

FILED

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )  
Columbus Southern Power Company and )  
Ohio Power Company, Individually and, if )  
Their Proposed Merger is Approved, as a )  
Merged Company (collectively, AEP Ohio) )  
for an Increase in Electric Distribution Rates )

Case No. 11-351-EL-AIR  
Case No. 11-352-EL-AIR

In the Matter of the Application of )  
Columbus Southern Power Company and )  
Ohio Power Company, Individually and, if )  
Their Proposed Merger is Approved, as a )  
Merged Company (collectively AEP Ohio) )  
for Tariff Approval )

Case No. 11-353-EL-ATA  
Case No. 11-354-EL-ATA

In the Matter of the Application of )  
Columbus Southern Power Company and )  
Ohio Power Company, Individually and, if )  
Their Proposed Merger is Approved, as a )  
Merged Company (collectively AEP Ohio) )  
for Approval to Change Accounting Methods)

Case No. 11-356-EL-AAM  
Case No. 11-358-EL-AAM

PUCO

2011 OCT 28 PM 4:32

RECEIVED-DOCKETING DIV

---

**MEMORANDUM CONTRA MOTION TO STRIKE CERTAIN OBJECTIONS TO THE STAFF  
REPORTS ON BEHALF OF  
COLUMBUS SOUTHERN POWER COMPANY  
AND  
OHIO POWER COMPANY**

---

The Ohio Consumers' Counsel (OCC) moved to strike certain objections of Columbus Southern Power Company's and Ohio Power Company's (collectively "AEP Ohio" or "Companies") to the Staff Reports in these cases on October 24, 2011. The motion based its request to strike on an allegation that the objections listed lacked specificity or were inconsistent with Commission precedent. OCC has misstated the criteria for judging specificity of objections, misquotes an objection and seeks to improperly narrow the scope of the proceeding. The Commission should deny OCC's motion to strike these objections.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician SM Date Processed OCT 31 2011

**Applicable Rule:**

Ohio Administrative Code Rule 4901-1-28(B) requires that objections to staff reports of investigation be specific. Under the rule, the objections to a staff report frame the issues for the hearing, and put the other parties on notice of issues that will be raised for the hearing. The Commission has considered the scope of this standard in previous proceedings. The goal of this standard is not to eliminate objections but to prevent objections too broad to provide any notice of the issues involved. The Commission does not want simple conclusory statements. The Commission previously provided guidance in Case Nos. 96-572-ST-AIR and 96-573-WW-AIR, *In the Matter of the Application of Copley Square Sewer Company for an Increase in Rates and Charges; In the Matter of the Application of Copley Square Water Company for an Increase in Rates and Charges* (Entry at 1-2)(December 27, 1996):

Some hypothetical examples of objections which would be deemed not specific enough to satisfy the requirements of Rule 4901-1-28(B), O.A.C., are: 'the staff incorrectly calculated test year labor expense' or 'the staff unreasonably determined rate case expense'. These hypothetical examples could be improved, as follows, so that they would be deemed specific enough to satisfy the O.A.C. requirements: 'the staff incorrectly calculated test year expense because it failed to use estimated end-of-test-period employee levels and wage rates in its calculation' or 'the staff unreasonably determined rate case expense because it failed to include the cost of publishing the required legal notice of the local hearing and because it amortized the expense over a three-year period instead of a one-year period.'

The Commission expressed guidance that a short conclusory sentence that a general area of a staff report like test year labor or rate case expense is wrong is not specific. It is the addition of the basis for that conclusion or some other factor like the fact that the Staff incorrectly calculated an area of the report or

failed to do include something in the analysis that provides the needed specificity for a proper objection.

### **Objections Raised by OCC:**

In general the Companies organized the objections under the headers used by the Staff in the reports so it would be clear what sections the objections were intended to apply. The Companies also provided testimony to provide context for the details behind the objections so there can be no question of the issues involved.<sup>1</sup> Based on the standard OCC uses to judge the specificity of the Companies' objections it almost appears that OCC would propose a standard that full testimony be required as the level of detail for each and every objection to frame the issues. However, as can be seen from OCC's request to delay the filing of testimony a week after the objections their actions highlight they would not even require such a strict standard.

