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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2010 Annual Filing of)
Columbus Southern Power Company and) Case Nos. 11-4571-EL-UNC
Ohio Power Company Required by Rule) 11-4572-EL-UNC
4901:1-35-10, Ohio Administrative Code.)

**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the approximately 1.2 million residential utility customers of Columbus Southern Power Company ("CSP") and Ohio Power Company ("OP") (collectively "Companies") moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in these proceedings.¹ In these matters the Commission will be evaluating whether the Companies had "significantly excessive earnings" in 2010 as a result of their approved electric security plan ("ESP").

The annual review of the electric distribution utility's earnings is an important component of S.B. 221. The review is one of the tools intended by the General Assembly to prevent electric utilities from charging excessive rates to customers. Under R.C. 4928.143(F), the Commission must conduct an annual review of the prior year approved ESP provisions to determine if excessive earnings resulted. The earnings are measured by the significantly in excess earnings test ("SEET") which is further defined by the

¹ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

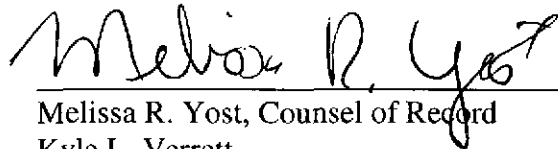
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PUCO's rules in Case No. 09-786-EL-UNC.² If the Commission finds that the ESP provisions did result in significantly excessive earnings, it "shall" require the electric distribution utility ("EDU") to return the excess to customers. The burden is on the EDU to demonstrate that significantly excessive earnings did not occur.

OCC's Motion should be granted because OCC meets the legal standards for intervention, as explained in detail in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Melissa R. Yost", is written over a horizontal line.

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² See *In the Matter of the Investigation into the Development of the Significantly Excessive Earnings Test Pursuant to Amended Substitute Senate Bill 221 for Electric Utilities*, Case No. 09-786-EL-UNC, Finding and Order (June 30, 2010).

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On July 30, 2008, Amended Substitute Senate Bill No. 221, which amended various statutes in Title 49 of the Ohio Revised Code, including R.C. 4928.14, became effective. Under the amended language of R.C. 4928.14, electric utilities are required to provide customers with a Standard Service Offer (“SSO”) consisting of either a market rate offer (“MRO”) or an electric security plan (“ESP”). Pursuant to R.C. 4928.143(F), the Commission shall evaluate the earnings of each electric utility’s approved ESP to determine whether the plan produces significantly excessive earnings for the utility. These statutes are intended to provide protections for customers.

On July 29, 2011, the Companies made their filing for the significantly excessive earnings test (“SEET”) for their 2010 earnings. The SEET filing by the Companies will require analysis and interpretation. This filing will be the basis for either granting or denying customers refunds for rates collected in 2010.

The OCC is the state agency that represents Ohio’s residential utility customers. As such, OCC is an interested stakeholder in these proceedings. The Commission should grant OCC’s Motion to Intervene in these proceedings so that OCC can fully participate

in the review of the Companies' SEET filing, and in so doing, protect the interests of the Companies' residential customers.

II. INTERVENTION

Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent residential utility customers of Ohio. OCC meets the standards for intervention found in Ohio's statutes and the PUCO's rules.

R.C. 4903.221 provides, in part, that any person "who may be adversely affected" by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio's residential customers may be "adversely affected" by these proceedings, especially if the customers are unrepresented in proceedings where the Commission is seeking to determine whether the Companies had significantly excessive earnings in 2010 as a result of their approved ESP. Residential customers are entitled to refunds if the earnings are found to be significantly excessive under R.C. 4928.143(F). Thus, residential customers "may be adversely affected" by the outcomes of these proceedings. Accordingly, OCC satisfies the intervention standard in R.C. 4903.221.

OCC also meets the criteria for intervention in R.C. 4903.221(B), which requires the PUCO, in ruling on motions to intervene, to consider the following:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of the OCC's interest is to represent the residential customers of electric utilities regarding the rates that they paid for electric service in 2010 which may be refunded, in part, if the Commission finds that the Companies' earnings were significantly excessive in 2010. This interest is different than that of any other party and especially different than that of electric utilities whose advocacy includes the financial interest of stockholders.

Second, OCC's legal positions include, without limitation, that the rates paid by residential customers must be reasonable and the service provided for those rates paid must be adequate. This legal position directly relates to the merits of the case, where the 2010 earnings of the Companies are in issue, and if found to be significantly excessive will be ordered to be refunded.

Third, OCC's intervention will not unduly prolong or delay these proceedings, but should provide insight that will expedite the PUCO's effective evaluation of the Companies' 2010 filing. OCC, with its longstanding expertise and experience in various PUCO proceedings, including the Companies' 2009 SEET case, SSO proceedings and the SEET workshop, will duly allow for the efficient processing of these proceedings with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. These cases significantly relate to analysis of the earnings of the Companies under the approved ESP, a matter about which OCC has knowledge. Also, OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding these proceedings in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility customer advocate for the State of Ohio, OCC has a real and substantial interest in these proceedings where the outcome will determine whether residential customers receive a refund for rates paid for electric service in 2010.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the “extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

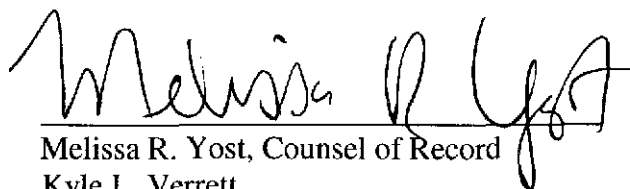
Moreover, the Supreme Court of Ohio confirmed OCC’s right to intervene in PUCO proceedings, in deciding two appeals in which OCC claimed that the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.³

³ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20 (2006).

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of the Companies' residential customers, the Commission should grant OCC's Motion to Intervene.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

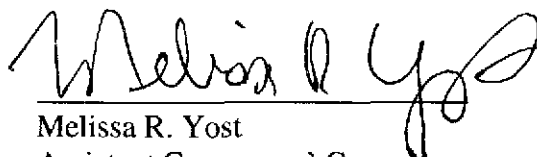
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via first class U.S. Mail, postage prepaid, this 25th day of August, 2011.



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