

IN THE SUPREME COURT OF OHIO

ORIGINAL

In the Matter of the Application of )  
Columbus Southern Power Company for )  
Approval of its Electric Security Plan; an )  
Amendment to its Corporate Separation )  
Plan; and the Sale or Transfer of Certain ) Supreme Court Case No. 09-2022  
Generation Assets, In the Matter of the )  
Application of Ohio Power Company for )  
Approval of its Electric Security Plan, and )  
an Amendment to its Corporate Separation ) Appeal from the Public Utilities  
Plan. ) Commission of Ohio  
) Case Nos. 08-917-EL-SSO and  
) 08-918-EL-SSO  
(*The Office of the Ohio Consumers'* )  
*Counsel v The Public Utilities Commission* )  
*of Ohio*) )

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MOTION TO SUPPLEMENT THE RECORD ON APPEAL  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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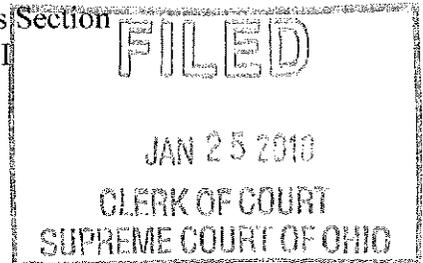
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**IN THE SUPREME COURT OF OHIO**

In the Matter of the Application of	)	
Columbus Southern Power Company for	)	
Approval of its Electric Security Plan; an	)	
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Plan; and the Sale or Transfer of Certain	)	Supreme Court Case No. 09-2022
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Plan.	)	Commission of Ohio
	)	Case Nos. 08-917-EL-SSO and
	)	08-918-EL-SSO
<i>(The Office of the Ohio Consumers'</i>	)	
<i>Counsel v The Public Utilities Commission</i>	)	
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**MOTION TO SUPPLEMENT THE RECORD ON APPEAL  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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Appellant, the Office of the Ohio Consumers' Counsel ("OCC"), under S.Ct.Prac.R.5.8, moves this Court to order a supplemental record to be certified and transmitted to its Clerk in this proceeding. A supplement is requested to include information that is necessary to the Court's consideration of the questions presented on appeal. OCC requests the attached information (Attachment A) be included in the record as a supplement so that the Court has information before it that demonstrates the prejudicial effect of the Public Utilities Commission's ("PUCO's" or "Commission's") retroactive ratemaking.

The information was submitted by Columbus Southern Power Company and Ohio Power Company ("Companies") to the PUCO Staff with tariffs that were filed to comply with the PUCO's March 18, 2009 Order. The PUCO appears to have relied upon the

“non-record” information to evaluate whether the tariffs complied with the March 18, 2009 Order. The PUCO did conclude that the tariffs complied with the March 18, 2009 Order and approved them by Order of March 30, 2009. Both these Orders, as well as others, are being appealed in this present proceeding.

The information in Attachment A shows that the retroactive adjustment (“collecting 12 months of revenue in nine”), the subject of OCC Merit Brief Proposition of Law 1 and 2, caused rates collected from customers to increase by \$63 million. OCC, within its Merit Brief, relies upon the information to demonstrate harm and quantify the effect of the PUCO’s unlawful action. OCC included the information in its Supplement to its Brief. (Supp. 48-52).

OCC became aware that this document existed, after the fact, through a public records request to the PUCO. While the Companies provided the document<sup>1</sup> to the PUCO Staff, the Companies did not provide it to OCC. Nor was this document ever filed at the PUCO or included in the case as record evidence.

The Court should order the PUCO to certify and transmit the attached information as a supplemental record in accordance with S.Ct.Prac.R. 5.3(B) and 5.8. The information is relevant to the issues appealed and was apparently relied upon by the PUCO to evaluate the Companies’ tariffs. It quantifies the impact of the PUCO’s decision to permit retroactive rates. It will complete the record before the Court, providing the Court with information that will allow it to conduct its judicial review of the lawfulness of the PUCO’s actions, under R.C. 4903.09. This information is also

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<sup>1</sup> There were numerous other documents provided to support the tariffs. These were also supplied to the PUCO Staff but not to OCC and others and appear to be information relied upon by the PUCO as well.

essential to demonstrating the prejudicial effect of the PUCO's Order. It puts a price tag on the unlawful retroactive activity.

This Court recognizes the problems caused by the PUCO failing to disclose information to those who most require it, thereby preventing a complaining party from demonstrating prejudice. On these very grounds, it reversed the PUCO in *Tongren v. Pub. Util. Comm.*<sup>2</sup> and ordered the PUCO to allow an appropriate record to be developed. The Court can act now in this proceeding to supplement the record with the information contained in Attachment A. This will correct the problem, and avoid the prejudice that the Court found in *Tongren*. Moreover, there will be no delay in justice caused by supplementing the record at this time.

