

ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of Columbus) Case No. 2011-751
Southern Power Company and Ohio Power)
Company for administration of the) On Appeal from the Public Utilities
Significantly Excessive Earnings Test under) Commission of Ohio,
Section 4928.143(F), Revised Code, and Rule) Case No.10-1261-EL-UNC
4901:1-35-10, Ohio Administrative Code.)

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

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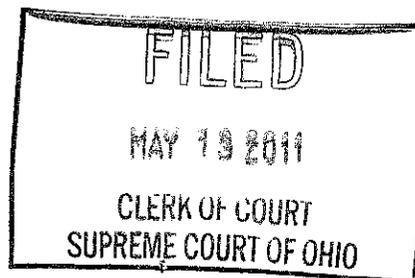
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IN THE SUPREME COURT OF OHIO

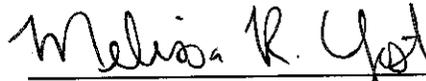
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The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the 665,000 residential electric customers of the Columbus Southern Power Company ("the Company" or "CSP"), respectfully requests that this Court grant it leave to intervene as a party appellant in the above-captioned case so that it can advocate to protect the interests of residential customers. In this case the Appellants, the Ohio Energy Group and Industrial Energy Users Ohio, seek to reverse a decision denying customers part of a refund for significantly excessive earnings achieved by CSP in 2009 as a result of its electric security plan. The reasons that the Court should grant this Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

This case comes to the Court on appeal by the Ohio Energy Group (“OEG”) and the Industrial Energy Users Ohio (“IEU”) of an order of the Public Utilities Commission of Ohio (“Commission,” “PUCO” or “Appellee”) dated January 11, 2011, and an Entry on Rehearing dated March 9, 2011 in PUCO Case No. 10-1261-EL-UNC. This case involved the Commission’s investigation of CSP’s 2009 earnings produced under the approved electric security plan.

OCC was an intervening party¹ and an active participant in PUCO Case No. 10-1261-EL-UNC. OCC, along with OEG, filed testimony on CSP’s Application. OCC also participated in the evidentiary hearing, and filed a post-hearing Initial Brief and a Reply Brief. OCC also filed an Application for Rehearing regarding the Commission’s error in unlawfully excluding the profits from off-system sales from the earned return of CSP. That error is the basis of OEG’s notice of appeal filed May 5, 2011.

¹ OCC moved to intervene in the PUCO proceeding and its intervention was granted by the PUCO on October 8, 2010.

OCC has the statutory authority to represent CSP's 665,000 residential utility customers under Chapter 4911 of the Ohio Revised Code. These residential utility customers are impacted directly in this proceeding because the outcome of this proceeding may affect the Company's revenues, 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.² 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 the Commission's decision be upheld, the residential customers, represented by OCC, would be deprived of \$22 million that should lawfully be returned to customers since CSP's earnings were significantly excessive in 2009. The Commission in its Order excluded the profits from off-system sales when comparing the return on common equity earned by CSP with publicly traded companies that faced comparable business and financial risks.³ This resulted in a comparison that failed to meet the comparable analysis required under R.C. 4928.143(F). The result was that customers were denied the return of \$22 million in significantly excessive earnings.

² See R.C. 4911.02(B)(2)(c).

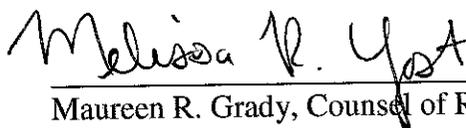
³ See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 10-1261-EL-UNC, Opinion and Order at 29-30 (Jan. 11, 2011).

Further, OCC's intervention will not unduly prolong or delay this proceeding. Instead, OCC will contribute to the full development and equitable resolution of this appeal. Finally, the nature of OCC's interest is different from that of either the Appellants or the Appellee, or from any other intervening party in this proceeding inasmuch as the OCC is the only party whose sole interest is to represent residential customers.

For all these reasons, OCC respectfully requests the Court to grant OCC's Motion to Intervene as Appellant⁴, so that OCC may protect the interests of 665,000 residential customers.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



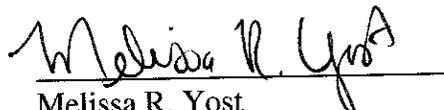
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⁴ There is ample precedent to support the granting of intervening appellant status in appeals of the PUCO proceedings. See for example *Alltel Ohio v. Pub. Util. Comm.* (1998), 81 Ohio St.3d 1417; 688 N.E.2d 1044; *Industrial Energy Consumers of Ohio Power Company et al. v. Pub. Util. Comm.* (1994), 68 Ohio St.3d 559; 1994 Ohio 435; 629 N.E.2d 423; *Allen v. Pub. Util. Comm.* (1988), 40 Ohio St.3d 184; 532 N.E.2d 1307; *Office of Consumers' Counsel v. Pub. Util. Comm.* (1983), 4 Ohio St.3d 35; 446 N.E.2d 163.

CERTIFICATE OF SERVICE

I hereby certify that copies of this Motion to Intervene as Appellant by the Office of the Ohio Consumers' Counsel have been served by first class mail, postage prepaid, to the following parties of record, this 13th day of May 2011.


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