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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of )  
Columbus Southern Power Company for )  
Approval of Electric Transition Plan and )  
Application for Receipt of Transition )  
Revenues. ) Case No. 99-1729-EL-ETP

In the Matter of the Application of )  
Ohio Power Company for Approval of )  
Electric Transition Plan and Application )  
For Receipt of Transition Revenues. ) Case No. 99-1730-EL-ETP

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**COLUMBUS SOUTHERN POWER COMPANY'S AND OHIO POWER COMPANY'S  
JOINT MEMORANDUM CONTRA UWUA'S MOTION TO COMPEL DISCOVERY**

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Columbus Southern Power Company ("CSP") and Ohio Power Company ("OPCO") (collectively referred to herein as the "Companies") respectfully submit this Joint Memorandum Contra the Motion to Compel Responses to Data Requests ("Motion") of UWUA Intervenors ("UWUA"). In its Motion, UWUA claims that § 4928.34, Revised Code, requires the Commission to determine that the Companies have the manpower to provide safe, adequate and reliable service before it may approve the Companies' Transition Plan. Consequently, UWUA contends any and all information regarding safety, quality, and reliability issues is relevant to this proceeding. UWUA is mistaken. Such service issues are not subject to review in this proceeding. Therefore, UWUA's discovery requests are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. To the extent that UWUA has legitimate concerns regarding the Companies' level of service, the concerns should be raised in another Commission forum. In any event, UWUA's real objective is not litigation of service-

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related issues. Instead, the object is to inject into this proceeding issues regarding appropriate employee staffing levels. Such issue have no place in any Commission proceeding.

Nevertheless, despite their patent irrelevance, the Companies answered most of UWUA's discovery requests. The Companies objected to and refused to respond to only 16 out of 61 questions. Notably, UWUA's Motion does not explain why the specific relatively few discovery requests that the Companies have not answered warrant a response. Instead, UWUA's Motion offers broad generalizations disconnected from the specific discovery requests. The Commission should deny the Motion.

**A. In approving the Companies' Transition Plan, the Commission is not required under Section 4928.34(A)(14) to make specific findings that the Transition Plan meets every policy goal delineated in Section 4928.02 (A) through (I).**

UWUA asserts that § 4928.34(A)(14) requires that the Commission make a specific finding that the Transition Plan meets every one of the state's policy goals delineated in § 4928.02 (A) through (I) prior to approving the Transition Plan. In essence, UWUA contends that the policy statements of § 4928.02 require the Commission to rule on the propriety of the Companies' historical and future employee staffing levels by way of the policy statement. By its policy statements in § 4928.02, the Legislature did not intend for the Commission to expand the scope of these already complicated Transition Plan proceedings to this absurd level.

Section 4928.02 is an important component of the legislation. However it is not an enabling statute. It does not authorize the Commission to take action not otherwise authorized by law, and particularly does not authorize the Commission to expand this proceeding. Section 4928.02 sets out in very broad terms the overall policy of what the State hopes to achieve through competitive retail electric service. It is not intended, nor is it realistic to expect, that

each and every action taken or decision made, e.g., as to staffing levels, made in the past or in the future along the journey to competitive retail electric service will further each and every aspect of the policy or will affect by itself any one aspect of the policy. Moreover, it is not reasonable to expect utilities to achieve each of the State's policy goals through their individual Transition Plans. The Commission is not required to scrutinize the Companies' employee staffing decisions to the level suggested by UWUA in order to approve the Companies' Transition Plan under § 4928.34. The Commission can readily determine that the Companies' Transition Plan is in the public interest without going through that protracted exercise. Sections 4928.34 and 4928.02 do not legitimate UWUA's discovery requests.

Several commenters in the Commission's rulemaking proceeding, Case No. 99-1141-EL-ORD, urged the Commission to make this very same leap in logic. The Commission rejected that effort<sup>1</sup> and it should do so again here by denying UWUA's Motion.

