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Via E-File

January 31, 2012

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: Case No. 11-4571-EL-UNC and 11-4572-EL-UNC

Dear Sir/Madam:

Please find attached the POST HEARING BRIEF OF THE OHIO ENERGY GROUP for filing in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody M. Kyler, Esq.
BOEHM, KURTZ & LOWRY

MLKkew
Encl.
Cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or ordinary mail, unless otherwise noted, this 31st day of January, 2012 to the following:

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BEFORE THE
PUBLIC UTILITY 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 No. 11-4571-EL-UNC** **11-4572-EL-UNC**

POST-HEARING BRIEF OF THE OHIO ENERGY GROUP

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January 31, 2012

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POST-HEARING BRIEF OF THE OHIO ENERGY GROUP

The Ohio Energy Group ("OEG") hereby submits its Post-Hearing Brief in support of its recommendations to the Public Utilities Commission of Ohio ("Commission") in this proceeding. The members of OEG participating in this action are: Amsted Rail Company, Inc., ArcelorMittal USA, E.I. DuPont de Nemours & Company, GE Aviation, Praxair Inc. and Worthington Industries. OEG's recommendations are set forth below.

Respectfully submitted,

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January 31, 2012

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INTRODUCTION

In 2010, the Columbus Southern Power Company ("CSP" or "Company") earned an after-tax return on common equity of 19.42%. This return is based on after-tax earnings of $281.351 million, and includes profits from off-system sales.[1] CSP's pre-tax return on equity in 2010 was 29.88%, based on pre-tax earnings of $432.86 million.[2]

Pursuant to R.C. 4928.143(F), the Commission must now examine whether any of CSP's 2010 earnings were "significantly excessive" and therefore must be refunded to customers. For the reasons discussed below, the Commission should find that $49.038 million of CSP's 2010 pre-tax profits were significantly excessive and should order a refund of that amount to all AEP Ohio customers.[3] A $49.038 million refund represents 11.3% of CSP's pre-tax profits in 2010.

The Commission should not exclude CSP's off-system sales earnings for purposes of the significantly excessive earnings test ("SEET"). The consideration of off-system sales earnings is required by the plain language of R.C. 4928.143(F) and is not barred by Commission precedent. However, if the Commission does exclude CSP's off-system sales earnings, then the Commission should use a correct methodology. CSP allocated 100% of its fixed generation and transmission costs to native load retail sales and none of those costs to off-system sales, even though off-system sales comprised 15.28% of total sales in 2010.[4] Since off-system sales cannot be made without generation and transmission assets, CSP's methodology overstates the profitability of off-system wholesale sales and understates the profitability of native load retail sales in Ohio.

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[1] OEG Ex. 1, Direct Testimony of Lane Kollen (Oct. 12, 2011)("Kollen Testimony"), Ex. LK-2.
[2] 19.42% x 1.5385 tax gross up.
[3] "AEP Ohio" includes both CSP and Ohio Power Company, which received Commission approval to merge on December 14, 2011 in PUCO Case No. 10-2376-EL-UNC et al, Opinion & Order at 56-57.
[4] Company Ex. 2, Direct Testimony of Thomas E. Mitchell (July 29, 2011) ("Mitchell Testimony"), Ex. TEM-1 at 5 of 5.

The Commission should reject the Company's primary proposal to again determine the SEET threshold based on a statistical standard deviation approach. That standard deviation approach was soundly rejected in the 2009 SEET case as being "*unreasonable and inconsistent with the statute*" as well as "*producing and unrealistic and indefensible result.*"[5] The Commission also should reject the Company's secondary proposal to add a 60% premium to the mean return of the comparable group ("60% adder"). Instead, the Commission should adopt a 50% SEET adder. The 50% SEET adder already encompasses substantial judgment and there is no valid basis for increasing it even further by relying on non-statutory subjective factors that are outside the requirements of R.C. 4928.143(F). If the Commission does rely upon subjective factors in determining the SEET adder, then the Commission should consider CSP's collection of $94.6 million of provider-of-last-resort ("POLR") revenues in 2010.[6]

In allocating the SEET refund to AEP Ohio customers, the Commission should retain the kilowatt hour allocation methodology and the exclusion of reasonable arrangement customers adopted in CSP's last SEET case. The Commission should also make any SEET refund nonbypassable, as it is impractical to determine every customer who contributed to the Company's significantly excessive earnings in 2010 but is now shopping. Further, the Commission should refund AEP Ohio customers over a short period of time, i.e. one month.

