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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Ohio)
Edison Company, The Cleveland)
Electric Illuminating Company and The) Case No. 08-935-EL-SSO
Toledo Edison Company for Authority)
to Establish a Standard Service Offer)
Pursuant to R.C. 4928.143 in the Form)
of an Electric Security Plan.)
)

**BRIEF OF OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY,
AND THE TOLEDO EDISON COMPANY
IN SUPPORT OF THEIR *SHORT-TERM ESP* OFFER**

James W. Burk, Counsel of Record
Arthur E. Korkosz
Mark A. Hayden
Ebony L. Miller
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308

James F. Lang
Laura C. McBride
CALFEE, HALTER & GRISWOLD LLP
800 Superior Ave., Suite 1400
Cleveland, OH 44114

David A. Kutik
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114

Mark A. Whitt
JONES DAY
325 John H. McConnell Blvd., Suite 600
Columbus, OH 43216

**ATTORNEYS FOR APPLICANTS, OHIO EDISON
COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, AND THE TOLEDO
EDISON COMPANY**

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INTRODUCTION

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively "the Companies") request Commission approval of their Application for an Electric Security Plan (an "ESP") as soon as possible, but in any event within the 150-day period provided by law. The Companies submitted their ESP Application, testimony, and related work papers (the "Plan") on July 31, 2008, and the Commission and all interested parties have made great progress in creating a robust record upon which the Commission may approve the Plan before the 150-day period expires. Indeed, both this proceeding and the Companies' Market Rate Offer ("MRO") proceeding progressed faster than some initially thought would occur when the Companies included a severable short term ESP in Paragraphs A.8.a. *et seq.* of the Companies' Application (the "Short Term ESP").¹ This progress may have obviated the need for the Short Term ESP given that final decisions concerning the Companies' ESP application can be made before December 28, 2008.²

However, to the extent the Commission believes it will be unable to fulfill its statutory responsibilities within the designated statutory period (150 days) or it wants more time to conduct the competitive bidding process in a more measured fashion, the severable Short Term ESP establishes an extended calendar to effect the mandates of Am. Sub. S.B. 221 and allows the Commission additional time to consider the provisions of the Companies' longer-term Plan, from which the Short Term ESP's favorable terms originate. The dates established by the Short Term ESP also provide an extended period of time in which to conduct the competitive bidding process under the MRO.

¹ The Short Term ESP is a severable part of the Plan and, similar to the Plan, is offered as a package to be approved or rejected for all Companies together.

² Indeed, the 90-day statutory deadline for issuing an order concerning the Companies' MRO Application passed on October 29, 2008, without Commission action.

Substantively, the Short Term ESP would provide the benefits of stability and certainty of customers' prices for the totality of the Companies' electric service for up to the four months that the Short Term ESP would be in effect. If the Commission approves the Short Term ESP by November 14, 2008, the Commission will have until March 5, 2009, to decide whether the Companies' Plan is more favorable in the aggregate than the expected result of an MRO. As such, although the Companies' preference is that the Commission approve, as soon as possible, their applications for an ESP and an MRO as filed, the Commission may approve the Companies' severable Short Term ESP if it determines it needs additional time to render a decision regarding the Companies' longer term Plan or additional time would assist in the implementation of the competitive bidding process pursuant to an MRO.

BACKGROUND

The Companies presented the severable Short Term ESP option to the Commission in recognition of the time pressures placed on the Commission by S.B. 221's requirements and the challenges posed by S.B. 221's new framework for the review and approval of electric service rates. The Commission is charged to "approve or modify and approve an [ESP] if it finds that the [ESP] so approved, including its pricing and all other terms and conditions . . . , is more favorable in the aggregate as compared to the expected results that would otherwise" result from an MRO. R.C. § 4928.143(C)(1). By requiring the Commission to review "pricing and . . . other terms and conditions," S.B. 221 anticipates the submission of plans that address a wide range of issues across the provision of electric service. This comprehensive approach contemplated by S.B. 221 represents a significant departure from the rate-making, cost-based concepts of old.