### **Objection 1:**

#### **Revenue Requirement**

**OBJ-1)** The Staff Reports utilize costs of service that are based on inconsistent data and contain clerical errors.

- a. The Staff Report erred by using data based on actuals in their adjustments, but did not correspondingly adjust the starting total distribution amounts, resulting in an analysis that improperly subtracts adjustments based on actuals from the as-filed estimated total distribution function in Schedule C-2, Col. C.

---

<sup>1</sup> To the extent the testimony was filed after the objections, the delay was due to a request by OCC for more time to file the testimony in support.

- b. The overall results of the reports are invalid and unreasonable due to the cumulative effect of these errors in methodology resulting in a revenue recommendation which cannot be relied on. The Companies note numerous adjustments which contained errors of a clerical nature.

OCC focuses mainly on the introductory sentence of the objection adding only that the Staff Reports erred by improperly subtracting unidentified adjustments and allege undefined errors. A review of the entire objection which is provided as a whole above shows that the objection deals with the Staff's methodology error in mixing actual data with the data as-filed estimated total distribution function in Schedule C-2, Col. C. As the objection points out this is a problem with the methodology used in the reports that skews the overall approach. The objection establishes Staff's method and examples to highlight the point are then provided in testimony. The objection is clear and OCC's request should be denied. OCC's motion to strike this objection should be denied.

**Objection 4:**

**OPERATING INCOME  
Current Adjustments (Rider Revenue and Expenses)**

**OBJ-4)** The Staff Report adjusted the Companies' cases by using known actual rider revenue and expense amounts for the test year and subtracting them from the actual/projected values that the Companies based their filings upon. The Companies object to this methodology because the Staff Reports do not make the necessary corresponding adjustments to the total Distribution revenue and expense amounts, resulting in a misstatement of the Companies operating income.

The Staff Reports contain errors (such as excluding necessary accounts or designing the adjustment such that the answer was wrong) that resulted in a misstatement of those adjustments.

OCC raises the same argument as it did to the first objection that the objection relies upon unidentified data that it cannot determine what is being placed at issue. They raise questions on some of the further details of the objections that can be found in testimony but ignore the fact that the point of the objection again is that the Staff erred in its methodology by subtracting actual data from the actual/projected data provided in the filing. The objection is again with the Staff methodology and the objection seeks to establish the point that this methodology would require a “necessary corresponding adjustments to the total Distribution revenue and expense amount.” The objection also points out that the Reports exclude necessary accounts or design the adjustment incorrectly. The objection does not just say the Staff Report got the Operating Income wrong. The objection is specific and states the exact error in methodology concerning specifically the rider and expense amounts for the test year and the corresponding lack of the required adjustment needed to mitigate that report error. OCC’s motion to strike this objection should be denied.

**Objection 20:**

**RATE OF RETURN (Capital Structure)**

**OBJ-20** The Staff Reports unreasonably and unlawfully reflect improper capital structures. The Companies’ capital structures should be revised to remove the balance of debt equivalent to the balance of the regulatory asset(s) to which it is been assigned.

OCC argues that it cannot be determined what is actually being placed at issue in Objection 20 and therefore it should be struck. OCC's allegation is incorrect. If the objection is read as a whole it establishes that the Staff Reports reflect improper capital structures as included in the reports under rate of return and capital structure portion of the Staff Reports. The Companies then recommend that a revision to the balance of debt equivalent to the balance of regulatory asset(s) which it is been assigned would be appropriate to correct the error in the Staff Report. Again the specific objection provides the response to a specific area of the Staff Report and provides the basis for how the Companies would correct that error. OCC's motion to strike this objection should be denied.

**Objection 23:**

**RATE OF RETURN (Common Equity)**

**OBJ-23** The Staff Reports unreasonably and unlawfully recommend a return on equity too low for the Companies to adequately compensate investors and are too low when compared to those approved in other jurisdictions.

OCC asserts that it cannot be determined what is actually being placed in issue with this objection and therefore it should be struck. Again OCC's assertion is incorrect that the issue is not shown in Objection 23. Under the Commission's guidance provided above a vague objection may be that the return on equity is too low. But this objection ties the fact that this is a common equity area, that the rate of return as tied to investor compensation is too low and shows that the Companies will compare the rate of return to other jurisdictions for a comparison. The objection establishes the issue will concern a

comparison of rates of return and contrast those with the recommendation of the Staff Reports. Again the objection is not required to list the full testimony of examples of the point of the objection being made that the level is inappropriate as compared to other jurisdictions. OCC's motion to strike this objection should be denied.