[5] PUCO Case No. 10-1261-EL-UNC, Opinion and Order (Jan. 11, 2011) at 24.
[6] Mitchell Testimony at Ex. TEM-5.

ARGUMENT

I. The Commission Should Include Off-System Sales In Its Determination Of Whether CSP Had "Significantly Excessive" Earnings In 2010.

A. The Inclusion Of Off-System Sales Earnings In The SEET Calculation Is Consistent With The Plain Language Of R.C. 4928.143(F).

The Commission should not exclude CSP's 2010 off-system sales earnings for purposes of the SEET. The exclusion of off-system sales from the SEET determination is contrary to the plain language of R.C. 4928.143(F).

To determine whether rate increases authorized in an ESP have resulted in "significantly excessive" earnings for a given year, R.C. 4928.143(F) requires the Commission to consider "*whether the earned return on common equity of the electric 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...*" The plain language of the statute provides that the PUCO must compare *all* of a utility's earnings to *all* of the earnings of companies with comparable risk.

An appeal of the Commission's decision addressing whether CSP's 2009 earnings were "*significantly excessive*" is currently pending before the Supreme Court of Ohio.[7] In that appeal, OEG argues that comparing only part of CSP's earnings to all of the earnings of companies with comparable risk is unlawful and unreasonable under the plain meaning of R.C. 4928.143(F). OEG's appellate argument applies to the present case as well.

R.C. 4928.143(F) gives the Commission wide discretion to select the group of companies with comparable risk whose earnings will be compared with the utility's earnings. The statute also grants the Commission wide discretion to determine the threshold when earnings transition from being just

[7] Supreme Court of Ohio Case No. 2011-0751 (reviewing PUCO Case No. 10-1261-EL-UNC).

excessive to "*significantly excessive.*" But the statutory language does not permit the Commission to compare only part of the utility's earnings with all of the earnings of comparable companies.

The Commission is a creature of statute.[8] The Commission has no discretion to disregard certain profits actually earned by the utility and reported on its accounting books to the Securities Exchange Commission ("SEC") and to the Federal Energy Regulatory Commission ("FERC"). R.C. 4928.143(F) should be applied "*...in a manner consistent with the plain meaning of the statutory language....*"[9] Including CSP's off-system sales earnings in its 2010 SEET earnings allows for the "apples to apples" comparison required by the plain language of R.C. 4928.143(F).

Using all of CSP's 2010 reported earnings for purposes of the SEET comparison is an objective, verifiable approach that does not require adjustments to the utility and/or comparable group earnings and return on equity. CSP's earnings, as reported to the SEC and FERC, include CSP's off-system sales earnings, in accordance with generally accepted accounting principles ("GAAP"). The earnings of the companies of comparable risk are also based on GAAP and are reported in accordance with GAAP to the SEC and FERC. The earnings of these companies with comparable risk are not adjusted to exclude segments of their earnings. Consequently, the exclusion of CSP's off-system sales earnings from the CSP 2010 SEET earnings would bias CSP's earnings downward compared to the group of companies with comparable risk used to determine the SEET earnings threshold. A comparison of this nature is asymmetrical and contrary to the language of 4928.143(F).

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[8] *Akron & Barherton Belt Rd. Co. et al. v. Pub. Util. Comm.*(1956), 165 Ohio St. 316, 319, 135 N.E.2d 400, 402 ("the [PUCO] is solely a creature of the General Assembly and may exercise no jurisdiction beyond that conferred by statute.)"