In contrast to the focus on previously incurred costs and allowed return on rate base found in a traditional rate case, S.B. 221 continues the State's transition to and encouragement of

competitive markets for retail electric generation service by allowing electric distribution utilities to provide a Standard Service Offer ("SSO") based on a competitive bidding process – the MRO. Initially, however, utilities also must file an ESP pursuant to R.C. § 4928.143, and that statutory section authorizes utilities to craft a comprehensive plan addressing all aspects of their electric service. This latter option is by no means a return to traditional rate-making, but, instead, relies upon a non-cost based benchmark to test whether the ESP is more favorable. The only test is whether the ESP's provisions in the "aggregate" are more favorable as compared to the expected results of an MRO. This is the only regulatory determination that is to be made under R.C. § 4928.143 as to whether the Commission should approve an ESP. This new paradigm places new responsibilities on the Commission and its Staff that represent a departure from traditional, and time-consuming, review procedures, although many participants have sought to cling to the familiar old methods.

As mandated by S.B. 221, the Commission's review of and decision on an MRO was to be completed within a 90-day time frame and an ESP application must be completed within a 150-day time frame. These time frames are of particular concern for the Companies because the Companies own no generation, and their wholesale power supply agreement with their affiliated supplier terminates on December 31, 2008.³ See R.C. § 4928.143. The Companies filed their ESP and MRO applications on the earliest date permitted by law to ensure that the applicable statutory time frames could be met. However, if the Commission determines that it requires

³ Consequently, if an acceptable ESP order is not issued before the 150-day deadline in violation of the statute, then, absent a Short Term ESP, the Companies will have no option but to purchase competitive market power and pass their costs on to customers. See R.C. § 4928.142; *Entergy La., Inc. v. La. PSC*, 539 U.S. 39, 47 (2003). If the Commission fails to act and the Companies are forced to buy power at market prices and the Companies' rates do not immediately reflect the market costs, very negative financial consequences could arise even in the best of times – let alone in the financially turbulent, credit-constrained times we are now in. Under these circumstances, ignoring the statutorily mandated timelines would represent a perverse disregard of a known risk. Accordingly, if the Commission were to shirk its statutory responsibilities, it would be doing so in a wanton and reckless manner knowing that such conduct in all probability would result in injury to the Companies.

additional time for its review, the Short Term ESP would provide stable and known pricing for customers during the first four months of 2009 through a package of favorable terms that combine to provide an aggregate benefit vis-à-vis the MRO default rates. And, it provides the Commission additional time, until March 5, 2009, to choose the more favorable SSO option that will be made available to customers for the remainder of 2009 and into 2010 and 2011.⁴

BENEFITS OF THE SHORT TERM ESP

I. THE SEVERABLE SHORT TERM ESP ALLOWS FOR THE CONSIDERED REVIEW AND IMPLEMENTATION OF THE COMPANIES' PLAN.

The 150-day time frame set by S.B. 221 for the Commission's review is adequate, as illustrated by the Companies' and the parties' success to-date in fulfilling the statutory process for the review of the Companies' ESP application. All parties would likely agree that a determination of the Companies' Plan in advance of January 1, 2009, would best serve the interests of the Companies' customers and the Companies in that it would avoid the imposition of repeated change and ongoing uncertainty. However, if the Commission determines that it requires additional time to complete its review, the Commission can approve the Companies' Short Term ESP, which will provide the Commission an additional two months in which to review and approve the Companies' Plan. If it approves the Short Term ESP, the Commission will have until March 5, 2009, to issue a decision on the Plan. Application, ¶¶ A.8.a., A.8.c. The Short Term ESP must be approved by the Commission in a form acceptable to the Companies on or before November 14, 2008, in order to trigger this extended calendar. Application, ¶ A.8.a.⁵

⁴ It is important to note that the Companies' proposal provides the Commission with the option to terminate the longer term Plan effective at the end of 2010. Application, ¶ A.7.e.

⁵ If the November 14, 2008 date passes without action by the Commission or the Commission denies the Short Term ESP, the Short Term ESP, as a severable component of the Plan, will be deemed withdrawn. Application, ¶ A.8.a.

