsel v. Pub. Util. Comm.* (1982), 1 Ohio St.3d 22, 24. The Court went on: "that statute [R.C. 4905.26] may be used to investigate the reasonableness of rate schedules . . ." previously approved by the Commission. *Id.* (citations omitted). Reynoldsburg has brought this case under R.C. 4905.26. (Compl. ¶ 3.) If R.C. 4905.26 can be used as a means of collateral attack on a prior Commission proceeding, the present action may be used to challenge the Commission's 1992 approval of CSP's tariff, and Reynoldsburg therefore did not forfeit the right to challenge CSP's tariff by not intervening in CSP's tariff case. More broadly, if the Commission's position is that failure to intervene in a tariff case precludes any later challenge to that tariff, there is no reason for R.C. 4905.26 to exist.

The Commission's finding that CSP's tariff is just, reasonable, and lawful because Reynoldsburg did not intervene in CSP's tariff case is misplaced, and the Application for Rehearing should therefore be granted. Accordingly, Reynoldsburg requests that the Commission reverse its finding that Paragraph 17 of CSP's tariff is not unjust, unreasonable, or unlawful as applied.

II. Assignment Error 2

The Commission erred in finding that the Commission cannot rule on the constitutionality of Paragraph 17 of CSP's tariff.

The Commission stated in its Order that it "does not have the requisite jurisdiction to adjudicate as to whether ¶17 of CSP's tariff violates Article XVIII, Sections 3 and 4 of the Ohio Constitution. (Order at 18, 23.) The Commission's statement is based on its assertion that the Commission is an administrative body whose powers, delineated by statute, do not extend to constitutional matters. (Id.)

Reynoldsburg requests rehearing on the constitutional arguments involved in this matter, on the grounds that the Commission has in the past addressed constitutional issues. *See, e.g., In Re Intrado Comms., Inc.*, 2008 WL 1294837, P.U.C.O. Case No. 07-1199-TP-ACE, ¶¶ 6, 9 (Commission evaluated and rejected claim that PUCO itself had violated due process); *In re Application of Buckeye Wind, LLC*, 2010 WL 2863978, P.U.C.O. Case No. 08-666-EL-BGN, ¶¶82-84 (Commission evaluated and rejected claim that Power Siting Board action resulted in a taking that violated the Ohio and federal constitutions). In fact, in one case, the Commission evaluated and ultimately rejected the City of Huron, Ohio's argument that the Commission had violated the City's rights under Article XVIII, Section 4 of the Ohio Constitution, one of the constitutional provisions at issue in this case. *City of Huron v. Ohio Edison Co.*, 2006 WL

1763685, P.U.C.O. Case No. 03-1238-EL-CSS, ¶¶ 5-11. Either the Commission has the power to address constitutional concerns in any matter before it, or the Commission has no such power.

Further, the Commission's interpretation of the *Panhandle East Pipeline* and *Fais* cases is misplaced. The Commission cites *Panhandle E. Pipeline Co. v. Pub. Util. Com* to support its contention that it has no power to hear the constitutional issues. (Order at 18.) However, the Commission invokes *Panhandle* on the grounds that the case stands for the proposition that "administrative agencies . . . have no authority to declare a statute unconstitutional." (Id.) Reynoldsburg has not asked the Commission to "declare a statute unconstitutional," and the Commission's reliance on *Panhandle* is therefore misplaced. What Reynoldsburg has asked the Commission to do is determine that CSP's tariff is unlawful both facially and as applied because, *inter alia*, it conflicts with Reynoldsburg's Right of Way Ordinance, state statutes, and the Ohio constitution. (Compl. ¶¶ 28-35.) Although CSP may deem CSP's tariff provision equivalent to a statute, it is not. Reynoldsburg does not ask the Commission to declare a statute unconstitutional. And, Ohio case law prohibiting the Commission from doing so is no barrier to the Commission's consideration of the constitutional issues in this matter. The Ohio Revised Code gives the Commission the express authority to declare a utility rate or practice "unlawful." R.C. 4905.26. The Commission cannot determine whether a tariff provision or utility practice is unlawful without looking at the law—that is, court decisions, statutes, or the Ohio Constitution.