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

B. The Inclusion Of Off-System Sales Earnings In The SEET Calculation Is Appropriate Under The Particular Facts Of This Case And, Therefore, Is Not Contrary To Commission Precedent.

In its January 11, 2011 Opinion and Order in Case No. 10-1261-EL-UNC ("2009 CSP SEET Order"), the Commission established a case-by-case standard for determining when it would consider off-system sales earnings in the SEET calculation. The Commission stated:

> Where it can be shown that the electric utility received a return on its OSS, which if included in the calculation could unduly increase its ROE for purposes of SEET comparisons, OSS margins and the related equity in generation facilities should be excluded from the SEET calculation.[10]

This language provides that the Commission will make a determination whether to exclude off-system sales earnings from the SEET calculation on a case-specific basis. And R.C. 4928.143(F) provides "[t]*he burden of proof for demonstrating that significantly excessive earnings did not occur shall be on the electric distribution utility.*" Thus, the Commission's exclusion of off-system sales earnings from the SEET calculation is conditioned upon whether the utility has met its burden to demonstrate that including the off-system sales earnings in the SEET calculation could unduly increase the utility's return on equity for SEET purposes.

In the present case, CSP merely assumed that off-system sales should be excluded. The Company has not presented sufficient evidence demonstrating that including off-system sales earnings in the SEET calculation could unduly increase its 2010 return on equity for SEET purposes. CSP witness Mitchell states "[i]*n accordance with the PUCO order in Case No. 10-1261-EL-UNC, (2009 SEET review)* [he] *made adjustments...to remove the OSS net margins....*"[11] CSP witness Hamrock similarly testifies "[c]*onsistent with the Commission's order, AEP Ohio excluded off-system sales...net margins, after federal and state income tax, from the calculation of the 2010 ROE.*"[12] Thus, CSP's

[10] 2009 SEET CSP Order at 29-30.
[11] Mitchell Testimony at 5:14-16 (emphasis added).
[12] Company Ex. 1, Direct Testimony of Joseph Hamrock (July 29, 2011) ("Hamrock Testimony") at 8:1-2 (emphasis added).

assumption that off-system sales earning should be excluded from the SEET calculation in the present case appears to be based merely on the fact that such sales were excluded in the prior case.

The Commission's case-by-case standard established in the 2009 CSP SEET Order requires a demonstration by the utility that including off-system sales earnings in the SEET calculation could unduly increase the utility's return on equity for purposes of SEET comparisons. CSP failed to meet its burden to make such a demonstration in this case. Accordingly, the Commission should not exclude CSP's 2010 off-system sales earnings from the SEET calculation.

C. If The Commission Determines That Off-System Sales Earnings Should Be Excluded From The SEET Calculation In This Case, Then The Commission Should Use A Methodology That Properly Allocates Generation And Transmission Fixed Costs.

If the Commission decides to exclude off-system sales earnings from the SEET calculation, then the Commission should use a correct methodology to exclude those earnings. A correct methodology would properly allocate the fixed costs of generation and transmission assets between native load customers and off-system sales. CSP incorrectly allocated 100% of its fixed generation and transmission costs to native and none to off-system sales, even though off-system sales comprised 15.28% of total sales in 2010.[13] Since off-system sales cannot be made without generation and transmission assets, CSP's methodology overstates the profitability of off-system wholesale sales and understates the profitability of native load retail sales in Ohio.

In its calculation to exclude off-system sales, CSP removed only the off-system sales revenues and the variable expenses associated with those sales (i.e., fuel, emission allowances, etc.), not generation or transmission fixed costs. CSP failed to allocate to the wholesale jurisdiction any fixed production expenses, such as fixed operation and maintenance expenses, administrative and general expenses, labor, depreciation expense, interest expense, property tax expense, or other tax expenses. All

[13] Mitchell Testimony, Ex. TEM-1 at 5 of 5.

of these generation and transmission fixed expenses are necessary for AEP to achieve any off-system sales margins.[14] Off-system sales cannot be made without power plants or transmission lines, without employees and without other fixed production expenses. CSP improperly allocated 100% of these fixed costs to the Ohio retail jurisdiction, thus subsidizing the wholesale jurisdiction under its methodology and penalizing the retail earned return on equity for SEET purposes.

