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BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Columbus Southern Power Company ) Case No. 12-<sup>1177</sup>-EL-WVR  
and Ohio Power Company for a Limited )  
Waiver Pursuant to Section 4901:1-35-02 (B) )

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APPLICATION FOR LIMITED WAIVER  
OF OHIO POWER COMPANY

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Ohio Power Company ("Ohio Power"), an electric utility as defined in § 4928.01(A)(11), Ohio Rev. Code, seeks a limited waiver that would extend the May 15 filing requirement set forth in §4901:1-35-10, Ohio Adm. Code, until the later of July 31, 2012, or one month after the Commission issues its decision in Case Nos. 11-4571-EL-UNC and 11-4572-EL-UNC. Ohio Power seeks the limited waiver pursuant to § 4901:1-35-02(B), Ohio Adm. Code, which provides:

The commission may, upon application or motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

While § 4928.143(F), Ohio Rev. Code, requires that the Commission apply the significantly excessive earnings test (SEET) to Ohio Power's 2011 earnings, the statute does not set a date by which an electric utility subject to the SEET must file its annual SEET application. The May 15 date, therefore, is not required by statute and can be waived by the Commission.

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## **I. BACKGROUND**

The May 15 filing date is the result of the Commission's rulemaking proceeding in Case No. 08-777-EL-ORD. In its July 2, 2008 Entry initiating Case No. 08-777-EL-UNC, the Commission proposed that SEET-related data would be filed within 90 days after each annual period that is subject to the SEET. Ohio Power Company's July 22, 2008 Initial Comments noted that relevant data regarding companies of comparable risk would not be available within a 90-day period and specifically noted that "ValueLine data for companies is typically not available until 180 days after the year end." (Case No. 08-777-EL-ORD, Columbus Southern Power Company's and Ohio Power Company's Initial Comments at 10 (July 22, 2008).)

In its September 17, 2008 Finding and Order in the rulemaking docket, the Commission re-wrote the provisions regarding the data that is to be submitted as part of the SEET process. The Commission "recognized that the income statement and balance sheet information which was being sought is satisfactorily contained in the FERC Form 1 and the Security and Exchange Commission (SEC) 10-K." (Case No. 08-777-EL-ORD, Finding and Order at 4 (Sept. 17, 2008).) Because the source of electric utilities' financial data changed, the Commission also changed "the date for the submission of the filing for the annual review from April 1 to May 15." (*Id.*)

Following the "Development of the SEET" proceedings that it conducted on April 1, 2010, the Commission deferred the May 15 filing deadline for all electric utilities' SEET applications until July 15, 2010 (for the 2009 earnings year). (Case No. 09-786-EL-UNC, Finding and Order at 32 (June 30, 2010).) The Commission also deferred the May 15 deadline for filing Ohio Power Company's (and Columbus Southern Power

Company's) SEET applications until July 31, 2011 (for the 2010 earnings year). (Case No. Case No. 11-1177-EL-WVR, Entry (April 19, 2011).) Yet, Rule 4901:1-35-10, Ohio Adm. Code, still requires an electric utility to file “the information set forth in paragraph (C) of rule 4901:1-35-03 of the Administrative Code as it relates to excessive earnings” by May 15.

## **II. LAW AND ARGUMENT**

Good cause exists for granting Ohio Power’s application for limited waiver. First, information that is required to be submitted in Ohio Power’s initial SEET filing will not be available until after May 15. Second, the Commission’s decision in Case Nos. 11-4571-EL-UNC and 11-4572-EL-UNC has not yet been rendered and may affect Ohio Power’s SEET filing for 2011. For each of these reasons, the Commission should grant Ohio Power’s request for limited waiver.

4901:1-35-03(C)(10)(a), Ohio Adm. Code sets out the filing requirements for the SEET analysis. These filing requirements are:

1. Testimony and analysis demonstrating the return on equity that was earned during the year *and the returns on equity earned during the same period by publicly traded companies that face comparable business and financial risks as the electric utility*.
2. The FERC Form 1 in its entirety for the annual period under review.
3. The 2011 SEC Form 10-K in its entirety.
4. Capital budget requirements for future committed investments in Ohio for each annual period remaining in the ESP.

The heart of these filing requirements appears to be the electric utility’s testimony and analysis regarding its return on equity during the year being tested *vis a vis* the returns on equity earned during the same period by the publicly traded companies that

face comparable business and financial risks as the electric utility. Yet the information regarding those comparable risk companies will not be available by May 15, let alone sufficiently prior to May 15 to enable Ohio Power to perform the necessary analysis and prepare testimony by that date.

As set out in the affidavit of Ohio Power Company witness Dr. Anil Makhija, attached hereto at Exhibit A, developing a threshold ROE for the SEET based upon a comparable risk group of publicly traded companies begins with a review of all public companies' 2011 performance. (Affidavit of Anil K. Makhija at ¶ 4.) Such information will not be available from Value Line's DATAFILE – a comprehensive and accurate database widely used to obtain information for the identification and measurement of performance of publicly traded companies -- until approximately the end of April 2012. (*Id.* at ¶ 5.) Ohio Power will need additional time to analyze the data and prepare its required testimony. (*Id.*) Consequently, Ohio Power believes that good cause exists to waive, again, the May 15 filing date. To the extent the information becomes available prior to the end of April 2012, and the Commission has rendered its decision in Case Nos. 11-4571-EL-UNC and 11-4572-EL-UNC, Ohio Power will advance its filing date accordingly. If the availability of the ValueLine data is unexpectedly delayed, Ohio Power may need to request a further extension.