The Commission further claims that it has no power to hear the constitutional issues in part because the Ohio Supreme Court in *State ex rel. Columbus Southern Power Company v. Fais* stated that municipal home-rule issues may be resolved by the Court in an appeal from an order of the Commission." (Order at 18.) The Commission is correct that the Ohio Supreme Court made this statement, but is mistaken about its import. In fact, the Ohio Supreme Court

makes clear in *Fais* that "The [Public Utilities] commission has the exclusive, original jurisdiction over this matter, subject to the ultimate review of this Court." *State ex rel. Columbus Southern Power Company v. Fais*, 2008-Ohio-849, ¶ 32. This statement that the Supreme Court has appellate jurisdiction to review the Commission's findings is not equivalent to a statement that the Commission need not make findings in the first place.

Because the Commission has in fact considered and decided constitutional issues in the past, and because the Commission based its finding on an erroneous reading of the *Fais* case, Reynoldsburg respectfully requests that the Commission grant rehearing to decide the constitutional issues raised by Reynoldsburg, and find that CSP's tariff provision violates the Ohio Constitution and is therefore unlawful.

III. Assignment of Error 3

The Commission erred in finding that Paragraph 17 of CSP's tariff applies to the facts of this case.

The Commission's finding that Paragraph 17 of CSP's tariff applies because Reynoldsburg "required, or at a minimum, specified" the change of CSP's utility facilities in Reynoldsburg's right of way from overhead to underground, (Order at 13), is not based on competent, credible evidence.

As an initial matter, Reynoldsburg again points out that the only utility facilities that are at issue in this case are CSP's utility facilities located *in the public right of way*. However, occupying the public right of way is not the only way for a utility to provide service to customers. R.C. 4933.15 specifically grants to utilities such as CSP the power to appropriate private property for placement of its distribution facilities. CSP's own witness admitted that CSP currently owns and uses facilities located in private utility easements. (Dias Cross 128:11-13.) The July 8, 2005 letter from Reynoldsburg's then-Safety/Service Director Sharon Reichard

to CSP specifically states that only those facilities located in the public right of way are subject to the City's requirement regarding relocation of overhead utility lines. (Jt. Ex. 1, Att. I.)

The Commission's finding that CSP was required to relocate its facilities underground ignores the simple reality that CSP had a choice between two alternatives: (1) CSP could elect to forego operating in the City's public right of way, with its attendant conditions, and instead place facilities in private utility easements, or (2) CSP could continue to operate in the City's public right of way and place its facilities underground subject to reasonable conditions. CSP chose the latter. The fact that choosing the former would entail greater work or expense on CSP's part does not make the decision a Hobson's choice. Companies frequently have to decide between two costly and imperfect solutions to a problem. CSP decided it is less expensive and time consuming to continue to operate in the public right of way. Having done so, CSP should not be endowed with the ability to dictate the terms and conditions of its presence on public property through its tariff. This is especially true where, as here, CSP has the option to occupy private property as well.

Further, there is no evidence in the record, much less competent and credible evidence, to support the Commission's finding that "there was not sufficient time for CSP to do anything other than relocate the distribution lines to the duct banks." (Order at 13.) Regarding the time frame for the change from overhead to underground lines, CSP has never provided any evidence that it could not have placed its lines in private utility easements rather than moving its overhead lines underground in the public right of way. The Commission appears to have mis-read the July 8, 2005 letter from Reynoldsburg's then-Safety/Service Director Sharon Reichard to CSP. The letter does not state that CSP's facilities must be installed underground in a "limited 90-day time frame," as the Commission states in its Order. (Order at 13.) Rather, the letter states that all

utilities operating in the public right of way would have to underground any overhead utility lines "within sixty (60) days of *receiving written notice* from the city that the duct bank construction is complete and that the duct bank is available for installation." (Jt. Ex. 1, Att. I) (emphasis added). The letter states that Reynoldsburg *estimates* that the construction will be completed "on or around October 15, 2005." Even if the construction project experienced no delays, and Reynoldsburg notified CSP of the duct bank's completion on October 15, 2005, CSP would still have an additional sixty (60) days—or until December 15, 2005—to underground its lines if it chose to continue to occupy the public right of way. This is a five-month time frame at the very least. Of course, CSP could have asked for an extension. The Commission's statement that CSP's only option given the "limited 90-day time frame" is therefore without basis in fact or the evidentiary record.

