

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MEMORANDUM CONTRA COLUMBUS SOUTHERN POWER COMPANY’S
AND OHIO POWER COMPANY’S
APPLICATION FOR LIMITED WAIVER
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

The Office of the Ohio Consumers’ Counsel (“OCC”), on behalf of the approximately 1.2 million residential utility customers of Columbus Southern Power Company (“CSP”) and Ohio Power Company (“Ohio Power”) (collectively “Companies”), submits this Memorandum Contra Ohio Power’s Application for Limited Waiver, (“Application for Waiver”) pursuant to Ohio Admin Code. 4901-1-12(B)(1).

R.C. 4928.143 requires that the Public Utilities Commission of Ohio (“PUCO” or “Commission”) conduct an annual review of an electric distribution utility’s earnings to determine whether those earnings were “significantly excessive” as a result of the utility’s approved electric security plan (“ESP”)—and whether there should be refunds to customers. In order for the Commission to make such an evaluation, electric utilities¹ are required by May 15 of each year to make a filing with the Commission “demonstrating whether or not any rate adjustments authorized by the commission as part of the electric

¹ CSP and Ohio Power are defined as electric utilities per R.C. 4928.01(A)(11).

utility's electric security plan resulted in significantly excessive earnings during the review period"²

In their April 6, 2012 Application for Waiver, the Companies request that the Commission "extend Ohio Power's SEET [Significantly Excessive Earnings Test] 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.**"³ (Emphasis added). The Companies request a waiver of the filing date because they contend that information that is required to be submitted in their filing will not be available until after May 15.⁴ Further, the Companies state that the Commission's decision in Case Nos. 11-4571-EL-UNC and 11-4572-EL-UNC "may affect Ohio Power's SEET filing for 2011."⁵

II. ARGUMENT

As explained above, the Companies are requesting a waiver "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."⁶ Therefore, this proceeding will determine when a review of the Companies' earnings in 2011 will be initiated with the filing of the information mandated by Ohio Adm. Code 4901:1-35-10. Such a review will determine whether Columbus Southern Power and/or Ohio Power Company had significantly

² See generally, Case No. 08-777-EL-ORD where the Commission adopted administrative rules in accordance with the directives of Senate Bill 221 ("S.B. 221"), establishing the May 15 filing deadline for electric utilities. Among the rules adopted in Case No. 08-777-EL-ORD was Chapter 4901:1-35 of the Ohio Administrative Code. See Ohio Admin Code 4901:1-35-10 (setting forth the May 15 filing deadline) and 4901:1-35-03(C)(10)(a)(i)-(iv) (setting forth the filing requirements).

³ In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for a Limited Waiver Pursuant to Section 4901:1-35-02 (B), Case No. 12-1177-EL-WVR, Application for Waiver (April 6, 2012) at 1.

⁴ Id. at 3.

⁵ Id.

⁶ Id. at 1.

excessive earnings in 2011 as a result of their approved ESPs. And residential customers are entitled to refunds if the earnings are found to be significantly excessive under R.C. 4928.143(F).

OCC does not oppose the granting of the waiver until July 31, 2012, as requested. But OCC opposes the granting of a waiver that does not establish a **date certain**. The Companies' proposal for a filing date that is not known, such as one month after the Commission issues its decision in the 2010 SEET case, is inappropriate for customers who may be entitled to a refund. Even if the current filing date is waived, the waiver should result in a known date for the Companies to file the information necessary to determine whether the earnings of CSP and Ohio Power⁷ were significantly excessive in 2011. It is unknown at this time when the Commission will make a decision with respect to Case Nos. 11-4571 and 11-4572, and it would therefore be inappropriate for the Commission to approve the Companies' request for an indefinite filing date.

Accordingly, OCC respectfully requests that the Commission grant the Companies' Application for Waiver only to the extent that the Commission establishes a date certain filing deadline of no longer than July 31, 2012. Should the Companies later conclude that it needs time beyond July 31, 2012, it can then request another extension for the Commission's consideration.

III. CONCLUSION

For the reasons stated herein, OCC respectfully requests that the Commission require the Companies to satisfy the filing requirements set forth in Ohio Adm. Code

⁷ The Commission has already determined that, for the purposes of the 2011 SEET review, the earnings of Columbus Southern Power and Ohio Power Company will be evaluated separately. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals* ("the Merger case"), Case No. 10-2376-EL-UNC, Entry (March 7, 2012) at ¶31.

4901:l-35-03(C)(10)(a) (in accordance with the Commission's March 7, 2012 Entry in the Merger case)⁸ on or before July 31, 2012.

Respectfully submitted,

BRUCE J. WESTON

/s/ Melissa R. Yost

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⁸ PUCO Case No. 10-2376-EL-UNC, Entry (March 7, 2012) at ¶31.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memo was served on the persons stated below by regular U.S. Mail, postage prepaid, this 23rd day of April, 2012.

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Summary: Memorandum Memorandum Contra Columbus Southern Power Company's and Ohio Power Company's Application for Limited Waiver by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Yost, Melissa R. Ms.