BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

INITIAL BRIEF
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") files this brief in furtherance of the legislative intent to protect Ohio customers from paying unjust and unreasonable rates for their electric service. In Senate Bill 221 ("S.B. 221") the 127th General Assembly determined that the Public Utilities Commission of Ohio ("PUCO" or "Commission") must protect Ohio customers by requiring electric distribution utilities to return to customers the amount of any significantly excessive earnings.[1]

Specifically, S.B. 221 requires the Commission, on an annual basis, to compare the earnings of Ohio investor-owned utilities with electric security plans ("ESPs") to the earnings of publicly-traded companies with comparable risk.[2] If, after conducting such a comparison, the Commission determines that a utility's ESP rate "adjustments" resulted in "significantly excessive" earnings, the utility must refund the excess earnings back to

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[1] *See* R.C. 4928.143(F).

[2] *See id.*

the utility's customers.[3] Through the significantly excessive earnings test ("SEET") the Legislature determined that Ohio consumers cannot be made to fund significantly excessive utility profits resulting from an ESP plan.

The Commission applied the SEET for the first time when it reviewed the 2009 earnings of Columbus Southern Power Company ("CSP" or "the Company")[4] and acknowledged that the purpose of the SEET is to be a statutory check on rates that result in excessive earnings.[5] On January 11, 2011, the PUCO issued an Opinion and Order ("January 11, 2011 Opinion and Order") addressing CSP's 2009 earnings ("2009 SEET Proceeding"), and whether those earnings constituted "significantly excessive" earnings under R.C. 4928.143(F). The Commission found CSP's earnings to be excessive in the amount of $42.6 million dollars, and ordered that amount to be refunded to customers.[6]

As explained in detail below, the Commission should find that CSP failed to meet its burden of proof that its earnings in 2010 were not significantly excessive. More specifically, OCC urges the Commission to find the following in regards to the 2010 SEET analysis for CSP: 1) PUCO Staff's comparable group, comparable groups' return on equity of 10.97 percent and baseline adder of fifty percent are reasonable and comply with the law; 2) PUCO Staff's baseline adder of fifty percent should be adjusted downward because of CSP's over-stated and declining capital investments in Ohio; and

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[3] *See id.*

[4] *See In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 10-1261-EL-UNC, generally.

[5] *See In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 10-1261-EL-UNC, January 11, 2011 Opinion and Order ("January 11, 2011 Opinion and Order") at 25.

[6] *See id*. at 35.

3) CSP's earned return on equity for the 2010 test year was 19.42% because Ohio law mandates that off-system sales be included for purposes of the SEET. Finally, OCC requests that CSP's significantly excessive earnings for 2010 be refunded to customers through a SEET adjustment rider on a per kilowatt-hour basis, similar to the refunding mechanism approved in the 2009 SEET Proceeding.[7]

II. BURDEN OF PROOF

There is no question that the Company has the burden of proof for demonstrating that **significantly excessive earnings did not occur in 2010**. In this regard, R.C. 4928.143(F) clearly states that, "[t]he burden of proof for demonstrating that significantly excessive earnings did not occur shall be on the electric distribution utility." The Commission has emphasized that "section 4928.143(F), Revised Code, imposes on the utility the burden of proof to demonstrate that significantly excessive earnings *did not occur as opposed to the mere likelihood* that significantly excessive earnings did not occur."[8]

III. LAW AND ARGUMENT

To determine if CSP's earnings were "significantly excessive" in 2010, the Commission must determine "whether the earned return on common equity of the electric

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[7] *See id.* at 35.

[8] *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, Entry on Rehearing at 26 (August 25, 2010) "SEET Rehearing Entry" (emphasis added). *See also*, Case No. 10-1261-EL-UNC, Finding and Order at 24 (January 11, 2011), where the Commission states: "Section 4928.143(F), Revised Code, places on the utility 'the burden of proof for demonstrating that significantly excessive earnings did not occur,'" *citing* the SEET Rehearing Entry in Case No. 09-786-EL-UNC.

distribution utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate."[9] The statute also requires "consideration" to be given to the "capital requirements of future committed investments in the state."[10] If the Commission determines that the adjustments, in the aggregate, did result in "significantly excessive earnings" it "shall require the electric distribution utility to return to consumers the amount of the excess by prospective adjustments."[11] OCC recommends the Commission find that CSP has significantly excessive earnings in 2010 for the reasons explained below.

