FILE

Bricker & Eckler
ATTORNEYS AT LAW
COLUMBUS | CLEVELAND
CINCINNATI-DAYTON

BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
MAIN: 614.227.2300
FAX: 614.227.2390

www.bricker.com
info@bricker.com

Edward Brett Breitschwerdt
614.227.2301
ebreitschwerdt@bricker.com

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Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: Case No. 08-935-EL-SSO

Dear Sir/Madam:

Please find enclosed an original and twenty (20) copies of the *Reply Brief of the Northeast Ohio Public Energy Council and Northwest Ohio Aggregation Coalition Regarding FirstEnergy's Electric Security Plan* to be filed in Case No. 08-935-EL-SSO on behalf of the NOPEC and NOAC, the Large-Scale Governmental Aggregations.

Copies have been served on all parties of record in this case.

Respectfully yours,

E. Brett Breitschwerdt, Esq.
Bricker & Eckler LLP

Cc: Parties of Record
Chairman Alan R. Schriber
Ronda Hartman Fergus
Valerie A. Lemmie
Paul A. Centolella
Cheryl Roberto
Gregory Price, Hearing Examiner
Christine Pirik, Hearing Examiner
Steve Lesser, Esq.

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The 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	))))))	Case No. 08-935-EL-SSO

REPLY BRIEF OF THE NORTHEAST OHIO PUBLIC ENERGY COUNCIL AND NORTHWEST OHIO AGGREGATION COALITION REGARDING FIRSTENERGY'S ELECTRIC SECURITY PLAN

Glenn S. Krassen
BRICKER & ECKLER LLP
1375 East Ninth Street, Suite 1500
Cleveland, Ohio 44114
Ph: (216) 523-5405
Fax: (216) 523-7071
gkrassen@bricker.com

E. Brett Breitschwerdt
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
Ph: (614) 227-2300
Fax: (614) 227-2390
bbreitschwerdt@bricker.com

Attorneys for Northeast Ohio
Public Energy Council

Lance M. Keiffer
Lucas County Asst. Prosecuting Attorney
711 Adams Street, 2nd Floor
Toledo, Ohio 43624-1680
Ph: (419) 213-4596
Fax: (419) 213-2011
lkeiffer@colucas.oh.us

Leslie A. Kovacik
City of Toledo/NOAC
420 Madison Avenue, Fourth Floor
Toledo, OH 43604
Ph: (419) 245-1893
Fax: (419) 245-1853
Leslie.kovacik@toledo.oh.gov

Attorneys for Northwest Ohio
Aggregation Coalition

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I. INTRODUCTION

The Northeast Ohio Public Energy Council ("NOPEC") and Northwest Ohio Aggregation Coalition ("NOAC") (collectively the "Large-Scale Governmental Aggregations") hereby respectfully file this reply brief. We reemphasize the specific legal mandates and policies of Amended Substitute Senate Bill 221 ("SB 221") that *must* be carried out by the Commission in this case. As described by the Commission in its recent Opinion and Order in Case No. 08-936-EL-SSO, Chapter 4928 of the Revised Code provides "a *roadmap of regulation* in which *specific provisions* were put forth *to advance state policies* . . ."[1] (emphasis added) While the Commission understands the importance of its decision in this case for over 2 million northern Ohioans, the FirstEnergy Utilities (collectively the "Companies" or "Applicants" or "FirstEnergy Utilities") Application in this case does not provide the Commission with a roadmap to a just, reasonable, and lawful decision in this case that effectuates the advancement, or even survival, of large-scale governmental aggregation in Ohio. The Large-Scale Governmental Aggregations have provided this road map to the Commission in our Initial Post-Hearing Brief and this Brief.[2]

Inarguably, SB 221 sets forth specific provisions to encourage and promote large-scale governmental aggregation to be implemented by the Commission. Also inarguably, the record is clear that without modification of the Companies' ESP, the benefits of large-scale governmental aggregation through retail competition will remain economically unviable and the State's policies not advanced in the FirstEnergy Utilities' service territories.

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[1] Case No. 08-936-EL-SSO, Commission's Opinion and Order (November 25, 2008), at 6.

[2] Neither Commission Staff's testimony nor Post-Hearing Brief mention large-scale governmental aggregation or present the Staff's position on the impact of the nonbypassable Minimum Default Service ("MDS") charge or other nonbypassable charges on large-scale governmental aggregation as required by SB 221. However, Staff does state in its Brief that recommendations made by other parties to change aspects of the Company's proposal "are meritorious and should be considered by the Commission." *See* Post Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio, at 8, fn 12.

