

File

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September 13, 2002

Greta See
Attorney Examiner
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215-3793

Re: Tomlin v. Columbus Southern Power
Case No. 02-46-EL-CSS and
Case No. 02-66-EL-CSS

Dear Attorney Examiner See:

It has come to my attention that there are two pagination errors in the hard copy of the brief I filed yesterday on behalf of the complainants in the above-referenced matters.

After page 40, the numbering skips to page 43. However, only one page was actually omitted during printing. Enclosed herewith is the missing page, which is page 42 from the electronic version which I e-mailed to you. (Unfortunately, the e-mail version has its own pagination problem – the pages are all there, but there is no page numbered as page 2 – which explains the apparent two-page skip in the hard copy.)

In addition, there are also two page 54's. Please remove the first page 54.

In reviewing the document, I also noted that the name of CSP witness John Tucker was inadvertently omitted at the end of sentence on the next-to-last line on page 5. Although not substantively significant, I did want to bring this to your attention.

I sincerely apologize for any confusion all this may have caused.

Sincerely,



Barth E. Royer

Enclosure

cc: R. Leland Evans (by fax)
Marvin I. Resnik (by fax)

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its intended function, which was to hold the insulator in place so as to maintain the conductor at the prescribed vertical clearance. Moreover, it did not take the application of 20/20 hindsight to know that this crossarm was heading for failure, nor did it take a view from above the crossarm to determine that this crossarm should have been replaced. Remember, Ms. Irion, who observed the crossarm from the ground while it was still attached to the pole, testified that if she had seen this crossarm prior to the accident, and it was in the same condition before the accident as it was when she saw it after the accident, she would have scheduled its replacement. Mercifully, Dr. Smith's principal occupation is not crossarm inspection, for he concluded, based on his close-up view of the bottom of the crossarm, that nothing on the underside of the crossarm revealed the need for replacement (CSP Ex. 5, at 4). Just as Mr. Huwel testified, this is precisely why one does not look only straight up at the bottom of a crossarm in conducting an inspection, although, in this instance, even that view would have shown the elongated holes and severe splitting which Ms. Irion identified as signs that this crossarm's strength may have been compromised.

In fact, not only does Dr. Smith dispute CSP witness Irion's conclusion that the crossarm should have been replaced (*id.*, see also Tr. II, 343), he does not even believe the crossarm failed (Tr. II, 348). As he testified on cross-examination, – and, yes, he really said this – “(t)o the best we can tell, there is some wood in the crossarm that failed, but we couldn't – it's not particularly appropriate to call it a failed crossarm” (*id.*). Any trace of credibility that Dr. Smith still retained was certainly swept away as he attempted to dance around his deposition testimony wherein he stated that when he first saw the accident crossarm that “it looked pretty bad” (Tr. II, 344). At hearing, he attributed this remark to tainted thinking resulting from his knowledge of the tragic accident involved and to the fact that he had a close-up view of the entire crossarm (*id.*). The fact