**B. Information requests regarding the Companies' staffing levels are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.**

The Companies' Transition Plan filing does not put employee staffing matters at issue. The Transition Plan does, as mandated by § 4928.31(A)(4), contain a proposed Employee Assistance Plan ("EAP") to provide for "severance, retraining, early retirement, retention, outplacement, and other assistance for the utility's employees whose employment is affected by electric industry restructuring." In this regard, see Melinda Ackerman's Direct Testimony at p. 3. The Companies make no claim for transition costs associated with its EAP attributable to restructuring because they have not identified any positions affected by the restructuring

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<sup>1</sup> Case No. 99-1141-EL-ORD, Finding and Order, November 30, 1999, at 13-14.

legislation.<sup>2</sup> Accordingly, information requests related to staffing levels in the past or in the future are completely unrelated to the Companies' Transition Plan. Neither Chapter 4928 nor the Companies' Transition Plan raise any issues regarding employee staffing levels. Simply put, the Commission has no jurisdiction to consider such issues.

To the extent that UWUA seeks to litigate issues regarding prior or future service adequacy, reliability, and safety matters, the proper forums before the Commission are the rulemakings and enforcement proceedings that specifically address those issues. For example, in Case No. 99-1611-EL-ORD, the Commission just recently adopted revised Minimum Electric Service Standards (MESS) with which the Companies must comply.<sup>3</sup> It is through rulemakings such as this and related investigation and enforcement proceedings that the Commission intends to monitor safety and reliability and remedy any deficiencies in a competitive marketplace, not through transition plan proceedings.

Furthermore, how other states deal with the relevance of service quality and staffing levels in restructuring plans is of no consequence in this proceeding. The Ohio Legislature did not include these subjects within the scope of these restructuring proceedings. The UWUA's iteration of what other states have done in conjunction with their review and approval of electric restructuring plans is not germane.<sup>4</sup>

In addition to reaching well beyond any bounds of relevance, some of UWUA's discovery requests that the Companies did not answer are also incredibly burdensome. For example, Question 16 requests from both Companies "positions, by category and facility, and by

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<sup>2</sup> See Ackerman Testimony at p. 3.

<sup>3</sup> The Commission has never, and does not in the MESS, micro-manage electric utilities to the point of mandating or questioning employee staffing levels.

<sup>4</sup> In this regard, UWUA's reference at p. 4 of its Motion to the U.S. DOE's Report of the Power Outage Study Team mischaracterizes the report's Executive Summary, which asserts that reliability has been eroded due to the disaggregation of the electric industry.

union and non-union, that have been eliminated between the years 1990 and the present.”

Equally as burdensome is Question 18 that seeks annual expenditures on operation and maintenance costs, broken down by function for the years 1995 until the present. The Companies would have to expend an enormous amount of time and effort to compile the information necessary to answer these and other equally pointless questions.<sup>5</sup>

Finally, the Companies objected to several questions to the extent that they sought information of companies other than Columbus Southern Power Company and Ohio Power Company. UWUA has provided no basis or explanation as to why such requests are relevant or reasonably calculated to lead to the discovery of admissible evidence.<sup>6</sup> For these additional reasons, the Commission should find that UWUA’s discovery requests that are subject to UWUA’s Motion are not relevant, and that the Companies are in full compliance with the Commission’s discovery rules.

The Companies are filing this Memorandum in accordance with the Commission’s discovery rule relevant to the review of electric transition plans, O.A.C. 4901:1-20-11. Under that rule, there is no opportunity for UWUA to file a reply to this Memorandum.

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<sup>5</sup> The Companies have identified only two questions for illustrative purposes. The Companies equally object to all 16 of the questions appended to UWUA’s Motion on the basis that they are not relevant.

<sup>6</sup> UWUA in several instances requested information from “CSP and OPCO”. In other instances (Questions 40, 41, 42, and 43), UWUA directed its inquiry to all AEP companies. The instructions defined “AEP” as “AEP’s affiliates, subsidiaries, corporate parents, attorneys, agents, employees, or other representatives”.

**Conclusion**

For all of the foregoing reasons, the Companies respectfully request that the Motion to Compel Responses to Data Requests of UWUA be denied.

By: MARVIN I. RESNIK / MRF

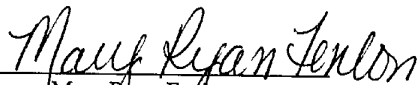
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CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Joint Memorandum Contra UWUA's Motion to Compel was served by E-mail to counsel for UWUA and first class U.S. Mail upon counsel for all parties of record in this case, on this 17th day of April, 2000.

  
Mary Ryan Fenton

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