OEG witness Lane Kollen testified as to how CSP should have done the calculation to exclude off-system sales at the hearing:

> ...in accordance with standard cost of service methodology, if you're going to jurisdictionalize costs, separate the retail from the wholesale, then you jurisdictionalize all of the costs, not just the variable costs. So, for example, the fixed costs which the company in its computation assumed would be assigned or allocated entirely to the retail jurisdiction or the native load, under a normal cost of service methodology you would allocate a portion of those fixed costs to the wholesale load as well So that, then, would be removed from the numerator of the return on equity calculation, which is a correct methodology if you do it right.[15]

The sheer magnitude of CSP's earned return on "non-jurisdictional" wholesale off-system sales demonstrates that its calculation is in error. Under CSP's methodology, the after-tax earned return on off-system sales is 41.4%. Unless CSP sells into a different wholesale market than FirstEnergy or Duke, a 41.4% after-tax return on off-system sales is not credible. Witness Kollen testified that "*this is an unreasonable result on its face given the depressed prices in the wholesale market and the competitive nature of that market.*"[16] Witness Kollen explained that under CSP's methodology, "*the greater the return on equity for off-system sales margins, the lower the return on equity for retail margins. That means that any costs that are not allocated to the wholesale jurisdiction inherently reduce the return on equity for retail margins.*"[17]

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[14] Kollen Testimony at 7:19-8:2.
[15] Tr. (Dec. 6, 2011) at 103:14-104:1.
[16] Kollen Testimony at 10:16-18.
[17] Kollen Testimony at 11:8-12.

The Commission should reject CSP's flawed methodology, which assigns all fixed generation and transmission costs to the Ohio retail jurisdiction, and the 17.54% return on equity resulting from that methodology.[18] When correctly calculated, CSP's return on equity is the same 19.42%, regardless of whether off-system sales are included or excluded.[19] CSP's earned return on common equity for 2010 remains 19.42% because "*the inclusion or exclusion of the off-system sales margins in both the numerator and the denominator has no effect on the earned return so long as the percentage margin on the* [off-system] *sales is the same as the percentage margin on retail sales.*"[20] However, the exclusion of off-system sales does act to reduce the level of the SEET refund because excluding off-system sales effectively "*shrinks*" the Company. In other words, properly adjusting both the numerator and denominator for off-system sales makes CSP a smaller utility which means that every 1% of excessive profits results in a smaller refund.

II. The Commission Should Use A 50% Adder In This Case.

In the 2009 SEET CSP Order, the Commission established a baseline adder of 50% to the mean earned return on equity of the comparable group, consistent with Staff's recommendation.[21] Then, the Commission added another 10% to the adder based upon subjective factors relevant to 2009. There is no reason to adopt a 60% adder in this proceeding. Rather, the Commission should adopt a 50% adder.

A. The Commission Should Again Reject CSP's Proposed Statistical Standard Deviation Adder Methodology.

The Commission again should reject CSP's primary proposal to replace the percentage adder with an adder computed based on 1.96 standard deviations at a 95% confidence interval. CSP's standard

[18] Kollen Testimony at 6:17-18.
[19] See Ex. LK-2.
[20] Kollen Testimony at 3:16-19.
[21] 2009 SEET CSP Order at 24-25.

deviation methodology was soundly rejected in the 2009 SEET CSP Order as "*unreasonable and inconsistent with the statute*" and as "*producing an unrealistic and indefensible result.*"[22] CSP has offered no new arguments to demonstrate that the Commission's decision in the 2009 SEET CSP Order should be reversed.[23] Instead, the Commission should adopt the 50% adder that it determined was appropriate in the 2009 CSP SEET Order and should not increase the adder further based on non-statutory subjective factors. A 50% adder is more than sufficient not only to allow CSP to retain excessive earnings up to the significantly excessive level, but also to reward CSP for any additional discretionary actions.[24]