Even if the Commission were correct about the 90-day time frame, however, there is absolutely no evidence, and the Commission cites none, that CSP did not have sufficient time to place its Reynoldsburg lines in private utility easements. CSP's witness testified that CSP has utility facilities in private easements, (Dias Cross: 34:22 – 35:2), and also testified that various scenarios outside of a mandate from a municipality have led CSP itself to underground certain utility facilities. (Dias Direct: 7:4-19.) However, CSP provided no evidence of any kind suggesting that it was impossible to place its Reynoldsburg facilities in private utility easements in response to Reichard's July 8, 2005 letter. It is not Reynoldsburg's burden to demonstrate to the Commission that CSP could have placed its facilities in private easements; the burden to prove that defense is on CSP. *Ohio Bell Tel. Co. v. PUCO* (1990), 49 Ohio St.3d 123, 128 (finding the respondent had the burden to refute with sufficient evidence the complainant's testimony offered during a PUCO hearing). CSP has not refuted with competent, credible

evidence Reynoldsburg's allegation that CSP could have placed its facilities in private utility easements. Two Commissioners dissented on this very point. (Order, Dissent of Commissioners Lemmie & Roberto at 1.). The Commission cited no evidence for its conclusion that placing utility lines in private easements was not a viable option for CSP. Respectfully, the Commission cannot properly substitute its own opinions for competent, credible evidence that Respondent must provide.

Further, viability of an option to occupy private easements is not relevant. It is not incumbent upon the taxpayers of Reynoldsburg to provide a private for-profit business with a viable, convenient, and economically desirable location in which to place its facilities. The fact that Reynoldsburg may provide such an option does not require it to do so, nor by doing so does Reynoldsburg grant to CSP property rights in perpetuity in the publicly owned right of way.

In short, the Commission erroneously found that CSP was "required" to construct general distribution lines underground within the meaning of Item #17 of its tariff. Facilities outside the right of way were permitted to be above ground. Rather, CSP elected to maintain general distribution facilities in the City's public right of way, knowing full well that by doing so the company would be subject to Reynoldsburg's constitutionally and statutorily authorized regulations governing access to and use of its public right of way.

The Commission also apparently found that CSP's tariff applies to this case because CSP was applying the tariff consistently with how it had applied the tariff in past matters. (Order at 13.) It is unclear why CSP's consistent application of its tariff language leads the Commission to the conclusion that the tariff applies to this matter. If the issue of whether the tariff applies is determined by soliciting CSP's opinion on the matter, there is little reason for the Commission to

review the question. CSP's opinion is no substitute for an examination of the facts, evidence, and legal arguments made in this case.

Accordingly, Reynoldsburg requests that the Commission reverse its finding that Paragraph 17 of CSP's tariff applies to the relocation of CSP's facilities in connection with Phase II of the Reynoldsburg project.

IV. Assignment of Error 4

The Commission erred in finding that CSP properly applied its tariff and appropriately charged Reynoldsburg for the relocation expenses.

Reynoldsburg has alleged that, even if CSP is correct that its tariff is just and applies to the present case, Reynoldsburg is responsible for only the costs of the relocation that exceed CSP's costs to move the company's utility lines from one above-ground location to another. The operative language from the tariff mentions two types of construction—(1) construction from scratch ("special construction"), and (2) relocation of existing facilities:

> The company [CSP] shall not be required to *construct general distribution lines underground* unless the cost of *such special construction* for general distribution lines and/or the cost of any change of existing overhead general distribution lines to underground which is required or specified by a municipality or other public authority **(to the extent that such cost exceeds the cost of construction of the Company's standard facilities)** shall be paid for by that municipality or public authority.
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> CSP tariff, Item #17 (emphasis added).