A. The Commission Should Adopt The PUCO Staff's Comparable Group And Comparable Group's Return On Equity Of 10.97 Percent.

As discussed above, the SEET analysis requires the selection of a group of "publicly traded companies, including utilities, that face comparable business and financial risk ***."[12] This group of publicly traded companies is known as the "comparable group." For its comparable group, the PUCO Staff used the companies that comprise the SPDR[13] Select Sector Fund-Utility ("XLU").[14] The PUCO Staff selected XLU as its comparable group because it "is the most widely traded utility ETF (electronically traded fund) and the components are selected by an independent third

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[9] R.C. 4928.143(F).

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] SPDR is a trademark of Standard and Poor's Financial Services LLC.

[14] *See* Staff Ex. 1 (Prefiled Testimony of Joseph P. Buckley) at 3.

party that is not involved in this proceeding."[15] The PUCO Staff also states that the use of XLU removes "bias from the selection of the comparable group, ***" and that "it fosters use of a simplistic process that produces consistent reasonable results."[16]

OCC agrees with the PUCO Staff's use of XLU in this proceeding and maintains that the use of a widely used stock index selected by an independent third party is a reasonable approach in calculating the mean Return on Equity ("ROE") of the comparable group. OCC also concurs with the PUCO Staff's opinion that the use of the SPDR index will have the effect of "having more parties understand the process and allowing greater participation the SEET review."[17]

Additionally, the PUCO Staff's approach in this proceeding is consistent with the approach approved and adopted by the Commission in the 2009 SEET Proceeding. In the 2009 SEET Proceeding, the PUCO Staff used the average ROEs of two exchange traded funds ("ETFs"), the iShares Dow Jones U.S. Utilities Sector Index Fund and the Utilities Selector Sector SPDR Fund, as the basis for the mean ROE of the comparable group of companies.[18] Based in part on the PUCO Staff's position, the Commission concluded that a comparable benchmark ROE was in the general range of between 10 percent and 11 percent in the 2009 SEET Proceeding.[19] In this proceeding, the PUCO Staff proposes an average ROE of 10.97 percent.[20] For the reasons stated above, the Commission should adopt the PUCO Staff's recommended comparable group and average ROE of

[15] *Id.* at 4.

[16] *Id.* at 5.

[17] *Id.* at 5.

[18] *See* January 11, 2011 Opinion and Order at 20.

[19] *See id.* at 21.

[20] *See* the Attachment to Staff Ex. 4 (Prefiled Redirect Testimony of Joseph P. Buckley).

10.97 percent for purposes of determining whether CSP's 2010 earnings were significantly excessive.

B. The Commission Should Adopt The PUCO Staff's Baseline Adder Of Fifty Percent.

In the 2009 SEET Proceeding, the Commission established the SEET threshold by first determining the comparable group and the comparable group's ROE and then deciding the appropriate adder. In that proceeding the Commission found that the PUCO Staff's recommended 50 percent adder was a reasonable guide for establishing a baseline adder[21] but ultimately the Commission adjusted the PUCO Staff's 50 percent baseline adder to 60 percent after considering other factors.[22]

In this proceeding the PUCO Staff totaled the net income earned by the companies in its comparable group and then divided by the total common equity of all the companies, which produced an average ROE of 10.97 percent.[23] The PUCO Staff again recommends the use of a fifty percent adder and relies on the January 11, 2011 Opinion and Order in the 2009 SEET Proceeding which established 50 percent as a reasonable guide for an adder.[24] Specifically, the Commission in the 2009 Proceeding concluded as follows:

> Among the parties' positions we find that Staff's basic methodology best gives effects to the statutory design to create such symmetry. Specifically, the Commission is persuaded by the fact that Staff's proposed adder's impact, if subtracted from the comparable ROE benchmark yields a result that is similar to the

[21] *See* January 11, 2011 Opinion and Order at 25 and 27.

[22] *See id.* at 27.

