

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Procurement of :  
Standard Service Offer Generation for : Case No. 17-1230-EL-UNC  
Customers of Ohio Power Company :

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**REPLY BRIEF**

SUBMITTED ON BEHALF OF THE STAFF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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### INTRODUCTION

The Consumers' Counsel challenges the result of the stipulation in a variety of ways. None have merit. The conclusion that the Ohio Power Company did not have significantly excessive earnings in the relevant period is supported by the record and should be adopted by the Commission. Whether examined through the three part test or simply on the record, the conclusion is the same. Ohio Power did not have significantly excessive earnings in 2016.

## ARGUMENT

Consumers' Counsel's first argument is that the stipulation is not the result of serious bargaining. This is factually incorrect. The Staff and Ohio Power did have a significant disagreement. They do not agree as to the method for calculating significantly excessive earnings. The stipulation represents an agreement not to pursue this disagreement, rather the parties agree to support the conclusion reached under the three (one for Ohio Power and two by the Staff) methodologies. This is a real compromise of real positions and meets the first prong of the three part test.<sup>1</sup>

Consumers' Counsel's second argument is simply that Dr. Duann performed the SEET correctly, but he did not as explained in Staff's initial brief. Staff initially performed the SEET in the same way that it has done in previous cases. This resulted in a conclusion that Ohio Power did not have significantly excessive earnings. However the comparable group included three companies that experienced massive negative returns, outside anything that might be expected in the utility industry. Staff recalculated the test without these three and again concluded that there were no significantly excessive earnings. Dr. Duann would go a step too far and remove another company from the group. This is too much. Leaving that company in the group was appropriate because it is conceivable that a

utility might have a negative earnings year just not the very large negative values seen for the other three. It is a question of judgment and the Staff exercised that judgment correctly again as more fully addressed in the initial brief.

Consumers' Counsel's third argument misunderstands the nature of the SEET itself. The purpose of SEET is to determine whether a company has experienced significantly excessive earnings in a given year. When accounting corrections are made for prior periods, those corrections have nothing to do with this year's performance. Even though these matters enter the books in this year, they do not relate to this year, they relate to the earlier period. It is appropriate to eliminate them from consideration because they do not relate to what the SEET is trying to capture, this year's performance. The corrections made by the company were proper and the Staff accepted them.

Consumers' Counsel goes on to complain that these corrections mean that some amounts of earnings will never have been subject to the SEET review. For example some earnings recorded in 2016 reflect earnings actually attributable to 2012 to 2015. AEP Ex. 5 at 6. The cases applying the SEET for 2012-2015 are already closed. This is not a reason to artificially alter the test for 2016. The

SEET can only be applied based upon what is known at the time<sup>1</sup>. It was. It is not proper to add earnings to 2016 in an effort to “correct” prior year SEET examinations. The reality is that the values reflected in these adjustments tell us nothing about the real subject of the 2016 SEET examination, did the company have significantly excessive earnings in 2016. These adjustments reflect activities in prior periods and are, therefore, irrelevant. The Staff properly did not consider them.

Consumers’ Counsel’s fourth argument is that the stipulation did not aid in a timely resolution of the case. This has no merit. As discussed previously, the stipulation avoided a methodological dispute between the company and the Staff. This simplified the case and was beneficial. The tacit assumption of the Consumers’ Counsel argument is that the only benefit to consumers is getting money. This is only true if consumers are entitled to money. The record in this case shows they are not. The benefit to consumers in this case is the proper application of the SEET test. The proper conclusion in this case is that there were no significantly excessive earnings. This conclusion was reached more quickly by avoiding a dispute over methodology through the stipulation.

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<sup>1</sup> It is not known what effect, if any, there would have been to the SEET test results in these prior years had these adjustments been known at the time.

Consumers' Counsel's final argument is simply that its view of the SEET analysis should carry the day. As has been discussed, it should not. The record clearly shows that the company did not experience significantly excessive earnings in 2016.

### **CONCLUSION**

Ohio Power did not have significantly excessive earnings in 2016. The stipulation recommends this conclusion and it meets the prongs of the three part test. Even if there were no stipulation, the result would be the same. Based on the Staff's two analyses and the company's analysis, the record supports the same resolution, no significantly excessive earnings in 2016. The Commission should so find.

Respectfully submitted,

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**William L. Wright**  
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*/s/Thomas W. McNamee*

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## PROOF OF SERVICE

I certify that a true copy of the foregoing **Reply Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio was served by regular U.S. mail, postage prepaid, or via electronic mail, upon the following parties of record, this 22<sup>nd</sup> day of May, 2018.

*/s/Thomas W. McNamee*

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