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Via E-File and
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May 15, 2012

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

In re: 11-346-EL-SSO, 11-348-EL-SSO
11-349-EL-AAM, 11-350-EL-AAM

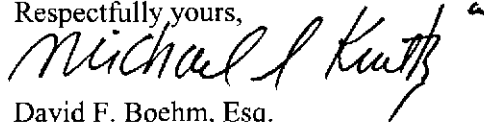
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PUCO

Dear Sir/Madam:

Please find attached the OHIO ENERGY GROUP'S MEMORANDUM CONTRA INDUSTRIAL ENERGY USERS-OHIO AND OFFICE OF THE OHIO CONSUMERS' COUNSEL MOTION TO STRIKE for filing in the above-referenced matters. The original and twenty (20) copies will follow by overnight mail.

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

Respectfully yours,



David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.

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MLKkew

Encl.

Cc: Certificate of Service

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Technician AN Date Processed MAY 16 2012

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OHIO**

In the Matter of the Application of Columbus Southern	:	Case No. 11-346-EL-SSO
Power Company and Ohio Power Company for Authority to	:	Case No. 11-348-EL-SSO
Establish a Standard Service Offer Pursuant to §4928.143,	:	
Ohio Rev. Code, in the Form of an Electric Security Plan.	:	
	:	
	:	
	:	
In the Matter of the Application of Columbus Southern	:	
Power Company and Ohio Power Company for Approval of	:	Case No. 11-349-EL-AAM
Certain Accounting Authority	:	Case No. 11-350-EL-AAM

**MEMORANDUM CONTRA
INDUSTRIAL ENERGY USERS-OHIO AND OFFICE OF THE OHIO CONSUMERS’
COUNSEL’S MOTION TO STRIKE
OF THE OHIO ENERGY GROUP**

Pursuant to §4901-1-12 of the Ohio Administrative Code, the Ohio Energy Group (“OEG”) hereby submits this Memorandum Contra the Motion to Strike filed by Industrial Energy Users-Ohio and the Office of the Ohio Consumers’ Counsel (collectively, “IEU/OCC”) on May 11, 2012 (“Motion”).

In their Motion, IEU/OCC argue that portions of OEG witness Lane Kollen’s Direct Testimony filed May 4, 2012 (“Testimony”) should be stricken from the record as irrelevant.¹ IEU/OCC allege that the Earnings Stabilization Mechanism (“ESM”) proposed by Mr. Kollen is a “transition cost recovery mechanism” and that such a mechanism is precluded by R.C. 4928.141(A) and R.C. 4928.38. On that basis, IEU/OCC claim that certain portions of the Testimony relate to the ESM, are irrelevant, and should be stricken.

¹ Motion at 3-6.

As an initial matter, IEU/OCC fail to recognize that Mr. Kollen filed testimony in the first half of this proceeding on behalf of OEG that proposed a mechanism substantially similar to the ESM, though the mechanism was called an “Equity Stabilization Incentive Plan” in that testimony.² No party contested the inclusion of Mr. Kollen’s proposal in the first half of this proceeding. Thus, that proposal is already in the record in this docket. Further, Mr. Kollen’s testimony in the pending Ohio Power Company (“AEP”) capacity compensation case included the proposed ESM.³ No party, including IEU and OCC, contested the inclusion of the ESM proposal in Mr. Kollen’s testimony in that case. The Commission’s determination in the capacity compensation case will likely have a significant impact on this proceeding and vice versa. Consequently, Mr. Kollen’s proposal to establish the ESM in the capacity compensation case may already significantly impact this proceeding. Accordingly, IEU/OCC’s arguments are tardy at this point in time.

Additionally, IEU/OCC improperly ask the Commission to make a premature conclusion on an ultimate legal issue during an evidentiary stage of the proceeding. IEU/OCC allege that the proposed ESM is illegal and is therefore, irrelevant to this proceeding. But the legality of the proposed ESM is an issue for parties to address in post-hearing Briefs. It is inappropriate to request that the Commission make an ultimate legal conclusion before the parties have had the opportunity to present evidence and legal argument in support of such a mechanism.