For these stated reasons, the Court should order the PUCO to supplement the record by certifying and transmitting the attached information no later than the filing of the Appellees' brief to enable parties to the proceeding to address the information in briefs and oral argument. Supplementing the record will enable the Court to make the "effective review" as contemplated in *Tongren v. Pub. Util. Comm.*,<sup>3</sup> and will assist OCC in demonstrating harm that is necessary to obtain a reversal.

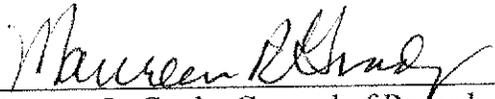
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<sup>2</sup> *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St.3d 87, 706 N.E.2d 1255.

<sup>3</sup> *Id.* at 93.

Respectfully submitted,

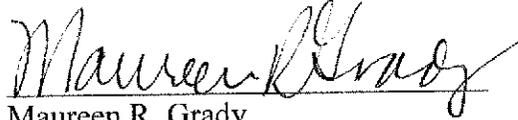
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing *Motion to Supplement the Record on Appeal* has been served upon the below-named counsel via First Class mail, postage prepaid, this 25<sup>th</sup> day of January, 2010.



Maureen R. Grady  
Assistant Consumers' Counsel

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## Office of the Ohio Consumers' Counsel

*Your Residential Utility Consumer Advocate*

Janine L. Migden-Ostrander  
Consumers' Counsel

May 6, 2009

*Via U.S. Mail and E-mail*  
([jodi.bair@puc.state.oh.us](mailto:jodi.bair@puc.state.oh.us))

Jodi J. Bair  
Deputy Director, Utilities Department  
Public Utilities Commission of Ohio  
180 East Broad Street, 3<sup>rd</sup> Fl.  
Columbus, Ohio 43215

Re: Request for Records

Dear Ms. Bair:

I write to request that the Public Utilities Commission of Ohio ("PUCO" or "Commission") provide to me all of the following records:

All records containing proofs of revenue and/or revenue realizations related to the tariffs that Columbus Southern Power Company and Ohio Power Company (collectively "AEP") filed during the month of March 2009, in Cases 08-917-EL-SSO and 08-918-EL-SSO;

All records relating to whether and how the revenues to be collected under the AEP tariffs filed in March 2009 were in compliance with the PUCO's rulings in Cases 08-917-EL-SSO and 08-918-EL-SSO; and

All records containing information created by the PUCO or received by the PUCO regarding whether the revenues to be collected under the AEP tariffs filed in March 2009 were in compliance with the PUCO's rulings in Cases 08-917-EL-SSO and 08-918-EL-SSO.

All records created by the PUCO since March 1, 2009 that contain an explanation as to how and why customers' bills are being increased by greater percentages than that contained in the PUCO's March 18 and March 30, 2009 rulings in Cases 08-917-EL-SSO and 08-918-EL-SSO.

This request is made under the Ohio Public Records Act, and includes but is not limited to the definitions of records under R.C. 149.011(G). I also make this request pursuant to R.C. 4911.16.

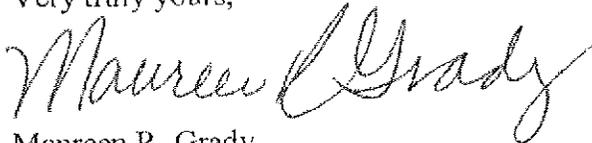
I request these records in an electronic format if such electronic versions are available; otherwise, the records should be provided in the format available. Please contact me by phone or email in advance of copying records, if the copying charges to OCC will exceed \$225.00.

Jodi Bair  
May 6, 2009  
Page Two

Please contact me to advise when the records are ready to be picked up at the PUCO. Please provide these records by May 11, 2009.

Thank you Jodi.

Very truly yours,

A handwritten signature in cursive script that reads "Maureen R. Grady". The signature is written in black ink and is positioned above the typed name.

Maureen R. Grady  
Assistant Consumers' Counsel  
614-466-9567  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)

**From:** "Lindgren, Thomas" <Thomas.Lindgren@puc.state.oh.us>  
**To:** <grady@occ.state.oh.us>  
**Date:** 5/13/2009 4:44 PM  
**Subject:** FW: Response to records request  
**Attachments:** 2009-03-19 2009 CSP Revenue Class Annual Averages.pdf

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From: Lindgren, Thomas  
Sent: Wednesday, May 13, 2009 4:34 PM  
To: 'grady@occ.state.oh.us'  
Subject: Response to records request

Maureen:

On behalf of the Public Utilities Commission of Ohio, I am responding to your records request dated May 6, 2009. I am attaching a responsive record and additional records will follow. Please contact me if you have any questions.