[23] *See* Staff Ex. 1 (Prefiled Testimony of Joseph P. Buckley) at 3 and the Attachment to Staff Ex. 4 (Prefiled Redirect Testimony of Joseph P. Buckley).

[24] January 11, 2011 Opinion and Order at 25.

> company's cost of debt. Given the Commission's adoption of an 11 percent ROE, the impact of a 50 percent downward adjustment to the comparable ROE results in an earning of 5.5 percent, which is similar to CSP's embedded cost of debt. **Therefore, 50 percent is a reasonable guide for establishing an adder**.[25]

As in the 2009 SEET Proceeding, the Commission should be again persuaded that the PUCO Staff's recommended baseline adder of 50 percent is reasonable because of its impact if it were subtracted from the comparable ROE benchmark as explained above.[26] Specifically, if the ROE for the PUCO Staff's comparable group (10.97 percent) was adjusted downward by 50 percent, it would result in earnings similar to CSP's embedded cost of debt—5.5 percent.[27] And using a fifty percent adder, the PUCO Staff recommends a threshold ROE of 16.46 percent in this proceeding.[28] But the PUCO Staff recognizes that their threshold ROE may be adjusted either upwards or downwards by the Commission based on other considerations.[29] OCC supports the PUCO Staff's recommendation to use 50 percent as a baseline adder but advocates further that CSP's over-stated and declining future committed investments in Ohio support a downward adjustment of the 50 percent baseline adder as explained below.

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[25] *Id.* (emphasis added).

[26] *See id.*

[27] *See id.*

[28] *See* Staff Ex. 1 (Prefiled Testimony of Joseph P. Buckley) at 3-4 and the Attachment to Staff Ex. 4 (Prefiled Redirect Testimony of Joseph P. Buckley).

[29] *See* Staff Ex. 1 (Prefiled Testimony of Joseph P. Buckley) at 4.

C. The Consideration Of Capital Requirements Of Future Committed Investments Supports A Downward Adjustment Of The 50% Baseline Adder Recommended By PUCO Staff.

1. R.C. 4928.143(F) is clear that the Commission shall give consideration to the capital requirements of future committed investments in Ohio when determining whether the ESP adjustments resulted in significantly excessive earnings for CSP in 2010.

R.C. 4928.143(F) provides that the Commission "shall consider" whether the return on common equity earned by an electric distribution utility is significantly excessive when compared to the business and financial risk that publicly traded companies face, with adjustments for capital structure. In the very next sentence, the Legislature directed that "*[c]onsideration also shall be given* to the capital requirements of future committed investments in this state." (Emphasis added). In applying the statute, this language requiring "consideration" to "also" be given to "future committed investment" is read in the context it is found—directly following the comparable analysis language. The placement of the capital requirement language, along with the language linking the capital requirements to the comparable analysis ("consideration also shall be given"), means that capital requirements of "future committed investments" is another factor that must be considered in conjunction with the comparable analysis and the establishment of the ROE threshold. And in the 2009 SEET Proceeding, the Commission specifically held that "[a]s required by statute ***, the Commission considered the electric utility's future committed capital investments when rendering its decision on the SEET."[30]

[30] January 11, 2011 Opinion and Order at 33.

2. CSP projects that it will invest $93 million less in capital investments in 2011 than in 2009.

In order to accurately assess the level of spending for CSP's capital commitments in the future—any assessment must start with the amount of money invested for capital commitments for the baseline year under review—2010—where CSP's capital spending was $194.870 million.[31] CSP estimates that its capital expenditures will decline in 2011 to $186.912 million.[32] But what is also important is that, in 2009, CSP's expenditures for capital investments were $280,107 million[33]—$85,237 million more than what was invested in 2010. And that is $93,195 million more than what CSP projects to spend in 2011. Consequently, CSP's expected future construction expenditures should not be the basis for increasing the baseline ROE used for determining whether CSP had significantly excessive earnings in 2010, especially since those expenditures are projected to be $93,195 million less in 2011 than what CSP invested in 2009.