The Commission's adoption of a 50% adder in this proceeding would not be punitive to CSP. Based upon the 11.48% mean return on equity cited by CSP witness Dr. Makhija and adopted by OEG witness Mr. Kollen, the Commission's use of a 50% adder would result in a threshold SEET return on equity of 17.22%.[25] A SEET threshold return on equity established at that level is reasonable for CSP, especially considering the national economic climate in 2010. There is no need to increase the SEET threshold beyond 17.22%. Accordingly, the Commission's adoption of a 17.22% SEET threshold is reasonable in this case.

The return on equity for the comparable group is not really in dispute. The 11.48% mean return on equity for the comparable group adopted by Dr. Makhija (and accepted by OEG witness Mr. Kollen) is very close to the mean return on equity adopted by other parties in this case. Dr. Makhija notes that, when correctly calculated, Staff witness Buckley's mean return on equity for his group of comparables is 11.42% and the mean for the FirstEnergy firms is 11.54%.[26] Therefore, it is only the adder, not the starting point, which is in dispute.

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[22] 2009 SEET CSP Order at 24.
[23] Kollen Testimony at 16:16-17.
[24] Kollen Testimony at 17:20-22.
[25] Kollen Testimony at 17:4-5.
[26] Rebuttal Testimony of Dr. Anil Makhija (Jan. 3, 2012) at 2:8-15.

B. The Use Of A 60% Adder Set By Subjective Factors Improperly Exceeds The Statutory Requirements.

The Commission should not use non-statutory subjective factors to increase CSP's adder to 60% because the use of such factors by the Commission would improperly exceed the statutory requirements set forth in R.C. 4928.143(F).

In PUCO Case No. 09-786-EL-UNC, the Commission listed a host of subjective factors to consider in making its SEET determination.[27] But R.C. 4928.143(F) provides specific statutory instructions for what criteria the Commission can consider in making its SEET determination. R.C. 4928.143(F) provides:

> With regard to the provisions that are included in an electric security plan under this section, *the commission shall consider*, following the end of each annual period of the plan, *if any such adjustments resulted in excessive earnings as measured by whether the earned return on common equity of the electric 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.*[28]

R.C. 4928.143(F) lists *one* additional factor that the Commission must consider in its SEET determination – "*the capital requirements of future committed investments in this state.*" Thus, the statute is explicit in the criteria that the Commission must examine when making its SEET determination.

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[27] Finding and Order (June 30, 2010) at 29 (" The Commission notes that within Ohio's electric utilities, there is significant variation, including, for example, whether the electric utility provides transmission, generation, and distribution service or only distribution service. For this reason, the Commission will give due consideration to certain factors, including, but not limited to, the electric utility's most recently authorized return on equity, the electric utility's risk, including the following: whether the electric utility owns generation; whether the ESP includes a fuel and purchased power adjustment or other similar adjustments; the rate design and the extent to which the electric utility remains subject to weather and economic risk; capital commitments and future capital requirements; indicators of management performance and benchmarks to other utilities; and innovation and industry leadership with respect to meeting industry challenges to maintain and improve the competitiveness of Ohio's economy, including research and development expenditures/investments in advanced technology, and innovative practices; and the extent to which the electric utility has advanced state policy. We therefore, direct the electric utilities to include this information in their SEET filings.").

[28] Emphasis added.

The Commission "*is a creature of statute, has and can exercise only the authority conferred upon it by the General Assembly.*"[29] R.C. 4928.143(F) does not state that the Commission can consider any such additional factors as it deems appropriate. Therefore, the Commission should disregard the subjective factors cited by CSP and should use a 50% adder in this proceeding.