The Large-Scale Governmental Aggregations are ready, willing, and able to provide material benefits to customers after January 1, 2009 if the ESP's barriers to competition are removed. On August 29, 2008, NOPEC and FPL Energy Power Marketing, Inc. ("FPLE") entered into a Letter of Intent for full requirements retail electric service to commence in early 2009. The Letter of Intent is subject to two key conditions precedent. FPLE and NOPEC will enter into a full requirements contract to provide NOPEC's 600,000 customers firm retail electric service at a material discount *if* the generation phase-in credit/deferral and MDS Rider are appropriately modified or eliminated. NOPEC and FPLE, together with NOAC, have proposed necessary and appropriate modifications that carry out the specific provisions of SB 221. These modifications are supported by express statutory directions to the Commission to advance the state policies encouraging and promoting large-scale governmental aggregation and ensuring effective competition. They should be incorporated into the Commission's roadmap to a just, reasonable, and lawful resolution of this case.[3]

As set forth in the Initial Post Hearing Brief of the Large-Scale Governmental Aggregations (and numerous other intervenors), the following three modifications *must* be made to the Companies' Electric Security Plan ("ESP") proposal to advance the state policies and carry out the specific legal mandates set forth in SB 221:

1) **Eliminate the Generation Phase In Credit and associated deferral for all customers *or* establish an equivalent Governmental Aggregation Generation Credit ("GAGC") under O.R.C. 4928.143(B)(2)(d) to eliminate the anti-competitive effect of the deferral and provide equal cost saving to large-scale governmental aggregation customers;**

2) **Eliminate or make the MDS Rider fully bypassable for large-scale governmental aggregations *or* establish a 150-day Notice Window to Notify the utility of the large-scale governmental aggregation's election to take CRES supply;**

[3] *See* O.R.C. §4928.20(K); O.R.C. §4928.02(H).

3) **Establish a Purchase of 100 percent CRES receivables program to operate in conjunction with Companies' Rider NDU *or* make Rider NDU bypassable for large-scale governmental aggregation customers, as proposed by Staff.**

In the Reply Brief that follows, the Large-Scale Governmental Aggregations provide the Commission specific directions to insert into its roadmap to a just, reasonable and lawful modification of the ESP.

II. THE COMMISSION'S ROADMAP TO A DECISION IN THIS CASE MUST COMPLY WITH THE MANDATES, AND ADVANCE THE POLICIES, OF SB 221.

A. Unlike the Companies, the Commission Cannot *Ignore* that SB 221's Statutory Mandate to Incentivize Large-Scale Governmental Aggregation *Trumps* Provisions of an ESP Designed to Disincentivize Customer Shopping

The Companies' brief incorrectly articulates the legal standard providing for an ESP's construction in order to subvert SB 221's legislated purpose of incentivizing large-scale governmental aggregation. The Companies' brief incorrectly asserts that an ESP can be constructed "*notwithstanding* any other provision of Title 49 of the Ohio Revised Code."[4] (emphasis added) This is plain wrong. While the Companies' interpretation may be consistent with how they constructed their proposed ESP, they ignore a key phrase that makes their interpretation inconsistent with SB 221 and unlawful.

SB 221 is constructed to ensure that its provisions incentivizing large-scale governmental aggregation expressly *trump* any provisions to be included in an ESP that would otherwise disincentivize the opportunity for customers to participate in large-scale governmental aggregation.[5] Specifically, controlling section (B) of 4928.143 states:

> (B) Notwithstanding any other provision of Title XLIX of the Revised Code to the contrary except division (D) of this section, divisions (I), (J), and (K) of

[4] *See* Brief of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company In Support of their Electric Security Plan (hereinafter "Companies Brief"), at 2.
[5] *See* Initial Post Hearing Brief of the Northeast Ohio Public Energy Council and Northwest Ohio Aggregation Coalition Regarding FirstEnergy's Electric Security Plan, at 8-9; *see also* FPL Energy's Initial Brief, at 8.

section 4928.20, division (E) of section 4928.64, and section 4928.69 of the Revised Code:[6] (emphasis added)

The Companies' Brief, like the provisions of its ESP, conveniently ignore this key exception for large-scale governmental aggregation, in an attempt to modify the legislative purpose of the statute for their own pecuniary benefit. This plain language of O.R.C. 4928.143(B) inarguably mandates that the Commission ensure the provisions of an ESP will not disincentivize participation in large-scale governmental aggregation, nor contradict Divisions (I), (J), and (K) of Section 4928.20. Thus, while division (B)(2) of Section 4928.143 provides the Commission with authority to approve an ESP that includes "(d) Terms, conditions, or charges relating to limitations on customer shopping . . .", these provisions are expressly *trumped* by SB 221's construction incentivizing large-scale governmental aggregation.[7] While the record in this case shows that the Companies have not constructed an ESP with the correct statutory construction in mind, the Commission's decision in this case must correctly apply SB 221's statutory mandates and advance its policies.[8]