The parenthetical phrase (in bold above) contains language limiting the costs that a municipality must pay with respect to relocation of lines. That is, municipalities must pay only the cost that "exceeds the cost of construction of the Company's standard facilities". The most sensible reading of the parenthetical is that it applies to both new construction and relocation. That is, whether a municipality requires CSP to construct new utility facilities from scratch in the underground duct bank, or instead requires CSP to relocate overhead lines into an underground

duct bank, the municipality will be responsible only for the cost of the undergrounding over and above what it would cost CSP to construct or relocate its lines above-ground. The parenthetical uses the phrase "such cost," without clear reference to which costs are implicated, and the phrase appears after the second of the two contemplated types of construction (relocation), an odd placement if the parenthetical is intended to apply only to the first type of construction (new), which is the interpretation CSP suggests. (Dias Cross 123:9-15, 140:21-23.)

The Commission's finding that CSP properly applied the tariff and correctly charged Reynoldsburg is without competent, credible evidence in the record. In support of its finding, the Commission merely states, "the tariff language must be interpreted to assure that CSP is compensated for the full cost of the relocation. To do otherwise would not satisfy the stated objective of the tariff provision." (Order at 25.) Why the Commission must satisfy the stated objective of the tariff provision is not clear to Reynoldsburg. Reynoldsburg has alleged an interpretation of CSP's tariff provision that is consistent with the rules of grammar and common sense. CSP has offered no alternative explanation, and the Commission has cited none. Further, although Reynoldsburg is not a "customer" that can be controlled by the tariff, ambiguities in a tariff are resolved by construing the tariff language in favor of the customer, not the utility. *Saalfield Pub. Co. v. Pub. Util. Comm.* (1948), 149 Ohio St. 113, syl. ¶ 2.

Even if CSP is correct that its tariff is lawful and applies to this case, CSP has over-charged Reynoldsburg for the cost of the relocation, and accordingly, Reynoldsburg requests that the Commission reverse its finding that CSP properly applied its tariff and appropriately charged Reynoldsburg for the relocation expenses.

V. Request for Oral Argument

Reynoldsburg also respectfully requests that the Commission reconsider its denial of Reynoldsburg's request for oral argument. As detailed above, this matter involves a number of complex statutory, constitutional, and jurisdictional issues. Reynoldsburg believes that the Commission, the parties, and the public would benefit from an oral argument to probe the contours of these important issues. *In re Application of Ohio Edison Company*, PUCO Case No. 03-2144-EL-ATA (April 14, 2004), 2004 WL 1803951 (oral argument granted to help Commission understand complex issues, and provide opportunity for Commission to ask clarifying questions).

VI. Conclusion

Based upon these errors, Reynoldsburg respectfully requests that the Commission modify its Order on rehearing to find that CSP's tariff is unjust, unreasonable, and/or unlawful, as described in Reynoldsburg's Complaint and briefing. Reynoldsburg requests that the Commission grant rehearing as discussed above in Assignments of Error 1 through 4, and take action to correct the errors discussed therein. Finally, Reynoldsburg requests that the Commission reconsider its denial of oral argument, and grant oral argument in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This undersigned certifies that a true and accurate copy of the foregoing was served by electronic mail and U. S. mail, postage prepaid, on this 4th day of May, 2011 upon the following:

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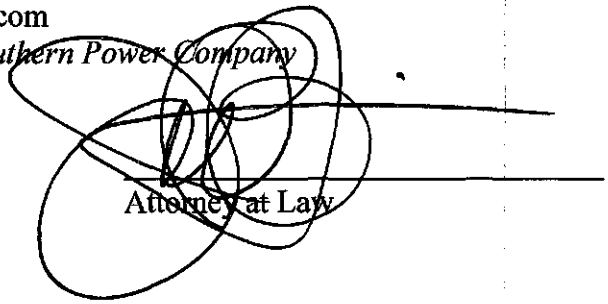

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