If approved, the Short Term ESP's certain and stable rates will commence on January 1, 2009, pursuant to the calendar set forth in the Companies' Application.

It is important to note that the approval of the Short Term ESP does not hinder the Commission's continuing review of the Plan. The Short Term ESP is completely severable from the longer term Plan; any approval or rejection of the Short Term ESP (by either the Commission or, if modified by the Commission, by the Companies) will not impact the viability or review of the longer term Plan. As such, the Commission may issue a decision on the Plan within S.B. 221's statutory time frame or at any time thereafter until March 5, 2009. And, the Commission's approval of the Short Term ESP does not constitute a decision on the Plan. Hearing Tr., Vol. VI, p. 229:17-231:11. If the Plan is approved during the effective period of the Short Term ESP, the Plan's terms will become effective seven days after the Commission's approval and the filing of tariffs to reflect the Plan's approval. Application, ¶ A.8.c.

The Commission's approval of the Short Term ESP also would establish an extended timetable leading to the development and implementation of pricing resulting from a competitive bidding process on May 1, 2009, should the Plan not be approved by March 5, 2009. Application, ¶ A.8.c. Under the Short Term ESP, the bid is scheduled to occur on April 8, 2009, followed by the termination of the Short Term ESP rates at the end of April 30, 2009. Application, ¶ A.8.c. Power supply from the winning bidders would commence, and the MRO rates would begin, on May 1, 2009. Application, ¶ A.8.c. Accordingly, the Short Term ESP provides additional time for the Commission, if it determines that additional time would be of benefit to its review.

II. THE SHORT TERM ESP IS MORE FAVORABLE IN THE AGGREGATE THAN THE EXPECTED RESULTS OF AN MRO.

The Short Term ESP also allows the Commission to set defined and stable rates for up to four months if the Commission requires additional time. During the time period in which the Short Term ESP prices would be in effect if approved, the Short Term ESP establishes an average base generation price of 7.75 cents/kWh. Application, ¶ A.8.d. As with the Plan, the Short Term ESP's average base generation charge will be gradualized resulting in an average charge to customers of 6.75 cents/kWh,⁶ with the difference deferred for future recovery in accordance with the procedures set in the Plan. Application, ¶ A.8.d., *see also id.*, ¶¶ A.2.a.-A.2.c. These deferred regulatory assets could be securitized in accordance with the procedures proposed in Attachment A to the Plan. *See* Application, ¶¶ A.2.e.-g. The Short Term ESP's rates benefit customers and avoid the volatility of the wholesale electricity market. Moreover, it preserves for the Commission the option of approving the longer term Plan, which would otherwise be unavailable once an MRO is instituted.

The Short Term ESP also includes many of the provisions from the favorable longer term Plan.⁷ Its base generation price includes all of the costs associated with the Companies' renewable energy resource requirements for the period of the Short Term ESP, and customers will not be responsible for these costs. Application, ¶¶ A.8.d., A.2.d. Transmission and

⁶ The Short Term ESP's average base generation rate of 6.75 cents/kWh mirrors the average rate charged to customers under the longer term Plan in 2009 and is applied under the same rate structure as the Plan. Application, ¶ A.8.d.; Hearing Tr., Vol. VII, p. 86:2-87:21.

⁷ The Short Term ESP does not include the waiver of RTC charges for CEI customers as proposed by the Plan. Under Staff Witness Fortney's proposal, the Companies would continue to recover all currently existing RTC charges. *See* Fortney Testimony, p. 10:12-21. The remainder of Mr. Fortney's proposal seeks to impose a "simple and easily administered" rate plan, but at the Staff's expected current rate level as of January 1, 2009. *Id.* The Companies believe their Short Term ESP is more straightforward and would provide greater administrative continuity, should the longer term Plan be instituted, than that proposed by Mr. Fortney. Further, even without the waiver of RTC charges, a feature of the Plan, the Short Term ESP is more favorable in the aggregate than the expected results from an MRO.