IEU/OCC’s request that the Commission strike portions of the Testimony because the ESM is allegedly illegal is based upon a mischaracterization of the ESM as a “transition cost recovery mechanism.”⁴ The ESM is not a “transition cost recovery mechanism” as contemplated under R.C. 4928.141(A) or 4928.38. Rather, the ESM is a mechanism by which to provide retail stability and certainty as a result of AEP’s Electric Security Plan (“ESP”). Pursuant to R.C. 4928.142(B)(2)(d),

² Direct Testimony and Exhibits of Lane Kollen, Case Nos. 11-346-EL-SSO *et al* (June 25, 2011) at 3:4-8; 3:20-6:3; 10:29-15:12.

³ Direct Testimony and Exhibits of Lane Kollen, Case No. 10-2929-EL-UNC (April 4, 2012) at 4:10-18; 18:5-21:16.

⁴ Motion at 5.

terms, conditions, and charges that “would have the effect of stabilizing or providing certainty regarding retail electric service” can properly be included in an ESP. Thus, state law recognizes that the Commission can appropriately consider the objectives of rate stability and certainty in the context of an ESP. The ESM is a manner in which the Commission can accomplish these objectives. As such, the ESM is not illegal, nor is it irrelevant to this proceeding.

Setting the impropriety of IEU/OCC’s request aside, the proposed ESM is very relevant to this proceeding. The proposed ESM can assist the Commission in ensuring that AEP provides “reasonably priced retail electric service” consistent with state policy outline in R.C. 4928.02(A). Though IEU/OCC focus on the 7% return on equity floor proposed under the ESM,⁵ the proposed ESM would also protect customers from unreasonably priced retail electric service resulting from AEP’s ESP by providing a credit to customers if AEP’s earnings exceed the 11% return on equity ceiling. Thus, the proposed ESM is relevant to this proceeding because it provides a manner in which the Commission can further state policy.

Moreover, the existence of a superior alternative to AEP’s proposed Retail Stability Rider (“RSR”) is a critical factor for the Commission to consider in evaluating the RSR in this case. IEU/OCC request to strike portions of the Testimony that provide valuable information regarding the ESM, which represents a superior alternative to the RSR. Additionally, IEU/OCC attempt to strike portions of the Testimony explaining how earnings, rather than projected revenues, are a superior metric of a utility’s financial performance and ability to attract capital because earnings: 1) incorporate the effects of all decisions that affect AEP’s generating assets; 2) are the basis for measuring AEP’s various coverage ratios used by rating agencies and investors to determine bond ratings; and 3) accurately capture the actual energy margins realized by the utility from selling energy free up by shopping.⁶ But the portions of the Testimony related to both the ESM and the reasons why earnings are a superior

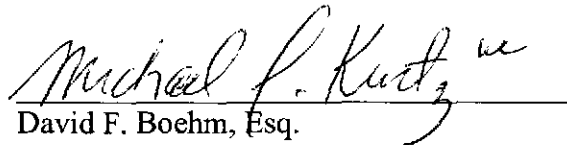
⁵ Motion at 4-5.

⁶ Testimony at 16:8-17:13.

metric to projected revenues can assist the Commission in determining whether to approve AEP's proposed RSR. Consequently, the disputed portions of the Testimony are very relevant to this proceeding and should not be stricken.

The Commission is not strictly bound by the rules of evidence.⁷ The Commission can give the disputed portions of Mr. Kollen's Testimony appropriate weight without resorting to the extreme approach of striking entire portions. The inclusion of all of Mr. Kollen's Testimony in this proceeding will help develop a full record for the Commission to consider in making its determination in this case. The Commission should reject IEU/OCC's extreme suggestion and should rely upon the Testimony to the extent the Commission deems appropriate. For these reasons, the Commission should deny IEU/OCC's Motion.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Michael L. Kurtz", followed by a horizontal line.

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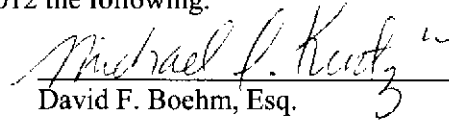
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May 15, 2012

⁷ *S.G. Foods v. FirstEnergy Corp.*, Case Nos. 04-28-EL-CSS et al., Entry (March 7, 2006) at 29 (citing *Greater Cleveland Welfare Rights Org. Inv. v. Pub. Util. Comm.*, 2 Ohio St. 3d 62 (1982)).

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 15th day of May, 2012 the following:



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