B. SB 221 Expressly Provides the Commission with Specific Directions to Incorporate into its ESP Review to Encourage and Promote Large-Scale Governmental Aggregation

Through Divisions (I), (J), and, most importantly, (K), of Section 4928.20, Ohio Revised Code, SB 221 provides the Commission directions to incorporate into its ESP review roadmap regarding the General Assembly's legislated commitment to the opportunity for customers to benefit from large-scale governmental aggregation under an ESP. As noted above, these

[6] O.R.C. §4928.143(B).
[7] O.R.C. §4928.143(B)(2); (B)(2)(d).
[8] *See* Tr. Vol. VII, at p. 33. (examination of Mr. Blank).

Q. Okay. But this – this section in Section 4928.20 is not one of the policies set forth in Section .02, so the balancing does not need to occur to satisfy the requirements of Sections I, J, and K as set forth in the Revised Code; would you agree with that?
A. No, I don't agree with that.

provisions trump any provisions of an ESP that otherwise would disincentivize large-scale governmental aggregation.

Division (I) recognizes the potential negative impact of a deferral on large-scale governmental aggregation customers, and provides the Commission with direction to ensure that these customers only pay for the proportionate benefits of any approved deferral they actually receive.[9]

Division (J) recognizes that standby and other provider of last resort ("POLR") charges have been used in the past by the Companies to inhibit large-scale governmental aggregation by reducing the shopping credit customers receive. Division (J) directs the Commission to provide for the standby charge's avoidance at the election of the large-scale governmental aggregation.[10]

Importantly, division (K) provides the Commission with express unambiguous direction to encourage and promote large-scale governmental aggregation, and, further, to review and consider the effect on large-scale governmental aggregation of any nonbypassable generation charges.[11] While the directive to encourage and promote is linked to adopting rules, FPLE's Brief clearly explains that the Commission has the authority to adopt rules in the adjudicatory proceeding reviewing each EDU's individual ESP, or in other proceedings to carry out this statutory directive.[12] FPLE's Brief also notes that the Commission has appropriately implemented its rulemaking by adjudication authority in the past.[13] This direction to encourage

[9] O.R.C. §4928.20(I).
[10] O.R.C. §4928.20(J).
[11] Unlike Divisions (I) and (J) of Section 4928.20, Division (K) is statutorily constructed to focus on the large-scale governmental aggregation itself as opposed to its customers. *See* FPL Energy's Initial Brief, at 13.
[12] *See* FPL Energy's Initial Brief, at 10 (Citing "Securities and Exchange Comm. v. Chenery Corp. (1947), 332 U.S. 194, 91 L.Ed. 1995, 67 S.Ct. 1575; Hamilton Cty. Bd. of Mental Retardation and Developmental Disabilities v. Professionals Guild of Ohio (1989), 46 Ohio St. 3d 147, 545 N.E.2d 1260; MarionOB/GYN, Inc. v. State Medical Board of Ohio (2000), 137 Ohio App. 3d 522, 739 N.E.2d 15.").
[13] *See* FPL Energy's Initial Brief, at 10 (Citing "*See WPS Energy Services, Inc. and Green Mountain Energy Company v. First Energy Corp., et al.*, PUCO Case No. 02-1944-EL-CSS (Opinion and Order, August 6, 2003), in which the

and promote large-scale governmental aggregation is very important as both a policy objective and a legal tool for the Commission.

Further, division (K) also expressly directs the Commission to review and consider the effect on large-scale governmental aggregation of any nonbypassable generation charges proposed in an ESP. FPLE's Brief explains that the purpose for which review and consideration of the nonbypassable charges is to be undertaken, based upon Ohio's rules of statutory construction, *must* be to encourage and promote large-scale governmental aggregation.[14] The Commission's review should assess each nonbypassable generation charge individually. This important safeguard of SB 221 directs the Commission that if any nonbypassable generation charge in FirstEnergy's ESP violates the policy of encouraging and promoting large-scale governmental aggregation, the Commission must modify or disallow the provision.

C. The Provisions Incentivizing Large-Scale Governmental Aggregation are Consistent with the Policies of the State, and Provide the Commission with Ample Authority to Ensure these Policies are Effectuated.

The Commission's Opinion and Order in Case No. 08-936-EL-SSO also states that it must consider and advance established state policies.[15] Section 4928.02 sets out the state policies to be achieved; policies that have binding importance upon the Commission's decision.[16] Several of these policies are consistent with the mandate to encourage and promote large-scale governmental aggregation, including:

> (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, ***nondiscriminatory, and reasonably priced retail electric service***;
>
> (B) Ensure the availability of unbundled and ***comparable retail electric service*** that ***provides consumers with*** the supplier, price, terms, conditions, and quality ***options they elect*** to meet their respective needs;

Commission approved partial payment priority rules applicable to FirstEnergy.")