3. CSP over-stated its projected capital commitments for 2010 in the 2009 SEET Proceeding by $61,230 million.

In the 2009 SEET Proceeding the Commission found that the PUCO Staff's recommended 50 percent was a reasonable guide for establishing a baseline adder[34] but ultimately the Commission adjusted the PUCO Staff's 50 percent baseline adder to 60 percent after considering other factors,[35] including the capital commitments made by CSP

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[31] *See* Exhibit JH-1 attached to Company Ex. 1.

[32] *See id.*

[33] *See id.*

[34] *See* January 11, 2011 Opinion and Order at 25 and 27.

[35] *See id*. at 27.

for 2010 and 2011.[36] And in its January 11, 2011 Opinion and Order the Commission noted that "Customer Parties raised a concern that CSP was not making a firm commitment to its 2010 budget."[37] But the Commission ultimately found that, "on cross-examination, it was demonstrated that CSP is indeed committed to spending the projected capital budget for 2010."[38]

In the 2009 SEET Proceeding, CSP had forecasted its construction expenditures for 2010 to be $256,100 million.[39] However, it has been shown in this proceeding that CSP's actual construction expenditure for 2010 was $194,870 million,[40] an amount equal to 76 percent of the projected capital spending for the year.[41] This over-stated investment projection of CSP was considered by the Commission in the 2009 SEET Proceeding when it rendered its decision on the SEET[42] and adjusted the PUCO Staff's 50 percent baseline adder upward to 60 percent.[43] In sum, CSP's actual capital spending in 2010 was $61,230 million (or 24 percent) less than the level projected by the Company which was one of the factors that led the Commission to adjust the PUCO Staff's 50 percent adder to 60 percent in the 2009 SEET Proceeding. Accordingly, there is a need for a

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[36] *See id.* at 25.

[37] *Id.*

[38] *Id.*

[39] *See id.* at 31 and Cross- Examination of Hamrock, Vol. I, pages 52-54.

[40] *See* Exhibit JH-1 attached to Company Ex. 1.

[41] OCC notes that in the 2009 SEET Proceeding, CSP projected its 2011 construction expenditures at $186, 969 million. *See* January 11, 2011 Opinion and Order at p. 31. In this proceeding CSP has reduced its projected construction expenditures for 2011 to $186, 912 million. *See* Exhibit JH-1 attached to Company Ex. 1.

[42] *See* January 11, 2011 Opinion and Order at 33.

[43] *See id*. at 27.

symmetrical downward adjustment in the adder in the instant case. Therefore it is appropriate that the Commission should adopt an adder that is less than the baseline adder of 50 percent proposed by the PUCO Staff.

As discussed above, the law requires the Commission to give consideration to the capital requirements of future committed capital investments in Ohio. In this case, the threshold level of significantly excessive earnings should not be increased based on CSP's projected construction spending.[44] Moreover, the threshold level of significantly excessive earnings should be decreased because in the 2009 SEET Proceeding the Commission gave future committed investments in Ohio $61,230 million more weight in the 2009 SEET analysis than what CSP actually expended in 2010.

D. The Commission Should Find That CSP's Earned Return On Equity Is 19.42 Percent For The Purpose Of Determining Whether CSP Had Significantly Excessive Earnings In 2010.

1. R.C. 4928.143(F) requires the Commission to include the profits from off-system sales as part of CSP's earned return on equity.

In administering the SEET, the Commission should include off-system sales ("OSS") in the margins in the earnings of the utility. Off-system sales are sales by a utility to individuals or entities that are not Ohio retail customers. They can be called "opportunity" sales—sales that are made possible because the generation plant produces more power than is needed for Ohio retail electric customers. CSP's off-system sales come from generation plant that was built for the benefit of Ohio customers. Moreover, CSP's jurisdictional customers have funded a return on and a return of such generation assets.

[44] *See* Exhibit JH-1 attached to Company Ex. 1.

