

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

5
RECEIVED-DOCKETING DIV
2011 APR -4 PM 4:18
PUCO

In the Matter of the Application of Duke)
Energy Ohio for Approval of a Market Rate)
Offer to Conduct a Competitive Bidding)
Process for Standard Service Offer Electric)
Generation Supply, Accounting Modifications,)
and Tariffs for Generation Service.)

Case No. 10-2586-EL-SSO

**THE OHIO MANUFACTURERS' ASSOCIATION'S MEMORANDUM CONTRA
APPLICATIONS FOR REHEARING OF DUKE ENERGY OHIO, INC.
AND FIRSTENERGY SOLUTIONS CORP.**

On November 15, 2010, Duke Energy-Ohio ("Duke") filed an application for approval of a market rate offer ("MRO") with the Public Utilities Commission of Ohio ("Commission"). On February 23, 2010, the Commission issued a detailed 77-page Opinion and Order rejecting Duke's MRO application based primarily upon Duke's failure to abide by the requirements in Ohio Revised Code Sections ("R.C.") 4928.142(D) and (E) regarding the statutory five-year blending period.

Although both Duke and FirstEnergy Solutions Corporation ("FES") filed applications for rehearing on March 25, 2011, neither raised issues not already addressed in their post-hearing briefs and rejected by the Commission. More specifically, the issue of the five-year blending period requirements in R.C. 4928.142(D), and the Commission's discretion under R.C. 4928.142(E) to alter the five-year blending period were analyzed, *ad nauseam*, at the evidentiary hearing and in numerous post-hearing briefs. The Commission's Opinion and Order properly rejected the arguments

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician A Date Processed APR 04 2011

of both Duke and FES (not coincidentally the same arguments raised in their applications for rehearing), concluding:

- "Duke was required to file a five-year blending plan and transition to market. Failure to do so renders Duke's proposed MRO application in noncompliance with the statutory requirements."¹
- "Duke did not comply with the requirements for the filing of an MRO and provide information for years three through five. . . . Instead, Duke took the chance that its view of the statutory constraints was correct and only filed supporting documentation for three years."²
- "[W]e must wait until year two of the MRO to consider whether the blended price percentages set forth in paragraph (D) of Section 4928.142, Revised Code should be altered pursuant to paragraph (E) of Section 4828.142, Revised Code."³
- To consider "such a change now, at the outset of the proposed MRO, is premature and would necessitate that the Commission prejudice circumstances that are neither present currently nor reflected in the record."⁴

It is entirely improper to revisit these issues yet again when neither Duke nor FES have raised any new grounds for doing so. Duke's and FES's arguments were fully briefed, adequately considered by the Commission, and properly rejected.

¹ Opinion and Order at 23.

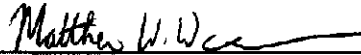
² *Id.* at 26.

³ *Id.* at 17.

⁴ *Id.* at 25.

For these reasons, and those set forth in OMA's post-hearing briefs, OMA respectfully requests that the applications for rehearing of Duke and FES be denied.

Respectfully submitted on behalf of
THE OHIO MANUFACTURERS' ASSOCIATION



Matthew W. Warnock
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-mail: mwarnock@bricker.com

Kevin Schmidt
The Ohio Manufacturers' Association
33 N. High Street, Suite 600
Columbus, OH 43215
Telephone: (614) 629-6816
E-mail: kschmidt@ohiomfg.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the parties of record listed below this 4th day of April 2011 *via* electronic mail.



Matthew W. Warnock

Amy B. Spiller
Associate General Counsel
Elizabeth H. Watts
Assistant General Counsel
Rocco O. D'Ascenzo
Senior Counsel
Duke Energy Business Services
139 East Fourth Street, 1313-Main
Cincinnati, OH 45202

John W. Bentine
Mark Yurick
Matthew S. White
Chester, Wilcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215-4213
jbentine@cwsllaw.com
myurick@cwsllaw.com
mwhite@cwsllaw.com

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

Michael D. Dortch
Kravitz, Brown & Dortch, LLC
65 East State Street, Suite 200
Columbus, OH 43215
mdortch@kravitzllc.com

Ann M. Hotz
Kyle L. Verrett
Jody M. Kyler
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
hotz@occ.state.oh.us
verret@occ.state.oh.us
kyler@occ.state.oh.us

William T. Reisinger
Nolan Moser
Trent A. Dougherty
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
will@theoec.org
nolan@theoec.org
trent@theoec.org

Samuel Randazzo
Joseph Oilker
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
sam@mwncmh.com
joliker@mwncmh.com

Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

David A. Kutik
Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114
dakutik@jonesday.com

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour, and Pease LLP
52 East Gay Street
PO Box 1008
Columbus, OH 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com

Grant W. Garber
Jones Day
325 John H. McConnell Blvd., Suite 600
Columbus, OH 43215-2673
gwwgarber@jonesday.com

Mary Christensen
Counsel for People Working
Cooperatively,
Inc.
8760 Orion Place, Suite 300
Columbus OH 43240
mchristensen@columbuslaw.org

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215
barthrover@aol.com

Gary A. Jeffries
Senior Counsel
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212
Garv.A.Jeffries@dom.com

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
tobrien@bricker.com

Douglas E. Hart
Attorney for The Greater
Cincinnati Health Council
441 Vine Street, Suite 4192
Cincinnati, OH 45202
dhart@douglasshart.com

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
drinebolt@ohiopartners.org
cmooney2@columbus.rr.com

Cynthia Fonner Brady
Senior Counsel
Constellation Energy Resources LLC
550 W. Washington St., Suite 300
Chicago, IL 60661
Cynthia.brady@constellation.com

Steven Beeler
John Jones
Assistant Attorneys General
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215
Steven.beeler@puc.state.oh.us
John.jones@puc.state.oh.us

Richard Chamberlain
Behrens, Wheeler & Chamberlain
6 N.E. 63rd Street, Suite 400
Oklahoma City, OK 73105
rdc_law@swbell.net