**Objection 24:**

**RATE OF RETURN (Common Equity)**

**OBJ-24** The Staff Reports unreasonably and unlawfully rely upon studies to determine the return on equity with faulty assumptions used in the design of the studies and are not reasonable given the type of study being performed.

OCC asserts that it cannot be determined what is actually being placed in issue with this objection and that it is unintelligible and therefore it should be struck. Again OCC's assertion is incorrect. The objection once again provides that it is responding the rate of return/common equity portion of the Staff Reports. This particular objection deals directly with the return on equity. The objection did not simply say the return on equity is too low or wrong. The objection points out that the studies relied upon by the reports are based on faulty assumptions and are improper to rely upon given the analysis or study being performed to determine the proper return on equity. Clearly the objection establishes that the sufficiency of the studies and assumptions relied upon in the Staff Reports are faulty. OCC's motion to strike this objection should be denied.

**Objection 25:**

**RATE OF RETURN (Common Equity)**

**OBJ-25** The Staff Reports unreasonably and unlawfully rely on studies to determine the return on equity that fail to recognize the realities and behaviors of the capital markets in which the Companies compete for funds.

OCC asserts that it cannot be determined what is actually being placed in issue with Objection 25, and that it fails to identify the realities and behaviors of capital markets. OCC again ignores the specificity provided beyond the level of the return on equity that includes an indictment on the studies relied upon by the Staff Reports and that the analysis used to make the findings in the Staff Reports do not recognize the full impact of capital markets and the associated behaviors. The objection once again provides that it is responding to the rate of return/common equity portion of the Staff Reports. Similar to Objection 24 it provides the context of why this criticism of the studies relied upon by the reports are inadequate to determine a return on equity. Objection 25 establishes why it takes issue with this specific portion of the Staff Reports. OCC's motion to strike this objection should be denied.

**Objection 27:**

**RATE OF RETURN (Common Equity)**

**OBJ-27** The Staff Reports are unreasonable and unlawful because the reports fail to overcome the evidence in direct testimony that supports the reasonableness of the recommended ROE for the Companies within the range of 10.55 percent to 11.55 percent.



In response to Companies' Objection 27, OCC again asserts that it cannot be determined what is actually being placed in issue, assumedly because the evidence cited is in the objection is unidentified. Objection 27 provides a direct clash with the return on equity recommended in the Staff Reports as compared to the range provided by the Companies in the direct testimony. The Companies list the range provided in that testimony (all of which is filed in the docket) and the objection is based upon the fact that the reports had no consideration of that evidence and appears to make a recommendation without considering any of the evidence in the public docket. A cut and paste of the evidence in the direct case is not necessary to raise the objection that the evidence supporting the range included in the objection was not considered. It is the absence of consideration of that information and justification for why that valid information was not considered that is the objection. OCC's motion to strike this objection should be denied.

**Objection 17:**

**OPERATING INCOME**

**Current Adjustments (Storm Damage Adjustment)**

**OBJ-17** The Staff Reports unreasonably and unlawfully proposed decreases in the major storm damage basis to a level proposed by Commission Staff in 11-346-EL-SSO et al. cases. The adjustment is unreasonable and unlawful because the lower suggested baseline relies upon a false premise that the Companies exposure to major storms has decreased due to aggressive right-of-way clearing.

OCC moves to strike Companies' Objection 17 because it claims the rationale provided in the objection is not noted in the Staff Report. The objection points out that the recommendation in the Staff Reports is at the level proposed in the Companies other pending cases. The reports give a narrow review of this matter and the result is the exact same level supported by Staff in the 11-346-EL-SSO et al. cases. It is reasonable to assume the underlying data and rationale to get to the same level is the basis in this case. The objections are supposed to frame the scope of the hearing and this is the rationale Staff apparently relied upon but did not include in the written part of the reports. OCC's motion to strike this objection should be denied.