By way of background, in the 2009 SEET Proceeding, the Commission determined that off-system sales should be excluded from the Company's earned return on equity.[45] The OCC, OEG and Appalachian Peace and Justice Network ("APJN") filed an application for rehearing arguing, primarily, that the Commission erred by unlawfully excluding the profits from off-system sales from the earned return of CSP. OCC explained that the exclusion of these profits (OSS margins) resulted in a biased comparison between CSP and publicly traded companies that face comparable business and financial risk. Thus, the Commission's decision to exclude OSS margins was contrary to R.C. 4928.143(F), and denied customers part of the refund they should have received from CSP.[46] In its March 9, 2011 Entry on Rehearing, the Commission affirmed the SEET Order and denied the Application for Rehearing of OCC, OEG and APJN, as well as the Application of Ohio Partners for Affordable Energy's ("OPAE") on the OSS issue.[47] OEG appealed the Commission's decision on the OSS issue to the Ohio Supreme Court on May 5, 2011. OCC intervened as appellant on May 13, 2011.[48] The appeal is still pending.

In this proceeding, OEG witness Lane Kollen recommends that CSP's return on common equity for 2010 include "the OSS margins in **both the net income numerator and in the common equity in the denominator**."[49] Kollen recommends that the Commission find that CSP's earned return on common equity for 2010 was 19.42 percent

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[45] *See* January 11, 2011 Opinion and Order at 30.

[46] *See* March 9, 2011 Entry on Rehearing at 7.

[47] *See id*. at 8.

[48] *See* Ohio Supreme Court Case No. 2011-0751.

[49] OEG Ex. 1 (Direct Testimony of Lane Kollen) at 3 (emphasis added).

for purposes of the SEET.[50] OCC supports Kollen's recommendation and advocates that the Commission should return to customers all of CSP's "significantly excessive" profits resulting from unnecessary ESP "adjustments" (rate increases) granted at the retail level. As explained further below, this is what R.C. 4928.143(F) requires.

In 2010, CSP's earnings from off-system sales were $47.224 million;[51] while CSP's total earnings were $230,074,000.[52] Consequently, approximately 20 percent of CSP's total earnings in 2010 were derived from off-system sales. Therefore, if earnings from off-system sales are ignored, as proposed by the Company,[53] the Commission will be comparing only 80 percent of the Company's earnings with 100 percent of the earnings of the comparable group. CSP's approach is therefore biased, meaningless, asymmetrical, and contrary to the language of 4928.143(F). Instead, the statute should be applied "***in a manner consistent with the plain meaning of the statutory language***."[54] Moreover, Ohio's rules regarding statutory construction mandate that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage."[55]

The SEET statute requires "the earned return on common equity of the electric distribution utility" to be compared with the "return on common equity that was earned during the same period by [comparable] publicly traded companies, including

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[50] *See id.*

[51] *See* Company Ex. 2 (Revised Direct Testimony of Thomas E. Mitchell) at TEM 1, 1-2

[52] *Id.*

[53] *See* Company Ex. 1 (Revised Direct Testimony of Joseph Hamrock) at 8.

[54] *State v. Johnson,* 116 Ohio St. 3d 541, 2008-Ohio-69, 880 N.E. 2d 896 at ¶15.

[55] R.C. 1.42.

utilities***."[56] The Company's proposal to compare only 80 percent of CSP's profits to 100 percent of the earnings of the companies in the comparable group, results in a comparison that does not comply with the statute.

Simply put, R.C. 4928.143(F) limits the amount of "significantly excessive" earnings that must be returned to customers to the amount of money that was collected as a result of "adjustments" (rate increases) approved at the retail level in the ESP. If CSP had no ESP rate increases at the retail level in 2010, then R.C. 4928.143(F) would not require any of CSP's profits to be returned to customers, regardless of how large CSP's profits from off-system sales may have been. But this was not the case, and the Commission is not permitted under R.C. 4928.143(F) to pick and choose which earnings to include in the Company's ROE.

The effect of the Company's unbalanced SEET comparison is that customers will not receive the full refund they are due under R.C. 4928.143(F). For this reason alone, CSP's proposal to exclude $47.224 million of off-system sales profits from reported earnings should be rejected. In this regard, the statutory language does not permit the Commission to selectively exclude certain utility earnings for purposes of the SEET comparison.

[56] R.C. 4928.143(F).

2. Including the profits from off-system sales in the earned return of CSP is consistent with how these profits are reported for financial accounting purposes, and is the only approach consistent with commonly recognized jurisdictional allocation methods.