[14] *See* FPL Energy's Initial Brief, at 11.

[15] Case No. 08-936-EL-SSO, Commission's Opinion and Order (November 25, 2008), at 6.

[16] *See Elyria Foundry Company et al v. PUC* (2007), 114 Ohio St. 3d. 305, at 316.

(C) ***Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices*** over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;

(G) ***Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;***

(H) ***Ensure effective competition in the provision of retail electric service*** by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;[17] (emphasis added)

In addition to complying with the directives of O.R.C. 4928.20, ensuring the viability of large-scale governmental aggregation advances each of these policies. Large-scale governmental aggregation:

- provides a market-based check on the Companies' constructed generation price;
- provides an effective and viable option to the Companies' SSO;
- provides opportunities for CRES to participate in Ohio's marketplace;
- provides at least one means for effective competition in the provision of retail electric service.

Promoting their own self interest, the Companies' have made the argument throughout this case that:

> "The State's policy of promoting diversity of suppliers and customer choice must be harmonized with the express statutory accommodation of ESP provisions that may have the effect of limiting customer shopping."[18]

With respect to large-scale governmental aggregation, the Companies' position is legally incorrect and improperly mischaracterizes SB 221. The Companies' legal support for the proposition that the Commission can justify the elimination of customer shopping and diversity of suppliers, based on Division (B)(2)(d) of Section 4928.143, is inapplicable to large-scale governmental aggregation based on the statutory construction of Section 4928.143(B) discussed

[17] *See* O.R.C. §4928.02.
[18] *See* Companies' Brief, at 4.

above. Encouraging and promoting large-scale governmental aggregation expressly trumps any provisions within an ESP, especially potential limitations on customer shopping. As acknowledged by the Companies' witness Mr. Blank during the hearing, the very purpose and continued existence of large-scale governmental aggregation requires effective and economically viable opportunities for CRES suppliers to participate in the Ohio marketplace.[19] The Commission should use Section 4928.20(K) to carry out the policy goals set forth in Section 4928.02 above to the greatest extent possible under the law.

III. CLARIFICATION OF CERTAIN PROPOSED MODIFICATIONS FOR THE COMMISSION TO ARRIVE AT A JUST, REASONABLE, AND LAWFUL DECISION IN ACCORDANCE WITH SB 221.

A. The Option II GAGC Can be Implemented Under O.R.C. 4928.143(B)(2)(d) *if* the Commission Determines it Appropriate to Incorporate a Deferral Into any Approved ESP.

Properly designing a deferral mechanism so that it will not construct an anti-competitive barrier to competition is ***critical*** to the continued viability of large-scale governmental aggregation. Any approved deferral mechanism's credit ***must*** be universally applied to large-scale governmental aggregation customers' bills on an equivalent basis to SSO customers. Conceptually, the deferral is a "loan" from the distribution utility to a customer. The Companies' ESP has proposed that the distribution utility provide this loan to SSO customers only, although all customers take service from the Applicant distribution utilities. The Large-Scale Governmental Aggregations have proposed a mechanism to extend this distribution utility loan to large-scale governmental aggregation customers as well. Extending this deferral to large-scale governmental aggregation customers served through the Applicant distribution utility by a third-party CRES supplier will operate exactly in the same manner as the distribution utility providing the deferral to SSO customers served through the distribution utility by its third party

[19] *See* Tr. Vol. VII, at 27, 63-64.

generation supplier, FES. In both instances, the loan is from the Applicant FirstEnergy Operating Utilities to the customer, not to FES or a CRES supplier, so it should operate exactly the same.

While the Large-Scale Governmental Aggregations called this credit the Governmental Aggregation Generation Credit ("GAGC"), this name is actually somewhat a misnomer since the credit - in actuality, a "phrase in credit" - would be applied to the distribution utility's portion of a Large-Scale Governmental Aggregation customer's bill. Below is an illustrative example of how such a credit should work:

Comparison of Hypothetical Bill for SSO vs. CRES Supply in 2009

Non-generation deferral credit made available to Large-Scale Governmental Aggregation customers regardless of whether they receive SSO or CRES supply. Hence the credit (or loan) is made to the customer and not to supplier (whomever that may be).