Good cause for waiver also exists because Ohio Power's and Columbus Southern Power Company's 2010 SEET cases presently remain pending before the Commission in Case Nos. 11-4571-EL-UNC and 11-4572-EL-UNC. The Commission's decision in those proceedings might affect the type of data necessary to present in Ohio Power's 2011 SEET case and might affect the manner of Ohio Power's presentation of that data.

Accordingly, the Commission should waive the May 15 filing date until at least one month after the Commission renders its decision in the 2010 SEET cases.

### III. CONCLUSION

Sections 4928.143 (F), Ohio Rev. Code, and 4901:1-35-03 (C)(10), Ohio Adm. Code, provide that an electric utility bears the burden of proof to demonstrate that significantly excessive earnings did not occur. The data needed to meet that burden of proof will not be available by May 15. Further, the Commission's decision in Case Nos. 11-4571-EL-UNC and 11-4572-EL-UNC has not yet been rendered and may affect the data that Ohio Power is required to submit in its 2011 SEET proceeding, as well as the manner in which that data is presented. The Commission, therefore, should find that good cause has been shown to grant Ohio Power's limited waiver request and should extend Ohio Power's SEET filing date until the later of July 31, 2012, or one month after the Commission issues its decision in Case Nos. 11-4571-EL-UNC and 11-4572-EL-UNC.

Respectfully submitted,

Steven T. Nourse (by CMM per auth.)  
Steven T. Nourse, Counsel of Record  
Matthew J. Satterwhite  
American Electric Power Service

Corporation

1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, Ohio 43215-2373  
Telephone: (614) 716-1606  
Facsimile: (614) 716-2950  
stnourse@aep.com  
mjsatterwhite@aep.com

Daniel R. Conway  
Porter Wright Morris & Arthur LLP  
41 South High Street

Columbus, Ohio 43215  
Telephone: (614) 227-2270  
Facsimile: (614) 227-2100  
dconway@porterwright.com

Counsel for Columbus Southern Power and  
Ohio Power Company

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**AFFIDAVIT OF ANIL K. MAKHIJA**

State of Ohio            )  
                                  )       SS:  
County of Franklin    )

I, Anil K. Makhija, being duly sworn, do depose and say:

1. My business address is 842 Fisher Hall, Fisher College of Business, The Ohio State University, Columbus, Ohio 43210.
2. My occupation is Professor of Finance. I am a tenured full Professor, and I hold the Dean's Distinguished Professorship in Finance at the Fisher College of Business, The Ohio State University.
3. Ohio Power Company ("Ohio Power") has asked me to assist in the preparation of analyses related to the significantly excessive earnings test (SEET) that §4928.143(F), Ohio Revised Code, requires the Commission to apply annually to an electric distribution utility (EDU) that has an approved electric security plan (ESP). The SEET requires the Commission to consider, following the end of each annual period of the ESP, if the rate adjustments included in the plan resulted in excessive earnings as measured by whether the earned return on common equity of the EDU is significantly in excess of the return on common equity (ROE) 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. Ohio Power has specifically requested that I assist in the selection of the group of publicly traded companies that faced business and financial risks comparable to the risks that

each of them faced during 2011 and, then, develop a threshold ROE for the SEET that may be used to evaluate each of their earned ROEs for 2011

4. In order to identify those publicly traded companies of comparable risk and, then, establish a threshold ROE for the SEET based upon that comparable risk group of publicly traded companies, it is appropriate, in my opinion, to start by reviewing the 2011 performance of all publicly traded companies. For this purpose, I employ data from Value Line, a highly reputable source of data used widely by investors. Value Line offers DATAFILE, a comprehensive and accurate database, which is suitable for the identification and measurement of performance of the comparable group of publicly traded companies.

5. Value Line obtains its data from Form 10K filings made by firms to the Securities and Exchange Commission (SEC). The filing of Form 10K is usually required within 90 days following the end of the fiscal year. Thus, firms with a fiscal year ending on December 31, 2011 have up to March 31, 2012 to file their 10Ks. Once a firm files its 10K, based on my discussion with Value Line management, it takes approximately two weeks to be entered into DATAFILE. Firms whose 2011 fiscal year finishes at the end of the first quarter of 2012 have until the end of June 2012 to file their 10Ks. In order to incorporate the results of the firms that file their 2011 10Ks during the second quarter of 2012 into an analysis of comparable risk firms for purposes of the SEET, it will be necessary to provide additional time beyond the May 15, 2012 deadline that the Commission's rule establishes for AEP Ohio's 2011 SEET filing. Specifically, I recommend that the filing date for AEP Ohio's SEET filing for 2011 be extended until at least July 31, 2012. This is necessary to provide me with sufficient time to review and analyze the data, and for AEP Ohio to prepare its SEET filing.



Further affiant sayeth not.

*Anil K. Makhija*

Anil K. Makhija

Sworn to and subscribed before me, this 6th day of April 2012.

*Daniel R Conway*

Notary Public

**DANIEL R. CONWAY, Attorney at Law**  
**NOTARY PUBLIC - STATE OF OHIO**  
**LIFETIME COMMISSION**

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