transmission-related costs are recovered via the Transmission and Ancillary Services Rider. Application, ¶ A.5.a. The Short Term ESP aligns the Companies' and customers' interests by including the Delivery Service Improvement Rider, which, upon a proper change to CEI's target,⁸ incentivizes the Companies to improve their SAIDI performance beyond the established targets and into the top decile of electric utility performance. Application, ¶¶ A.8.d., A.3.e.; Schneider Testimony, p. 8:22-9:3. Additional riders are also included, which properly allow for the Companies to recover allowable costs and lost revenues, including *inter alia*: the Minimum Default Service Rider; Economic Development Rider; Reasonable Arrangements Rider; Non-distribution Uncollectibles Rider; PIPP Uncollectible Recovery Rider; Deferred Distribution Costs Recovery Rider; Fuel Transportation Surcharge & Environmental Control Rider; and, the Delta Revenue Recovery Rider. See Application, ¶ A.8.c.; see Hearing Tr., Vol. VII, p. 87:3-88:5. As with the Plan, any customer who opts to obtain service from CRES suppliers can return to stable Short Term ESP prices as long as the customer paid the bypassable standby charge. Application, ¶ A.2.k. The non-bypassable Storm Damage and Distribution Enhancement rider recovers excess costs that result from storm damage and certain rules and/or policies under R.C. § 4928.151, along with other costs detailed in Paragraph A.3.h of the Application. In summary, the Short Term ESP provides reasoned, favorable, and stable pricing provisions for customers.

The proposals for alternative short-term plans put forth by Intervenor Witness Baron and Staff Witness Fortney – the only two non-Company witnesses to provide pre-filed testimony on the Short Term ESP – lack specificity with regard to substantial elements of the Short Term ESP, but nonetheless appear to be economically unviable. See Baron Testimony, p. 11:11-15:8; Fortney Testimony, p. 10:12-21. Mr. Fortney's pre-filed testimony includes an under-developed

⁸ The Companies' Short Term ESP includes its proposal to amend CEI's SAIDI target from 95 to 120, which is in line with the current targets for OE and TE. See Application, ¶ A.3.f.

proposal – at hearing he referred to it as a “straw man” presented as a starting point for discussion – to add a 2½% surcharge on total bills. Fortney Testimony, p. 10:12-21; Hearing Tr., Vol. VIII, p. 158:1-159:18, 180:16-181:7. Mr. Baron essentially proposes that the Companies be required to apply market prices, which he suggests are lower than the Companies’ proposed rates, in combination with a purchased power recovery rider to recover the Companies’ costs for obtaining the POLR supply not recovered via existing generation rates or other riders. See Baron Testimony, p. 12:18-13:16. Both Mr. Fortney and Mr. Baron suggest that the Companies continue to collect RTC charges.⁹ See Fortney Testimony, p. 10:14-16; Baron Testimony, p. 13:13-16.

Additionally, Staff Witness Johnson, upon questioning from the Hearing Examiner, provided his opinion that an appropriate generation rate under the Short Term ESP would be 6.75 cents/kWh. Hearing Tr., Vol. X, p. 15:11-16:2. However, he offered no opinion on any other facet of the Companies’ Short Term ESP. See Hearing Tr., Vol. X, p. 65:24-66:23. As a result, based upon the limited information provided, his generation rate is less than the Companies’ estimate of the market rates for January through April 2009 and, therefore, likely would be rejected by the Companies.

Mr. Fortney suggests that the Companies’ current rates, including RTC charges, be increased by 2½% and that the CEI special contracts be allowed to continue. Fortney Testimony, p. 10:12-21. Mr. Fortney’s proposal is unclear regarding the base rates to which the 2½% would be applied or how that 2½% relates, if at all, to a separate decision in the Distribution Case, and it lacks any explanation of how the (presumably) kilowatt-hour equivalent RTC charges would

⁹ What exactly the witnesses meant by this is unclear. A possible reading is that each of the three Companies would maintain their current rates, including RTC charges for CEI customers and the amount equivalent to the current level of RTC charges for the other two Companies, which two Companies would not continue to charge regulatory transition costs. See, e.g., Fortney Testimony, p. 10:15-16.

continue in 2009 and it fails to specify whether such equivalent charges would be distribution charges. His proposal also fails to make allowances for any increase in fuel costs and it fails to recognize the Companies' proposed fuel-cost deferral treatment. *See* Hearing Tr., Vol. VIII, p. 181:10-14. Given that his proposal is both impractical and unclear, the Companies are likely to reject it. While less than clear, the terms of Mr. Baron's and Mr. Fortney's proposals (and Mr. Johnson's stand-alone generation rate) appear to establish insufficient revenue streams and, in effect, establish untenable generation rates, and would very likely be rejected by the Companies if adopted by the Commission – leaving the Commission to decide the longer term Plan.