	FE EDU SSO Customer		NOPEC Customer (with SSO Supply)		NOPEC Customer (with CRES Supply)	
Charges from FE Operating Company (EDU)						
Customer Charge		$ 4.75		$ 4.75		$ 4.75
Delivery Charge		42.51		42.51		42.51
EDU "Rate Shock Protection" Deferral Credit		-7.50		-7.50		-7.50
CRES Generation Supply Charges						
Basic Generation Charge	1000 KWH X $0.0750 per KWH	75.00	1000 KWH X $0.0750 per KWH	75.00	1000 KWH X $0.0740 per KWH	74.00
Transmission Related Component	1000 KWH X $0.0098 per KWH	9.77	1000 KWH X $0.0098 per KWH	9.77	1000 KWH X $0.0098 per KWH	9.77
Total CRES Charges		$ 84.77		$ 84.77		$ 83.77
Total Customer Charges		$124.53		$124.53		$123.53

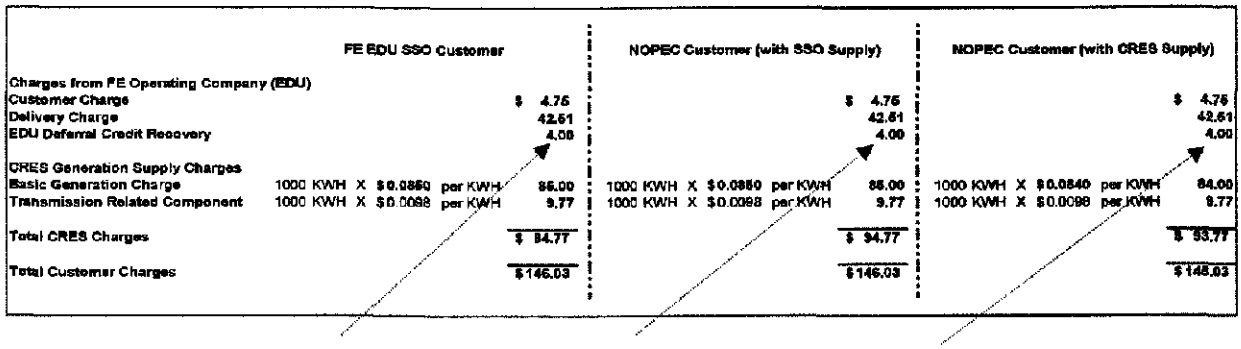
Market based generation charges

CRES SUPPLIER ONLY GETS PAID MARKET-BASED GENERATION CHARGES

Assumption: Hypothetical customer bill in 2009 with monthly electricity usage of 1000 KWH

Similarly, the recovery of the deferral credit by the Applicant distribution utilities would operate as follows:

Recovery of Deferral Credit



Large-Scale Governmental Aggregation customers start to pay back the credit (like everyone else) whether they received SSO or CRES supply

As these illustrations show, the "deferral credit" would apply equally to SSO and large-scale governmental aggregation customers, and an equal amount would then be recovered by the distribution utility, including the same amount of carrying charges, regardless of whether the customer is an SSO or large-scale governmental aggregation customer. As explained above, in both cases, the loan being made is from the Applicant distribution utilities to the customer. Similarly, repayment is made directly from the customer to the Applicants, and in no way implicates the lending of money to or borrowing of money from the competitive supplier or FES. Further, as noted in the Direct Testimony of FPLE Witness Robert M. Garvin, providing this deferral credit to customers universally in deregulated environment has been accomplished and proven successful in Maryland.[20]

SB 221 provides the Commission full legal authority to implement this mechanism. SB 221 provides that the Commission may include "[t]erms and conditions" in an ESP including

[20] *See* FPLE Exhibit 1, Direct Testimony of Robert M. Garvin, at 11-12.

"accounting or deferrals, including future recovery of such deferrals."[21] The GAGC mechanism is such a "[t]erm or condition". It establishes an accounting deferral (the GAGC) *necessary* to ensure the viability of large-scale governmental aggregation. Section 4928.143(B)(2)(d) provides for such a regulatory asset accounting mechanism and does not limit or preclude the GAGC. Importantly, the only statutory limitation on this accounting and deferral language in Division (B)(2)(d) is that it must comply with Division (B)'s directives, including to encourage and promote large-scale governmental aggregation under Section 4928.20(K).[22] Otherwise, an accounting and deferral mechanism may be included, "without limitation" by the Commission, and is not statutorily limited to the utility's generation deferral under O.R.C. 4928.144.[23]

Further, implementation of the GAGC would also be consistent with the State policies set forth in Section 4928.02 in the following ways:

- Allowing SSO customers to defer a portion of the approved generation rate and not large-scale governmental customers would be unduly ***discriminatory*** against large-scale-governmental aggregation customers -- 4928.02(A);
- The GAGC is necessary for a large-scale governmental aggregator to offer a ***comparable*** deferral as that proposed by FirstEnergy -- 4928.02(B);
- Large-scale governmental aggregation is the ***only viable competitive option*** for residential and small commercial consumers in FirstEnergy's service territory. Without the GAGC, large-scale governmental aggregation will not be viable. -- 4928.02(C); and
- The GAGC is clearly the type of ***flexible regulatory treatment*** that is necessary to encourage the emergence of competitive retail electric markets in the FirstEnergy service territory -- 4928.02(G).

