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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Regulation of the :  
Electric Fuel Component Contained : Case No. 96-102-EL-EFC  
Within the Rate Schedule of :  
Columbus Southern Power Company :  
and Related Matters. :

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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 function of a reply brief is to respond to mistakes, misunderstandings and new matters which arise in the initial briefs of the opposing parties. This Reply Brief will take this tack. Failure to discuss any specific matter herein should be taken as an expression of the belief that the topic was treated adequately in the Post-Hearing Brief.

**Emissions Allowance Commissions**

The company appears to misunderstand the nature of the Staff's argument with regard to the significance of the EPA allowance auction. The Staff does not suggest that the company should have sold its allowances through the EPA auction.

Indeed the Staff takes no position about the wisdom of the sale at all. Rather the significance of the EPA auction is that it shows prices at which willing buyers were able to make a purchase at nearly the same point in time that the company made its sale. The EPA auction results are somewhat comparable sales in the same sense as any of the other sales discussed.

It appears that the company believes that it has obtained some consultancy or advice-driven benefit from the commission paid to the "seller's agent" in addition to the pure "brokerage" aspect of the relationship. Staff is willing to accept that the company has shown the brokerage services were provided and these services were worth five dollars per allowance. The balance of the fee must be attributable to something else, perhaps the "consultancy" aspect of the transaction. The Staff can identify no ratepayer benefit in this regard. This does not mean that no such benefit exists, just that the company has not shown an EFC benefit to justify the additional cost of the consultant's fee. Such a showing is needed to justify inclusion in the EFC rate. Perhaps there may be a rate base benefit that could be substantiated. If this were true, then the company has merely sought recovery in the wrong docket.

### **Coal Conversion**

The company misunderstand the thrust of the concern about the coal conversion program. There is no jurisdictional question. Staff does not recommend that the Commission exercise any jurisdiction over these FERC-jurisdictional, wholesale transactions. The terms under which FERC-jurisdictional sales occur are for the FERC to determine. Whether, how and under what terms the company proceeds with or terminates the coal conversion program are matters entirely between the company and the FERC. What should be of interest to this Commission is whether the program has any negative effects for the ratepayer. No negative effects have been identified currently. If negative effects were identified in the future, this

Commission could address the effects but not the cause. For example, if it were determined that the coal was not actually replaced for many months, this Commission might, in a base rate case, wish to make an adjustment to eliminate any working capital subsidy from ratepayers to the coal conversion program. The Commission could not order the company to cease the coal conversion program.

The company goes to some efforts to emphasize that the auditor found nothing harmful to ratepayers in the coal conversion program. While this is true, it is also enlightening. The only reason that such a conclusion could be made is that the auditor was able, with considerable effort, to examine the program. Such examinations must continue into the future, a single audit is not an inoculation. Simple tools must be available to allow this review and this is all that is sought. The absence of these tools serves, ultimately, only to harm the company's interests as it makes the process of determining that the company is not harming the ratepayers more difficult.

### **Confidentiality**

The company has identified two instances in which it believes that a breach of confidentiality has occurred. The first instance appears in the audit report, Comm.-Ord. Ex. 2 at 4-5, where the auditor unintentionally revealed one bid price for coal that had been marked confidential. This was an error by the auditor and a regrettable one. Although review processes are in place which are intended to prevent such an occurrence, the mechanisms failed in this instance. Although the Staff recognizes that it is cold comfort for the company, the Staff is in agreement that the unintentional release of information that has been marked as confidential is a serious matter. In order to avoid such occurrences in the future, Staff has already implemented additional steps in the audit review process.

In the Staff's view, there is no second instance of a breach of confidentiality. At pages 7-2 and 7-3 of the audit report is a table which contains information which

is not confidential in itself but which could be used, together with other information already public, to derive information which was confidential in the company's view. Comm.-Ord. Ex. 2 at 7-2, 7-3. The table was a result of discussions and an agreement among the company, the auditor and the staff regarding the treatment of emission allowance information that the company believed was confidential. After reaching this agreement, but during the audit report discussions, the Staff discovered the potential for using data in the table to derive information considered confidential by the company. Staff immediately informed the company of the implication of the release of the information but the company was unconcerned at that time. The release was the company's choice. The auditor has testified that the company was informed of the implications of the inclusion of the information but did nothing. Tr. I at 48-51. There is nothing more that the Staff or the auditor should have done in this instance. If there was an error, it was the company's error.

### **Conclusion**

For the reasons described above and in its Post-Hearing Brief, the Staff reiterates its recommendation that the Commission:

- (1) adopt the terms of the stipulation in this case:
- (2) adopt the auditor's recommendation number 17 in this case and number 24 in the audit filed in *Ohio Power Company*, Case No. 96-101-EL-EFC by requiring an adjustment in the EFC rate set to reflect the emissions allowance proceeds as calculated at pages six and seven above; and
- (3) adopt the auditor's recommendation number 3 in this case.

Respectfully submitted,

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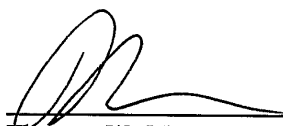


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## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief** was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following parties of record, this 25th day of April, 1997



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