Both witnesses propose lower rates than the Companies for no reason, as the rates set forth in the Companies' Short Term ESP already meet the statutory criteria for approval of the Short Term ESP. Indeed, their proposals fly in the face of Mr. Johnson's calculation, as corrected by Mr. Blank in his rebuttal testimony, of the ESP resulting in a positive net present value as compared to the expected results of an MRO.¹⁰ Based on the determination of \$1.9 billion of net present value, even without the waiver of CEI's RTC charges under the Companies' Short Term ESP (a value of approximately \$0.5 billion), the Short Term ESP would still result in positive net present value and, therefore, passes the statutory test for approval of an ESP. Staff Exhibit 9(d); Blank Testimony, p. 17:20-23; Blank Rebuttal Testimony, p. 2:7-11, 3:19-4:5. These recommendations fail to account for the economic risks that are borne by the supplier for POLR service. This is explained in detail in the testimony of the Companies' expert witnesses. *Compare* Jones Testimony, p. 15:12-26:6 (explaining the necessity of including a margin to compensate for risk, including shopping, load variability, price variability, regulatory,

¹⁰ While the Companies recognize that charging an even lower number would result in an even more "positive" net present value as compared to the expected results of an MRO, it is of no consequence if the result is a number that the Companies cannot accept.

and bidding risk and the incorporation of such margin into market price estimate); Graves Testimony, p. 12:4-13:22 (description of addition of risk premium to market price estimate) *with* Baron Testimony, p. 10:3-8, 12:6-10 (incorporating Witness Kollen's concerns regarding the Plan's proposed generation rates); Kollen Testimony, p. 12:1-22.


The incorporation of a risk premium is indeed logical and reasonable. As described by Mr. Warvell, "[t]he risk premiums include price risk, volatility risk with volume especially regarding governmental aggregation and other risks related to measuring a retail product." Warvell Testimony, p. 5:23-6:2.¹¹ Moreover, Mr. Baron conceded at hearing that his portfolio management proposal will not necessarily result in a lower price, will probably be more volatile, and will require a prudence review of daily purchasing decisions made by an entirely new purchasing group that the Companies would be forced to create. Hearing Tr., Vol. VI, p. 40:11-41:14. Mr. Fortney's proposal, by limiting the increase over current rates to 2½%, would set a resultant generation rate that is significantly below the rates projected by the Companies' expert witnesses, in that it provides for no increase over current generation rates. *See* Fortney Testimony, p. 10:12-21 (providing his unclarified proposal only for a 2½% increase over current rates based on Staff's recommendations for a *distribution* rate increase). Therefore, Mr. Baron's and Mr. Fortney's proposals are inadequate. On the other hand, the Short Term ESP proposal establishes reasonable rates that, in combination with the other provisions of the Short Term ESP, result in a more favorable package than the MRO alternative.

¹¹ When a risk premium is incorporated into Mr. Baron's projection based on July 15, 2008 forward prices, the resulting rate is higher than the Companies' Short Term ESP rate and actually higher than the \$82.57/MWh projection arrived at by averaging the two expert witnesses' estimates. *See* Baron Testimony, p. 14:8-9, Table 2 (detailing Mr. Baron's estimate based on July 15, 2008 forward prices of \$72.49/MWh); Graves Testimony, Ex. 6 (detailing 50th percentile risk premium of 15.96%, which when applied to Mr. Baron's estimate of \$72.49 is \$84.06/MWh).