[21] O.R.C. §4928.143(B)(2)(d) ("(d) Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service;).

[22] O.R.C. §4928.20(B).

[23] Moreover, S.B. 221 expressly excludes an ESP from Title XLIV of the Revised Code, except to the extent the ESP must encourage and promote large-scale governmental aggregation. This statutory construction makes the GAGC lawful. Further, the GAGC is not inconsistent with the language and holding of *Elyria Foundry*, which guards against the electric utility eliminating competition through nonbypassable subsidies. O.R.C. §4928.143 (b). *See also Elyria Foundry v PUC*, (2007) 114 Ohio St. 3d. 305.

There is no financial disadvantage to the FirstEnergy Utilities because they will be repaid the *exact same* deferral revenue from large-scale governmental aggregation customers they otherwise would receive if the customers remained SSO customers.[24]

B. Our Option II 150-day Window Notification Eliminates the Anti-Competitive Barrier of the MDS Rider Without Impacting the FirstEnergy Utilities.

If the Commission does not eliminate the MDS or make it fully bypassable for large-scale governmental aggregation customers, the Large-Scale Governmental Aggregation's Option II proposal is to establish a 150-day window during which a large-scale governmental aggregation can notify its electric utility that it elects to take third-party CRES supply, and, in doing so, avoid the MDS Rider. This proposal eliminates the MDS' $10 per MWh shopping barrier during this initial window, and *effectively* allows the large-scale governmental aggregation and CRES suppliers to either prove that the Companies' market pricing estimates were substantially overvalued and that material benefits can be obtained for customers or be forced to accept that the Companies' ESP pricing represents *nondiscriminatory and reasonably priced retail electric service* as contemplated by O.R.C. 4928.02.[25]

The risk of this proposal to the Companies also seems negligible based on the record in this case and current circumstances. First, as extensively examined in the Large-Scale Governmental Aggregation's Initial Post Hearing Brief, the Companies failed to provide credible justification for this nonbypassable charge, and, therefore, have not carried their burden of proof for its approval at least with regard to the O.R.C. 4928.20(K) review for large-scale

[24] Should the Commission not order the same phase-in-credit for large-scale governmental aggregation customers, the Commission should specifically find and order under ORC Section 4928.20(I), that no large-scale governmental aggregation customer who received CRES service during the ESP period should be required to pay the Companies' generation credit deferral even if such customer returns to the Companies' SSO service after the expiration of the ESP period because they will not have received any benefits from the deferral credit.

[25] *See* O.R.C. §4928.02.

governmental aggregations.[26] Even assuming *some* credible justification for the risk associated with the $1.731 *Billion* charge exists (which we do not accept), the MDS Rider is not designated as the POLR charge, and, essentially, is "compensation for FirstEnergy to stand ready to sell generation at 160% times the current market prices."[27] In a deregulated environment, the FirstEnergy Utilities cannot claim a "loss" of revenue when customers take third party supply unless they contractually take ownership of this risk in their contract with their third-party supplier, i.e., FES. As no contract is currently in place between the FirstEnergy Utilities and FES, the FirstEnergy Utilities do not own any risk associated with serving the Large-Scale Governmental Aggregations' load. If the Commission properly eliminates the MDS for large-scale governmental aggregations in full or for the 150-day window, FirstEnergy will still be able to negotiate with FES to reduce its load requirements to avoid this risk. Further, current economic circumstances and the extreme drop in energy prices also discredit the Companies' attempt to justify this provision.

IV. CONCLUSION

The Large-Scale Governmental Aggregations have set forth statutory directions to assist the Commission in arriving at a just, reasonable and lawful decision in this case. While there are certainly many other critical issues that must be addressed in the Commission's decision, SB 221 makes clear that the State's commitment to the benefits of large-scale governmental aggregation *must* also be carried out in any approved ESP.

The Large-Scale Governmental Aggregations respectfully request the Commission comply with the mandates and advance the policies of SB 221, and implement the necessary and appropriate modifications we have proposed in this case.

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[26] *See* Large-Scale Governmental Aggregations' Post Hearing Brief, at 27-36.
[27] *See* Large-Scale Governmental Aggregations' Post Hearing Brief, at 31 (Citing Competitive Suppliers Exhibit 3, Direct Testimony of Teresa Ringenbach, at 9).