OCC reaches too far with its motion to strike this objection which is beyond the specificity requirement in the rule for an issue that ultimately does appear in the Staff Reports. The inclusion of an objection does not preclude a motion to strike testimony to the extent an issue should not be part of the proceeding. If Staff did not intend to rely upon its public analysis that produces the exact same result, then it can move to strike any testimony in that area. In a previous Entry at the Commission, Examiner Jeff Jones found that, "[t]he intrinsic merit, or lack of merit, of any particular objections must be dealt with following the evidentiary hearing on the matter, not by striking it prior to that time." *In the Matter of the Application of Water and Sewer LLC for an Increase in its Rates and Charges*, Case No. 08-227-WS-AIR (Entry April 14, 2009 at ¶6). Examiner Jones went on to point out that "just because an objection is specific and relates to the staff report, this does not necessarily mean that evidence regarding the issue raised by that objection will be admitted at the hearing. Evidence will be allowed only as to issues that are relevant to the determination of the Company's rates." *Id.*

**Objection 18:**  
**OPERATING INCOME**  
**Current Adjustments (Storm Damage Adjustment)**

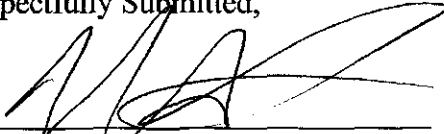
**OBJ-18** The Staff Reports unreasonably and unlawfully make an adjustment to the storm damage level because the Staff Report did not reflect the actual basis for O&M storm damages incurred during the test year.

OCC also moves to strike Companies' Objection 18 after misquoting the objection. OCC quotes the objection as stating, "the Staff Reports unreasonably and unlawfully proposed decreases in major storm damage basis to a level proposed by Commission Staff in 11-346-EL-SSO et al. cases." (See OCC Motion at 5.) This language does not appear in Objection 18. OCC improperly applies language from Objection 17 and applies it to Objection 18. Objection 18 is focused on the failure of the Staff Reports to "reflect the actual basis for O&M storm damaged incurred during the test year." Even the standard proposed by OCC on page 4 of its motion stating the requirements of an objection include items that "relate to the failure of the staff report to address as items" would allow Objection 18. This objection is based on the fact that the Staff Reports do not reflect the actual basis for O&M storm damages incurred during the test year. OCC's motion to strike this objection should be denied.

**Conclusion:**

Based on the foregoing, the Companies' objections meet the Commission's standard for specificity and is consistent with Commission precedent. OCC's motion to strike these objections should be denied.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'MJS', written over a horizontal line.

Matthew J. Satterwhite

Anne M. Vogel

American Electric Power Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215-2373

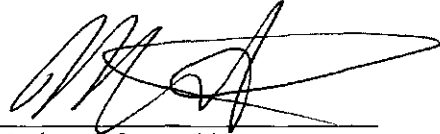
614-716-1915

[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)

[amvogel@aep.com](mailto:amvogel@aep.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Memorandum Contra Motion to Strike Certain Objections to the Staff Reports on Behalf of Columbus Southern Power Company and Ohio Power Company has been served upon the below-named counsel via First Class mail, postage prepaid, this 28th day of October, 2011.



Matthew J. Satterwhite

William L. Wright, Section Chief  
Thomas McNamee  
Werner L. Margard III  
Stephen A. Reilly  
Public Utilities Commission of Ohio  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, OH 43215-3793  
[William.wright@puc.state.oh.us](mailto:William.wright@puc.state.oh.us) 614-466-4397  
[Thomas.mcnamee@puc.state.oh.us](mailto:Thomas.mcnamee@puc.state.oh.us) 614-466-4397  
[werner.margard@puc.state.oh.us](mailto:werner.margard@puc.state.oh.us) 614-466-4395  
[stephen.reilly@puc.state.oh.us](mailto:stephen.reilly@puc.state.oh.us) 614-466-4397

Samuel C. Randazzo  
Joseph E. Olikier  
Frank P. Darr  
McNees Wallace & Nurick LLC  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, OH 43215  
[sam@mwncmh.com](mailto:sam@mwncmh.com) 614-719-2840  
[joliker@mwncnih.com](mailto:joliker@mwncnih.com) 614.719.5957  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com) 614.719.2855

Counsel for Industry Energy Users-Ohio

David F. Boehm  
Michael L. Kurtz  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
[dboehm@bklawfirm.com](mailto:dboehm@bklawfirm.com) 513-421-2255  
[mkurtz@BKLlawfirm.com](mailto:mkurtz@BKLlawfirm.com) 513-421-2255

Counsel for Ohio Energy Group

Thomas J. O'Brien  
Lisa G. McAlister  
Matthew W. Warnock  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[lmcalister@bricker.com](mailto:lmcalister@bricker.com) 614.227.4854  
[mwarnock@bricker.com](mailto:mwarnock@bricker.com) 614.227-2300  
[tobrien@bricker.com](mailto:tobrien@bricker.com) 614.227-2335

Counsel for Ohio Hospital Association and  
OMA Energy Group

James F. Lang  
Laura C. McBride  
N. Trevor Alexander  
Calfee, Halter & Griswold LLP  
1400 KeyBank Center  
800 Superior Avenue  
Cleveland, OH 44114  
[JLang@Calfee.com](mailto:JLang@Calfee.com) 216.622.8563  
[LMcBride@Calfee.com](mailto:LMcBride@Calfee.com) 216.622.8528  
[talexander@calfee.com](mailto:talexander@calfee.com) 614.621.7774

Counsel for FirstEnergy Solutions Corp.