C. CSP Has Not Met Its Burden Of Proof To Justify A 60% Adder.

R.C. 4928.143(F) provides "[t]*he burden of proof for demonstrating that significantly excessive earnings did not occur shall be on the electric distribution utility.*" CSP has offered no quantitative evidence in support of using a 60% adder rather than a 50% adder. In the absence of the use of such quantitative evidence, the Commission can provide no clear guidance about how an adder will be calculated. CSP has not presented a specific argument in support of a 60% adder in this case. In fact, CSP's witness, Dr. Anil Makhija, rejects the Commission's methodology altogether.[30] Thus, CSP has failed to meet its burden of proof to justify using a 60% rather than a 50% adder. Accordingly, the Commission should use a 50% adder in this proceeding.

D. If The Commission Considers Subjective Factors In Determining The Amount Of The Adder, The Commission Should Consider CSP's Collection Of $94.6 Million Of Provider-Of-Last-Resort Charges In 2010.

If subjective factors are considered by the Commission in this proceeding, then the Commission should take into account CSP's collection of $94.6 million of POLR charges from customers in 2010.

The Commission initially permitted CSP to collect POLR charges in CSP's 2008 ESP proceeding.[31] In 2011, the Supreme Court of Ohio found that the Commission's determination that the POLR charge was cost-based was against the manifest weight of the evidence, an abuse of the

[29] *Tongren v. Pub. Util. Comm.*, 85 Ohio St. 3d 87, 88, 1999-Ohio-206, 706 N.E.2d 1255.
[30] Kollen Testimony at 17:8-10.
[31] *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO.

Commission's discretion, and a reversible error. The Supreme Court remanded the POLR charge issue to the Commission.[32] On remand, the Commission found that CSP and Ohio Power had collected POLR charges at a level that was not justified.[33] The Commission ordered CSP to refund the POLR charges collected after the first billing cycle of June 2011.[34] The $94.6 million of POLR charges collected in 2010 were equally unjustified, but could not be refunded to CSP's customers because of retroactive ratemaking principles.

During 2010, CSP collected POLR charges from customers at a level that the Commission later determined was unjustified and therefore unreasonable. CSP's unjustified POLR revenues, with no off-setting POLR costs, comprised almost 22% of CSP's pre-tax 2010 earnings. CSP witness Mitchell's Ex. TEM-5 reflects POLR revenues of approximately $94.6 million in 2010, compared to pre-tax earnings of $432.86 million. OEG is not asking the Commission to use this case to re-litigate the POLR issue, but the collection of $94.6 million of POLR revenue in 2010 and its effect on earnings cannot be ignored either.

In summary, the Commission's determination regarding CSP's off-system sales earnings and the proper level of the SEET adder could result in four different SEET refund levels, when correctly calculated:

[32] *In re Application of Columbus S. Power Co.* (2011), 128 Ohio St.3d 512, 518-19.
[33] *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, Order on Remand at 24.
[34] Order on Remand at 37.

SEET Refund Amount Under Various Scenarios

	50% Adder	60% Adder
SEET ROE of 19.42% (With Off-System Sales Earnings Included in SEET Calculation)	$49.038 million[35]	$23.405 million[36]
SEET ROE of 19.42% (With Off-System Sales Earnings Excluded from SEET Calculation)	$40.810 million[37]	$19.478 million[38]

The Commission should include CSP's 2010 off-system sale earnings in the SEET calculation and should adopt a 50% adder in this proceeding. Accordingly, the Commission should order a SEET refund to AEP Ohio customers of $49.038 million.

III. The Commission Should Retain The Allocation Methodology Adopted In The 2009 CSP SEET Order.

Regarding the allocation of any SEET refund to CSP's customers, the Commission should retain certain policies adopted in the 2009 CSP SEET Order. In that Order, the Commission directed CSP to apply the SEET refund first to any deferrals on CSP's books, with any remaining balance to be credited to CSP's customers on a per kilowatt hour basis.[39] The Commission should likewise direct CSP to apply the SEET refund as a credit to AEP Ohio customers on a per kilowatt hour basis in the present case.