Respectfully submitted,

Glenn S. Krassen (EBB permission)

Glenn S. Krassen (0007610)
BRICKER & ECKLER LLP
1375 East Ninth Street
Suite 1500
Cleveland, Ohio 44114
Phone: (216) 523-5405
Facsimile: (216) 523-7071
gkrassen@bricker.com

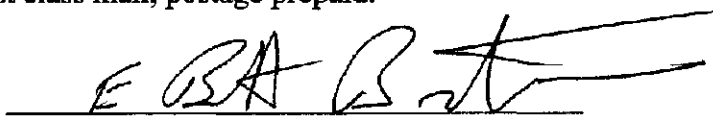
and

E. Brett Breitschwerdt (0082801)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215
Phone: (614) 227-2300
Facsimile: (614) 227-2390
bbreitschwerdt@bricker.com

Attorneys for Northeast Ohio Public Energy Council

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief of The Northeast Ohio Public Energy Council and Northwest Ohio Aggregation Coalition Regarding FirstEnergy's Electric Security Plan was served upon the following parties of record this 12th day of December 2008, *via* electronic transmission, hand-delivery or first class mail, postage prepaid.



E. Brett Breitschwerdt

James W. Burk, Counsel of Record
Arthur Korkosz, Senior Attorney
Mark A. Hayden, Attorney
Ebony L. Miller, Attorney
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

On Behalf of The Cleveland Electric Illuminating Company, Ohio Edison Company and The Toledo Edison Company

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

On Behalf of Ohio Energy Group

Samuel C. Randazzo
Lisa G. McAlister
Daniel J. Neilsen
Joseph Clark
McNees, Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215

On Behalf of Industrial Energy Users – Ohio

Janine L. Migden-Ostrander
Consumers' Counsel
Jeffrey L. Small, Counsel of Record
Jacqueline Lake Roberts
Richard C. Reese
Gregory J. Poulos
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485

On Behalf of Office of the Ohio Consumers' Counsel

John W. Bentine
Mark S. Yurick
Matthew S. White
Chester, Willcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, OH 43215-4213

On Behalf of The Kroger Co.

Barth E. Royer, Counsel of Record
Bell & Royer Co. LPA
33 South Grant Avenue
Columbus, OH 43215-3927

Nolan Moser
Air & Energy Program Manager
The Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449

Trent A. Dougherty
Staff Attorney
The Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449

On Behalf of The Ohio Environmental Council

David C. Rinebolt, Trial Attorney
Colleen L. Mooney
Ohio Partners for Affordable Energy
PO Box 1793
Findlay, OH 45839-1793

On Behalf of Ohio Partners for Affordable Energy

John W. Bentine, Counsel of Record
Mark S. Yurick
Chester, Willcox & Saxbe LLP
65 East State Street, Suite
1000 Columbus, OH 43215-4213

Garrett A. Stone
Michael K. Lavanga
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, NW
8th Floor, West Tower
Washington, DC 20007

On Behalf of Nucor Steel Marion, Inc.

Leslie A. Kovacik, Lead Counsel for NOAC
Counsel for Toledo
420 Madison Avenue, Suite 100
Toledo, OH 43604-1219

Lance M. Keiffer, Lead Counsel for NOAC
Assistant Prosecuting Attorney
Counsel for Lucas County
711 Adams Street, 2nd Floor
Toledo, OH 43624-1680

Sheilah H. McAdams, Law Director
Counsel for Maumee
Marsh & McAdams
204 West Wayne Street
Maumee, OH 43537

Brian J. Ballenger, Law Director
Counsel for Northwood
Ballenger & Moore
3401 Woodville Road, Suite C
Northwood, OH 43619

Paul S. Goldberg, Law Director
Counsel for Oregon
6800 W. Central Avenue
Toledo, OH 43617-1135

James E. Moan, Law Director
Counsel for Sylvania
4930 Holland-Sylvania Road
Sylvania, OH 43560

Paul Skaff, Asst. Village Solicitor
Counsel for Holland
353 Elm Street
Perrysburg, OH 43551

Thomas R. Hays, Solicitor
Counsel for Lake Township
3315 Centennial Road, Suite A-2
Sylvania, OH 43560

On Behalf of Northwest Ohio Aggregation Coalition ("NOAC")

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008

Cynthia A. Fonner
Constellation Energy Group, Inc.
50 West Washington Blvd., Suite 300
Chicago, IL 60661

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

On Behalf of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008

On Behalf of Direct Energy Services, LLC, The National Energy Marketers and Integrys Energy Services, LLC

Craig G. Goodman
President
National Energy Marketers Association
3333 K Street, N.W., Suite 110
Washington, DC 20007

On Behalf of the National Energy Marketers ("NEM")

Bobby Singh
Integrys Energy Services, Inc.
300 West Wilson Bride Road, Suite 350
Worthington, OH 43085

On Behalf of Integrys Energy Services, Inc.