Maureen R. Grady  
Larry Sauer  
Ohio Consumers' Counsel  
10 W. Broad Street Suite 1800  
Columbus OH 43215  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us) 614-466-8574  
[sauer@occ.state.oh.us](mailto:sauer@occ.state.oh.us) 614-466-1312

Richard L. Sites  
155 East Broad Street, 15<sup>th</sup> Floor  
Columbus, OH 43215-3620  
[ricks@ohanet.org](mailto:ricks@ohanet.org) 614-221-7614

Counsel for Ohio Hospital Association

Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Findlay, OH 45840  
[cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)  
419-425-8860

Counsel for Ohio Partners for Affordable Energy

Henry W. Eckhart  
The Sierra Club  
1200 Chambers Road, #106  
Columbus, OH 43212  
[henryeckhart@aol.com](mailto:henryeckhart@aol.com) 614-461-0984

Mark A. Hayden  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)  
Phone (330) 761-7735

John W. Bentine  
Mark S. Yurick  
Zachary D. Kravitz  
Chester Willcox & Saxbe, LLP  
65 East State Street, Suite 1000  
Columbus, OH 43215  
[jbentine@cwslaw.com](mailto:jbentine@cwslaw.com) 614-334-6121  
[myurick@cwslaw.com](mailto:myurick@cwslaw.com) 614-334-7197  
[zkravitz@cwslaw.com](mailto:zkravitz@cwslaw.com) 614-334-6117

Counsel for The Kroger Co.

Benita Kahn  
Lija Kaleps-Clark  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
P O Box 1008  
Columbus, OH 43216-1008  
[bakahn@vorys.com](mailto:bakahn@vorys.com) 614-464-6487  
[lkalepsclark@vorys.com](mailto:lkalepsclark@vorys.com)

Counsel for Ohio Cable Television Association

John Davidson Thomas  
Hogan Lovells US LLP  
Columbia Square  
555 Thirteenth Street, NW  
Washington DC 20004  
[Dave.Thomas@hoganlovells.com](mailto:Dave.Thomas@hoganlovells.com)  
202-637-5675

Counsel for Ohio Cable Television Association

Christopher J. Allwein  
Williams, Allwein and Moser, LLC  
1373 Grandview Ave., Suite 212  
Columbus, OH 43212  
[callwein@williamsandmoser.com](mailto:callwein@williamsandmoser.com)  
614-429-3092

Counsel for Natural Resources Defense Council

Barth E. Royer  
Bell & Royer Co., LPA  
33 South Grant Avenue  
Columbus, OH 43215-3927  
[barthrover@aol.com](mailto:barthrover@aol.com) (614) 228-0704

Counsel for The Ohio Department of Development

Douglas G. Bonner  
Emma F. Hand  
Keith C. Nusbaum  
SNR Denton US LLP  
1301 K Street NW  
Suite 600, East Tower  
Washington, DC 20005  
[doug.bonner@snrdenton.com](mailto:doug.bonner@snrdenton.com) 202-408-3957  
[emma.hand@snrdenton.com](mailto:emma.hand@snrdenton.com) 202-408-7094  
[keith.nusbaum@snrdenton.com](mailto:keith.nusbaum@snrdenton.com)

Counsel for Ormet Primary Aluminum Corporation

Michael R. Smalz  
Joseph V. Maskovyak  
Ohio Poverty Law Center  
555 Buttles Avenue  
Columbus, OH 43215  
[m-smalz@ohiopoveritylaw.org](mailto:m-smalz@ohiopoveritylaw.org) 614-824-2502  
[j-maskovyak@ohiopoveritylaw.org](mailto:j-maskovyak@ohiopoveritylaw.org) 614/221-7201 x105

Counsel for The Appalachian Peace and Justice  
Network