In its January 27, 2011 order in the 2009 CSP SEET case, the Commission also clarified that reasonable arrangement customers who receive service under a discounted rate supported by delta revenue recovery are not entitled to both the subsidized rate and a SEET credit.[40] The Commission should retain this policy in the present case as well because there is no evidence that customers on discounted rates contributed to CSP's significantly excessive earnings.

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[35] 19.42% - 17.22% = 2.2%. Then, 22 x $2.229 million/per 0.1% (Ex. LK-2) = $49.038 million.
[36] 19.42% - 18.37% = 1.05%. Then, 10.5 x $2.229 million/per 0.1% =$23.405 million.
[37] 19.42% - 17.22% = 2.2%. Then, 22 x $1.855 million/per 0.1% (Ex. LK-2) = $40.0810 million.
[38] 19.42% - 18.37% = 1.05%. Then, 10.5 x $1.855 million/per 0.1% =$19.478 million.
[39] 2009 SEET CSP Order at 35.
[40] PUCO Case No. 10-1261-EL-UNC at 1.

IV. The Commission Should Make The Refund to AEP Ohio Customers Nonbypassable And Over As Short A Period As Possible.

Because it would be impracticable to attempt to determine which customers took service from CSP in 2010 but have since shopped, the Commission should make the SEET refund nonbypassable. Adopting a nonbypassable SEET refund is a practical way to guarantee that any customer who contributed to CSP's 2010 excessive earnings, but has since switched to another electric service provider, is included in the refund.

The Commission should also require the SEET refund to be distributed among all AEP Ohio customers. In its December 14, 2011 Opinion & Order in PUCO Case Nos. 10-2376-EL-UNC et al, the Commission approved the merger of CSP into Ohio Power.[41] The Commission should require the SEET refund to be distributed to all AEP Ohio customers since AEP Ohio will operate as one electric distribution utility during the SEET refund period. R.C. 4928.143(F) requires the Commission to consider CSP's 2010 *earnings* distinctly from Ohio Power's 2010 earnings because those companies operated separately in 2010.[42] This policy will likewise apply to CSP's 2011 *earnings*. But the statute does not bar the Commission from distributing the SEET *refund* to all AEP Ohio customers under the circumstances of this case.

Specifically, R.C. 4928.143(F) provides "[i]f the commission finds that such 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." Because CSP and Ohio Power will operate as one electric distribution utility during the period when CSP's "significantly excessive" earnings will be refunded to customers, distributing the SEET refund to all AEP Ohio customers is appropriate under the statute. The Commission will treat AEP Ohio as one electric distribution utility for purposes of the repayment of Ohio Power's deferred fuel balance. Similarly, it is

[41] Opinion & Order at 56-57.

[42] R.C. 4928.143(F)("In making its determination of significantly excessive earnings under this division, the commission shall not consider, directly or indirectly, the revenue, expenses, or earnings of any affiliate or parent company.").

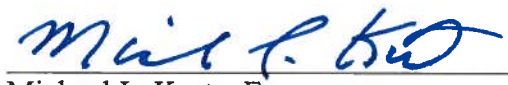
reasonable to treat AEP Ohio as one electric distribution utility for purposes of the SEET refund by distributing the refund to all AEP Ohio customers.

Additionally, CSP's significantly excessive earnings should be refunded as soon as possible. OEG suggests that the entire SEET refund occur over the course of one month. CSP has held the significantly excessive earnings paid by customers since 2010. An expeditious refund to customers of unjust and unreasonable rates paid is long overdue. And a prompt refund would also likely assist AEP Ohio customers in the current economic climate by putting money into customers pockets sooner rather than later.

CONCLUSION

For the reasons discussed above, the Commission should include CSP's 2010 off-system sale earnings in the SEET calculation and should adopt a 50% adder in this proceeding. Accordingly, the Commission should order a nonbypassable SEET refund to AEP Ohio customers of $49.038 million. The level of refund requested by OEG amounts to only 11.3% of CSP's pre-tax profits in 2010 and, looked at from a different perspective, is slightly more than half of the unjustified POLR charges collected by CSP during that year.

Respectfully submitted,



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