

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of Ohio Power)
Company for a Limited Waiver of Rule) Case No. 13-1118-EL-WVR
4901:1-35-10, Ohio Administrative Code)**

**APPLICATION FOR LIMITED WAIVER
OF OHIO POWER COMPANY AND REQUEST FOR EXPEDITED RULING**

Ohio Power Company (“Ohio Power” or the “Company”), 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, 2013, or one month after the Commission issues its decision in Ohio Power’s 2011 significantly excessive earnings test (SEET) proceeding. Pursuant to the Commission’s April 25, 2012 Entry in Case No. 12-1177-EL-WVR, Ohio Power is required to make its 2011 SEET filing within 30 days after the Commission issues its decision in Case Nos. 11-4571-EL-UNC and 11-4572-EL-UNC. Accordingly, Ohio Power respectfully requests that the Commission grant a limited waiver to allow Ohio Power to make its 2012 SEET filing after the Commission has fully adjudicated the Company’s 2010 and 2011 SEET proceedings.

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.

Although § 4928.143(F), Ohio Rev. Code, requires that the Commission apply the significantly excessive earnings test (SEET) to Ohio Power’s 2012 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.

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, 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). See Case No. Case No. 11-1177-EL-WVR, Entry (April 19, 2011). And, as described above, the Commission deferred the May 15 deadline for filing Ohio Power Company's SEET application for the 2011 earnings year until the later of July 31, 2012, or 30 days after the Commission issues its decision in the Company's 2010 SEET proceeding. Case No. 12-1177-EL-WVR, Entry (April 25, 2012). 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 decisions in Case Nos. 11-4571-EL-UNC and 11-4572-EL-UNC and in the Company's 2011 SEET proceeding have not yet been rendered and may affect Ohio Power's SEET filing for 2012. 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 2012 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. Moreover, after information regarding comparable risk companies becomes available, Ohio Power will need additional time to analyze the data and prepare its required testimony. Consequently, Ohio Power believes that good cause exists to waive, again, the May 15 filing date.

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, and Ohio Power's 2011 SEET case has not yet been filed. The Commission's decision in those proceedings might affect the type of data necessary to present in Ohio Power's 2012 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 Ohio Power's to-be-filed 2011 SEET case.

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 decisions in Case Nos. 11-4571-EL-UNC and 11-4572-EL-UNC and Ohio Power's 2011 SEET case have not yet been rendered and may affect the data that Ohio Power is required to submit in its 2012 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, 2013, or one month after the Commission issues its decision in Ohio Power's 2011 SEET proceeding, which Ohio Power will initiate within 30 days after the Commission's decision in Case Nos. 11-4571-EL-UNC and 11-4572-EL-UNC. Alternatively, the Commission could address the 2011 and 2012 SEET filings at the same time by aligning the 2012 SEET filing deadline with the 2011 SEET filing (*i.e.*, requiring that the 2012 filing be submitted 30 days after the Commission issues its decision in the Company's 2010 SEET proceeding).

Due to the fact that the May 15 deadline is rapidly approaching, Ohio Power requests an expedited ruling on this request.

Respectfully submitted,

//s/ Steven T. Nourse

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Summary: Application for Limited Waiver of Ohio Power Company and Request for Expedited Ruling electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company