CONCLUSION

The Companies request that the Commission make its decision on the Companies' longer term Plan within the relevant S.B. 221 time frame. However, to the extent the Commission determines that additional time is warranted for its review, the Companies' Short Term ESP provides for such time. And, over the four months in which the Short Term ESP may be in effect, it establishes stable pricing provisions that are, in the aggregate, more favorable than the MRO alternative. Therefore, based on these qualitative and quantitative benefits, the Short Term ESP as proposed by the Companies is more favorable in the aggregate than the expected results of an MRO.

Respectfully submitted,


James W. Burk, Counsel of Record
Arthur E. Korkosz
Mark A. Hayden
Ebony L. Miller
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
(330) 761-7735
(330) 384-3875 (fax)
burkj@firstenergycorp.com
korkosza@firstenergycorp.com
haydenm@firstenergycorp.com
elmiller@firstenergycorp.com

James F. Lang
Laura McBride
Calfee, Halter & Griswold LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

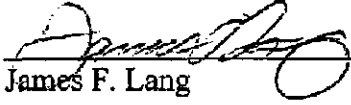
David A. Kutik
Jones Day
901 Lakeside Avenue
Cleveland, OH 44114

Mark A. Whitt
Jones Day
325 John H. McConnell Blvd., Suite 600
Columbus, OH 43216

On behalf of Applicants

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Brief in Support of Short-Term ESP Offer was served upon the parties on the attached service list on October 31, 2008, via e-mail.


James F. Lang
Attorney

Case 08-935-EL-SSO
Service List

Public Utilities Commission of Ohio

Robert Fortney
180 East Broad St.
3rd Floor
Columbus, OH 43215
E-mail: robert.fortney@puc.state.oh.us

Ohio Energy Group (OEG)

Michael L. Kurtz
David F. Boehm
Kurt J. Boehm
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
mkurtz@BKLlawfirm.com
dboehm@BKLlawfirm.com

Ohio Consumers' Counsel

Jeffrey L. Small
Gregory J. Poulos
Richard C. Reese
Ohio Consumers' Counsel
10 West Broad Street
18th Floor
Columbus, OH 43215-3485
small@occ.state.oh.us
poulos@occ.state.oh.us
roberts@occ.state.oh.us
reese@occ.state.oh.us

Kroger Co

John W. Bentine
Mark S. Yurick
Matthew S. White
Chester Wilcox & Saxbe, LLP
65 E. State St., Suite 1000
Columbus, OH 43215
jbentine@cwsllaw.com
myurick@cwsllaw.com
mwhite@cwsllaw.com

Ohio Environmental Council

Barth E. Royer
Nolan Moser
Trent A. Dougherty
Bell & Royer, LPA
33 South Grant Avenue
Columbus, OH 43215
barthroyer@aol.com
nmoser@theoec.org
trent@theoec.org

Industrial Energy Users (IEU)

Samuel C. Randazzo
Lisa G. McAlister
Daniel J. Neilsen
Joseph M. Clark
McNees Wallace & Nurick LLC
21 East State St., 17th Floor
Columbus, OH 43215
E-mail: sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com
dneilsen@mwncmh.com

Ohio Partners for Affordable Energy

David C. Rinebolt
Colleen L. Mooney
(OPEA)
231 West Lima Street
PO BOX 1793
Columbus, OH 43215
E-mail: drinebolt@aol.com
cmooney2@columbus.rr.com

Nucor Steel Marion, Inc.

Garrett A. Stone
Michael K. Lavanga
Brickfield, Burchette, Ritts & Stone
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, DC 20007-5201
E-mail: gas@bbrslaw.com
mkl@bbrslaw.com

**Northwest Ohio Aggregation Coalition (NOAC)
Toledo**

Leslie A. Kovacik
420 Madison Ave., Suite 100
Toledo, OH 43604-1219
Phone: 419.245.1893
Fax: 419.245.1853
E-mail: leslie.kovacik@toledo.oh.gov

Lucas

Lance M. Keiffer
Lucas County Assist Prosecuting Atty
711 Adams St., 2nd Floor
Toledo, OH 43624-1680
Phone: 419.213.2001
Fax: 419.213.2011
E-mail: lkeiffer@co.lucas.oh.us