CSP's proposal to exclude off-system sales margins from its SEET calculation is unsound because off-system sales are an inherent component of the Company's earnings. When calculating CSP's earnings for SEET purposes, the Commission should examine, and take into account, CSP's **actual earnings** for 2010. To this end, CSP's actual earnings include its allocated share of off-system sales earnings, as prescribed by generally accepted accounting principles ("GAAP"), and as reported to the SEC[57] and the FERC.[58] This is an objective, verifiable approach that does not require adjustments to the utility and/or comparable group earnings and ROE.

To this end, OEG witness Lane Kollen explains in his direct testimony that "the most accurate and simplest way to calculate the retail jurisdictional earned return on equity is to **leave the OSS margins in both the numerator and the denominator**."[59] Kollen also points out that this approach is the only one that is consistent with either of the two commonly recognized jurisdictional allocation methods.[60] OCC supports this approach and maintains that the Commission should leave the OSS margins in both the numerator and the denominator when calculating the Company's Return on Equity.

[57] *See* Company Exhibit 1A, SEC Form 10K, at 167-170.

[58] *See* Company Exhibit 1C, FERC Financial Report Columbus Southern Power Company, at 114-117.

[59]OEG Ex. 1 (Direct Testimony of Lane Kollen) at 10 (emphasis added).

[60] *See id*.

E. The Commission Should Reject CSP's Proposed SEET Analysis.

When considering the evidence presented by the Company (including the testimony of Mitchell, Hamrock and Makhija), the Company has failed to provide evidence sufficient to prove that its earnings for 2010 were not significantly excessive. Dr. Makhija's proposed threshold ROE for 2010 for CSP of 22.62%, based on a mean ROE of 11.48%, and an adder of 11.13%, is unreasonable.[61] In the 2009 SEET Proceeding, the methodology used by Dr. Makhija in calculating the threshold ROE was rejected by the Commission. Specifically, the Commission stated as follows:

> We find that not only does AEP-Ohio's proposed SEET analysis rely exclusively on a bright line statistical test for its SEET threshold; it relies on the statistical analysis to the point of producing an **unrealistic and indefensible result**. If the Commission were to accept AEP-Ohio's SEET analysis to determine the threshold ROE for CSP at 22.51 percent, the Commission would be forced to accept an electric utility ROE of less than 22.51 percent as not significantly excessive.[62]

In this proceeding, Dr. Makhija used the same methodology for CSP's SEET analysis.[63] Accordingly, Dr. Makhija's approach in this case—like in the 2009 SEET Proceeding—fails to comply with the mandate of the statute and should again be rejected by the Commission. The PUCO Staff's methodology, on the other hand, complies with the statute, follows the Commission's January 11, 2011 Opinion and Order in the 2009 SEET Proceeding, and produces a reasonable starting point for determining the threshold return above which profits are considered significantly excessive.

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[61] *See* Company Ex. 3 (Direct Testimony of Dr. Anil K. Makhija) at 7.

[62] January 11, 2011 Opinion and Order at 24 (emphasis added).

[63] *See* Company Ex. 3 (Direct Testimony of Dr. Anil K. Makhija) at 6 and Cross- Examination of Dr. Makhija, Vol. I, page 98.

IV. CONCLUSION

Upon review of the record in this proceeding, the Commission should find that CSP failed to meet its burden of proof that its earnings in 2010 were not significantly excessive. More specifically, OCC urges the Commission to find the following in regards to the 2010 SEET analysis for CSP: 1) PUCO Staff's comparable group, comparable group's return on equity of 10.97 percent and baseline adder of fifty percent are reasonable and comply with the law; 2) PUCO Staff's adder should be adjusted downward because of CSP's over-stated and declining capital investments in Ohio; and 3) CSP's earned return on equity for 2010 was 19.42% because Ohio law mandates that off-system sales be included for purposes of the SEET. Finally, OCC requests that CSP's significantly excessive earnings for 2010 be refunded to customers through a SEET adjustment rider on a per kilowatt-hour basis, similar to the refunding mechanism approved in the 2009 SEET Proceeding.[64]

[64] *See* January 11, 2011 Opinion and Order at 35.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Brief* was served electronically on the persons stated below this 31st day of January, 2012.

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