

ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of Columbus )  
 Southern Power Company for Approval of its ) Case No. 2009-2298  
 Electric Security Plan; an Amendment to its )  
 Corporate Separation Plan; and the Sale or ) On Appeal from the Public Utilities  
 Transfer of Certain Generation Assets. ) Commission of Ohio, Case No. 08-917-EL-  
 ) SSO  
 )  
 (*Columbus Southern Power Company v. The* )  
*Public Utilities Commission of Ohio*) )

MOTION TO INTERVENE AS APPELLEE  
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**IN THE SUPREME COURT OF OHIO**

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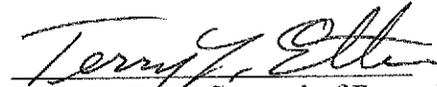
**MOTION TO INTERVENE AS APPELLEE  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the 665,306 residential electric customers of the Columbus Southern Power Company ("Appellant," "Company" or "Columbus Southern"), respectfully requests that this Court grant it leave to intervene as a party appellee in the above-captioned case where the Appellant seeks to reverse a decision denying it additional collections of approximately \$51 million from Ohio customers. The reasons that the Court should grant this Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

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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 Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generation Assets. ) Case No. 2009-2298  
)  
) On Appeal from the Public Utilities Commission of Ohio, Case No. 08-917-EL-SSO  
)  
(Columbus Southern Power Company v. The Public Utilities Commission of Ohio) )

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**MEMORANDUM IN SUPPORT**

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This case comes to the Court on appeal by Columbus Southern from an order of the Public Utilities Commission of Ohio (“Commission,” “PUCO” or “Appellee”) dated March 18, 2009, an Entry Nunc Pro Tunc dated March 30, 2009, an Entry on Rehearing dated July 23, 2009, an Entry on Rehearing dated August 26, 2009 and a Second Entry on Rehearing dated November 4, 2009 in PUCO Case No. 08-917-EL-SSO. The case below involved an application by Columbus Southern for approval of an electric security plan under R.C. 4928.143 and for authority to sell or transfer certain generation assets under R.C. 4928.17.

OCC was an intervening party<sup>1</sup> and an active participant in PUCO Case No. 08-917-EL-SSO. Initially, OCC filed an opposition to Columbus Southern’s request for a waiver of certain filing requirements. Subsequently, OCC filed the written expert testimony of seven witnesses. OCC also participated in the evidentiary hearing, and filed a post-hearing brief and a reply brief. Further, in addition to filing its own application for rehearing of the Opinion and Order,<sup>2</sup> OCC

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<sup>1</sup> OCC moved to intervene in the PUCO proceeding and its intervention was granted by the PUCO on September 19, 2009.

<sup>2</sup> OCC filed an appeal of the Opinion and Order (Case No. 2009-2022) regarding other issues that are not the subject of this proceeding.

filed a memorandum contra Columbus Southern's application for rehearing regarding the Waterford Energy Center and the Darby Electric Generating Center (collectively, "Facilities") that are the subject of this proceeding.

OCC has the statutory authority to represent Columbus Southern's 665,306 residential utility consumers under Chapter 4911 of the Ohio Revised Code. The residential utility customers are impacted directly in this proceeding because the outcome of this proceeding may affect the Company's revenues and/or costs, and thus may affect the rates that the Company charges customers, including residential customers, for electric service.

OCC has a statutory right to intervene in state courts, including the Ohio Supreme Court, concerning review of decisions rendered by the Commission.<sup>3</sup> OCC, a party in the PUCO proceeding below, also has a real and substantial interest in this matter because the electric rates of residential consumers who OCC represents would be affected by the Court's decision. This interest is not adequately represented by any existing party to this proceeding.

Should Columbus Southern prevail and the Commission's decision be reversed, the Appellants' residential customers, represented by OCC, could suffer harm from increased rates. In the case below, the Company sought to collect from customers approximately \$51 million per year in operating and maintenance costs associated with the Facilities, but the Commission denied the request on rehearing. If the Court reverses the Commission's decision, the Company could be allowed to collect these costs from customers without a showing that its revenues are inadequate to cover such costs.

Further, OCC's intervention will not unduly prolong or delay the proceedings. Instead, OCC will contribute to the full development and equitable resolution of this appeal. Finally, the

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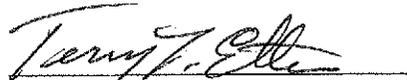
<sup>3</sup> See R.C. 4911.02(B)(2)(c).

nature of OCC's interest is different from that of either the Appellant, or the Appellee, or any other intervening party in this proceeding.

For all these reasons, OCC respectfully requests the Court to grant OCC's Motion to Intervene, so that OCC may protect the interests of 665,306 residential customers.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of this Motion to Intervene as Appellee by the Office of the Ohio Consumers' Counsel have been served by first class mail, postage prepaid, to the following parties of record, this 23rd day of February 2010.

  
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