NOAC- Holland

Paul Skaff
Leatherman Witzler Dombey & Hart
353 Elm St.
Perrysburg, OH 43551
Phone: 419.874.3536
Fax: 419.874.3899
E-mail: paulskaff@justice.com

NOAC- Lake
Thomas R. Hays
Lake Township – Solicitor
3315 Centennial Road, Suite A-2
Sylvania, OH 43560
Phone: 419.843.5355
Fax: 419.843.5350
E-mail: hayslaw@buckeye-express.com

NOAC- Maumee
Sheilah H. McAdams
Marsh & McAdams – Law Director
204 West Wayne Street
Maumee, OH 43547
Phone: 419.893.4880
Fax: 419.893.5891
E-mail: sheilahnca@aol.com

NOAC- Northwood
Brian J. Ballenger
Ballenger & Moore – Law Director
3401 Woodville Rd., Suite C
Toledo, OH 43619
Phone: 419.698.1040
Fax: 419.698.5493
E-mail: ballengerlawbjb@sbcglobal.net

NOAC- Oregon
Paul S. Goldberg
Oregon – Law Director
6800 W. Central Ave.
Toledo, OH 43617-1135
Phone: 419.843.5355
E-mail: pgoldberg@ci.oregon.oh.us

NOAC- Sylvania
James E. Moan
Sylvania – Law Director
4930 Holland-Sylvania Rd
Sylvania, OH 43560
Phone: 419.882.7100
Fax: 419.882.7201
E-mail: jimmoan@hotmail.com

Jones Day
Mark A. Whitt
P.O. Box 165017
325 John H. McConnell Blvd. Suite 600

Columbus, OH 43216-5017
Phone: 614-281-3880
Fax: 614-461-4198
E-mail: mawhitt@jonesday.com

**Constellation Energy Commodities Group, Inc.,
and Constellation NewEnergy, Inc.**
M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymore and Pease, LLP
52 East Gay Street
PO Box 1008
Columbus, OH 43216-1008
E-mail: mhpeticoff@vorys.com

Cynthia A. Fonner
Constellation Energy Resources, LLC
550 West Washington Blvd., Suite 300
Chicago, IL 60661

David I. Fein
Constellation Energy Group, Inc.
550 West Washington Blvd., Suite 300
Chicago, IL 60661

Integrus Energy Services, Inc.
M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymore and Pease, LLP
52 East Gay Street
PO Box 1008
Columbus, OH 43216-1008
E-mail: mhpeticoff@vorys.com

Bobby Singh
300 West Wilson Bridge Road, Suite 350
Worthington, OH 43085
Phone: 614.844.4340
Fax: 614.844.4306
E-mail: bsingh@integrusenergy.com

**Ohio Association of School Business Officials,
Ohio School Boards Association, Buckeye
Association of School Administrators,**
M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymore and Pease, LLP
52 East Gay Street
PO Box 1008
Columbus, OH 43216-1008
E-mail: mhpeticoff@vorys.com

Direct Energy Services, LLC
M. Howard Petricoff
Stephen M. Howard

Vorys, Sater, Seymore and Pease, LLP
52 East Gay Street
PO Box 1008
Columbus, OH 43216-1008
E-mail: mhpetricoff@vorys.com

Dominion Retail, Inc.
Barth E. Royer
Bell & Royer, LPA
33 South Grant Avenue
Columbus, OH 43215
Email: barthroyer@aol.com

Gary A. Jeffries
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburg, PA 15212-5817
Gary.A.Jeffries@dom.com

Ohio Hospital Association
Richard L. Sites
155 E. Broad Street, 15th Floor
Columbus, OH 43215-3620
Phone: (614) 221-7614
Email: ricks@ohanet.org

**Neighborhood Environmental Coalition,
Consumers for Fair Utility Rates, United
Clevelanders Against Poverty, Cleveland Housing
Network, The Empowerment Center of Greater
Cleveland (Citizens Coalition)**
Joseph P. Meissner
The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, OH 44113
Phone: 216.687.1900
Email: jpmessn@lasclv.org

National Energy Marketers Assoc.
Craig G. Goodman, Esq.
3333 K. Street, NW, Suite 110
Washington, D.C. 20007
Email: cgoodman@energymarketers.com