Barth E. Royer Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215-3927

Gary A. Jeffries
Senior Counsel
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817

On Behalf of Dominion Retail, Inc.

Richard L. Sites
General Counsel & Senior Director of Health Policy
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620

On Behalf Of Ohio Hospital Association

Henry W. Eckhart
50 W. Broad Street, #2117
Columbus, OH 43215

On Behalf of The Sierra Club and The National Resources Defense Council ("NRDC")

Sean W. Vollman
David A. Muntean
Assistant Directors of Law
City of Akron
161 S. High Street, Suite 202
Akron, OH 44308

On Behalf of The City of Akron

Joseph P. Meissner
The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, OH 44113

On Behalf of The Neighborhood Environmental Coalition, Consumers for Fair Utility Rates, United Clevelanders Against Poverty, Cleveland Housing Network and The Empowerment Center of Greater Cleveland ("Citizens Coalition")

Langdon D. Bell Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215-3927

Kevin Schmidt
The Ohio Manufacturers' Association
33 North High Street
Columbus, OH 43215-3005

On Behalf of The Ohio Manufacturers' Association ("OMA")

Glenn S. Krassen
Bricker & Eckler LLP
1375 East Ninth Street, Suite 1500
Cleveland, OH 44114

E. Brett Breitschwerdt
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215

On behalf of Northeast Ohio Public Energy Council ("NOPEC") and the Ohio Schools Council ("Schools")

Larry Gearhardt
Chief Legal Counsel
Ohio Farm Bureau Federation
280 North High Street
PO Box 182383
Columbus, OH 43218-2383

On Behalf of the Ohio Farm Bureau Federation ("OFBF")

Robert J. Triozzi, Director of Law
Steven Beeler, Assistant Director of Law
City of Cleveland
Cleveland City Hall
601 Lakeside Avenue, Room 106
Cleveland, OH 44114-1077

Gregory H. Dunn, Counsel of Record
Christopher L Miller
Andrew T. Porter
Schottenstein Zox & Dunn Co., LPA
250 West Street
Columbus, OH 43215

On Behalf of The City of Cleveland

Dane Stinson
Bailey Cavalieri LLC
One Columbus
10 West Broad Street, Suite 2100
Columbus, OH 43215

F. Mitchell Dutton
Senior Attorney
FPL Energy Power Marketing, Inc.
700 Universe Boulevard
CTR/JB
Juno Beach, FL 33408

On Behalf of FPL Energy Power Marketing, Inc. ("PMI") and GEXA Energy holdings, LLC ("GEXA") (collectively "PMI/GEXA")

Theodore S. Robinson
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217

On Behalf of Citizen Power, Inc.

Damon E. Xenopoulos
Brickfield, Birchette, Ritts & Stone, PC
1025 Thomas Jefferson Street, NW
Eighth Floor, Wets Tower
Washington, DC 20007

On Behalf of OmniSource Corporation

Craig I. Smith
2824 Coventry Road
Cleveland, OH 44120

On Behalf of Materials Science Corporation

Steve Millard
President and Executive Director
The Council on Small Enterprises
The Higbee Building
100 Public Square, Suite 201
Cleveland, OH 44113

Nicholas C. York
Eric D. Weldele
Tucker Ellis & West LLP
1225 Huntington Center
41 South High Street
Columbus, OH 43215

On Behalf of Council of Smaller enterprises

Sally W.BIoomfield
Terrence O'Donnell
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215

On Behalf of American Wind Energy Association, Wind on the Wires, and Ohio Advanced Energy

Douglas M. Mancino
McDermott Will & Emery LLP
2049 Century Park East, Suite 3800
Los Angeles, CA 90067-3218

Gregory K. Lawrence
McDermott Will & Emery LLP
28 State Street
Boston, MA 02109

On Behalf of Morgan Stanley Capital Group

Douglas M. Mancino
McDermott Will & Emery LLP
2049 Century Park East, Suite 3800
Los Angeles, CA 90067-3218

Grace C. Wung
McDermott Will & Emery, LLP
600 Thirteenth Street, NW
Washington, DC 2005

On Behalf of Wal-Mart Stores East LP and Sam's Club East, LP, Macy's Inc., and BJ's Wholesale Club, Inc. (the "Commercial Group")

John Jones
William Wright
Assistant Attorneys General
Public Utilities Section
180 East Broad Street
Columbus, OH 43215

On Behalf of the Public Utilities Commission of Ohio

Christine Pirik
Gregory Price
Public Utilities Commission of Ohio
180 East Broad Street
Columbus OH 43215

Attorney Examiners