Tom Lindgren

AAG, Public Utilities Section



## Columbus Southern Power Company

### Summary of Average Tariff Class Increases

	<u>Residential</u>	<u>GS-1</u>	<u>GS-2</u>	<u>GS-3</u>	<u>GS-4/IRP-D</u>	<u>AL</u>	<u>SL</u>	Joint Service Territory	Total Company	Annual Revenue
Average Monthly Revenue	\$58,995,153	\$3,536,548	\$15,547,066	\$43,194,072	\$10,361,932	\$816,909	\$388,305	\$9,532,928	\$142,372,913	\$1,708,474,950
7% Bill Increase - 2009	\$4,129,661	\$247,558	\$1,088,295	\$3,023,585	\$725,335	\$57,184	\$27,181	\$667,305	\$9,966,104	\$89,694,935
Increase due to 12 Months Increase in 9 Months	\$1,376,554	\$82,519	\$362,765	\$1,007,862	\$241,778	\$19,061	\$9,060	\$222,435	\$3,322,035	\$29,898,312
Increase to meet annual 7% revenue increase and variation in bill increases by tariff/voltage	\$325,551	\$126,798	\$688,548	\$929,423	\$339,075	-\$9,035	-\$9,198	-\$2,733,270	-\$342,108	-\$3,078,971
<b>Total Revenue under April to December 2009 Rates</b>	<b>\$64,826,918</b>	<b>\$3,993,424</b>	<b>\$17,686,673</b>	<b>\$48,154,942</b>	<b>\$11,668,121</b>	<b>\$884,119</b>	<b>\$415,348</b>	<b>\$7,689,398</b>	<b>\$155,318,943</b>	<b>\$1,824,989,226</b>
Remove Increase due to 12 Months Increase in 9 Months	-\$1,451,250	-\$113,865	-\$540,796	-\$1,243,560	-\$325,350	-\$16,711	-\$6,719	\$461,743	-\$3,236,507	
6% Bill Increase - 2010	\$3,802,540	\$232,774	\$1,028,753	\$2,814,683	\$680,566	\$52,044	\$24,518	\$489,068	\$9,124,946	\$109,499,354
<b>Monthly Revenue - 2010</b>	<b>\$67,178,208</b>	<b>\$4,112,332</b>	<b>\$18,174,630</b>	<b>\$49,726,065</b>	<b>\$12,023,338</b>	<b>\$919,453</b>	<b>\$433,147</b>	<b>\$8,640,210</b>	<b>\$161,207,382</b>	<b>\$1,934,488,580</b>
6% Bill Increase - 2011	\$4,038,459	\$247,150	\$1,083,648	\$2,979,674	\$722,790	\$55,273	\$26,038	\$519,412	\$9,672,443	\$116,069,319
<b>Monthly Revenue - 2011</b>	<b>\$71,216,667</b>	<b>\$4,359,482</b>	<b>\$19,258,278</b>	<b>\$52,705,739</b>	<b>\$12,746,128</b>	<b>\$974,726</b>	<b>\$459,185</b>	<b>\$9,159,621</b>	<b>\$170,879,825</b>	<b>\$2,050,557,899</b>
<b>Percentage increases</b>										
7% Bill Increase	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	5.25%
% Increase due to 12 Months Increase in 9 Months	2.33%	2.33%	2.33%	2.33%	2.33%	2.33%	2.33%	2.33%	2.33%	1.75%
% Increase to meet annual 7% revenue increase and variation in bill increases by tariff/voltage	0.55%	3.59%	4.43%	2.15%	3.27%	-1.11%	-2.37%	-28.67%	-0.24%	-0.18%
<b>Total April to December 2009 % Increase</b>	<b>9.89%</b>	<b>12.92%</b>	<b>13.76%</b>	<b>11.49%</b>	<b>12.61%</b>	<b>8.23%</b>	<b>6.96%</b>	<b>-19.34%</b>	<b>9.09%</b>	<b>6.82%</b>
2010 Bill Increase %	3.63%	2.98%	2.76%	3.26%	3.04%	4.00%	4.29%	12.37%	3.79%	6.00%
2011 Bill Increase %	6.01%	6.01%	5.96%	5.99%	6.01%	6.01%	6.01%	6.01%	6.00%	6.00%