City of Akron
Sean W. Vollman
161 S. High Street, Suite 202
Akron, OH 44308
Phone: 330.375.2030
Fax: 330.375.2041
E-mail: vollmse@ci.akron.oh.us
munteda@ci.akron.oh.us

The Ohio Manufacturers' Association
Langdon D. Bell

Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215-3927
Email: lbell33@aol.com

Kevin Schmidt
The Ohio Manufacturers' Association
33 North High Street
Columbus, OH 43215-3005
kschmidt@ohiomfg.com

Ohio Farm Bureau Federation
Larry Gearhardt
Chief Legal Counsel
280 North High Street
Columbus, OH 43218-2383
Email: lgearhardt@ofbf.org

Material Sciences Corporation
Craig I. Smith
2824 Coventry Road
Cleveland, Ohio 44120
Tel. (216) 561-9410
Email: wis29@yahoo.com

FPL Energy Power Marketing, Inc. (PMI/GEXA)
F. Mitchell Dutton
FPL Energy Power Marketing, Inc.
700 Universe Blvd.
Juno Beach, Florida 33408
Email: mitch.dutton@fpl.com

Dane Stinson
Bailey Cavalieri LLC
10 West Broad Street, Suite 2100
Columbus, Ohio 43215
Dane.Stinson@BaileyCavalieri.com

The City of Cleveland
Steven Beeler
Gregory J. Dunn
Christopher Miller
Andre T. Porter
Schottenstein Zox & Dunn Co., LPA
250 West Street
Columbus, OH 43215
Email: gdunn@szd.com
cmiller@szd.com
aporter@szd.com

OmniSource Corporation
Damon E. Xenopoulos, Esq.
Brickfield, Burchette, Ritts & Stone, P.C.

1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, D.C. 20007
E-Mail: dex@bbrslaw.com

Citizen Power

Theodore S. Robinson
2121 Murray Avenue
Pittsburgh, PA 15217
Email: robinson@citizenpower.com

Ohio Schools Council,

Glenn S. Krassen
E. Brett Breitschwerdt
Bricker & Eckler LLP
1375 E. 9th St., Suite 1500
Cleveland, OH 44114
Email: gkrassen@bricker.com
bbreitschwerdt@bricker.com

NOPEC

Glenn S. Krassen
E. Brett Breitschwerdt
Bricker & Eckler LLP
1375 E. 9th St., Suite 1500
Cleveland, OH 44114
Email: gkrassen@bricker.com
bbreitschwerdt@bricker.com

COSE

Steve Millard
The Higbee Building
100 Public Square, Suite 201
Cleveland, OH 44113
smillard@cose.org

**Wal-Mart Stores East LP and Sam's Club East,
LP, Macy's Inc., and BJ's Wholesale Club, Inc.
(Collectively, the {"Commercial Group"})**

Douglas M. Mancino
McDermott Will & Emory LLP
2049 Century Park East
Suite 3800
Los Angeles, CA 90067-3218
Email: dmancino@mwe.com

Grace C. Wung
McDermott Will & Emery, LLP
600 Thirteenth Street, N.W.
Washington, DC 20005
gwung@mwe.com

**American Wind Energy Association,
Wind on the Wires, Ohio Advanced Energy**

Sally W. Bloomfield
Terrence O'Donnell
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
sbloomfield@bricker.com
todonnell@bricker.com

Morgan Stanley Capital Group Inc.

Douglas M. Mancino
McDermott Will & Emory LLP
2049 Century Park East
Suite 3800
Los Angeles, CA 90067-3218
Email: dmancino@mwe.com

Gregory K. Lawrence
28 State Street
McDermott Will & Emory LLP
Boston, MA 02109
Email: glawrence@mwe.com

Natural Resources Defense Council,

Henry W. Eckhart
50 West Broad Street, #2117
Columbus, Ohio 43215
henryeckhart@aol.com

The Sierra Club Ohio Chapter

Henry W. Eckhart
50 West Broad Street, #2117
Columbus, Ohio 43215
henryeckhart@aol.com