

**BEFORE THE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission Review of)	
the Capacity Charges of Ohio Power)	Case No. 10-2929-EL-UNC
Company and Columbus Southern Power)	
Company.)	

**FIRSTENERGY SOLUTIONS CORP.'S MEMORANDUM CONTRA THE MOTION OF
OHIO POWER COMPANY FOR LEAVE TO FILE A REPLY TO THE
MEMORANDUM CONTRA OHIO POWER'S FEBRUARY 27, 2012
MOTION FOR RELIEF**

Pursuant to Section 4901-1-12 of the Ohio Administrative Code, FirstEnergy Solutions Corp. ("FES") respectfully requests that the Commission deny the Motion of Ohio Power Company ("AEP Ohio") For Leave To File A Reply to the Memorandum Contra Ohio Power's February 27, 2012 Motion For Relief.

AEP Ohio elected to file its "Motion for Relief and Request for Expedited Ruling" pursuant to Rule 4901-1-12(C).¹ This rule requires that all memoranda contra be filed within seven days after service of the motion instead of the standard fifteen days. However, in exchange for this accelerated response time, the rule prohibits reply briefs. In effect, the rule requires that a movant make its case in its initial filing in exchange for receiving expedited consideration. AEP Ohio's Motion for Leave is in clear violation of this rule.

Indeed, there is nothing in AEP Ohio's proposed "reply" that it could not have included in its Motion for Relief. The proposed "reply" is nothing more than an Affidavit of William A. Allen.² In the affidavit, Mr. Allen summarizes the assumptions he supposedly relied upon in

¹ See Motion for Relief, p. 2.

² AEP Ohio's filing has three parts: the Motion for Leave, a Memorandum In Support of the Motion for Leave, and the Affidavit of William A. Allen.

supporting the alleged financial harm claimed in the Motion for Relief.³ Not only did AEP Ohio elect to proceed on an expedited basis and thereby waive a reply, but it also elected to file its Motion for Relief without including any factual support. All parties that filed memoranda contra relied upon and responded to the Motion for Relief as filed. It is grossly unreasonable and a violation of basic procedural due process for the Commission to accept what AEP Ohio now claims was the factual support for its Motion for Relief in the form of a reply brief – actually an affidavit – after opposition memoranda have been filed.

Any Commission decision on the Motion for Relief that takes into consideration Mr. Allen's affidavit would be plain error. Not only would it be error to grant AEP Ohio's Motion to file the Affidavit, assuming *arguendo* that the Motion is granted, it would be error to give any weight to the statements contained in the Affidavit. Although AEP Ohio says it only is focusing on the facts,⁴ the Commission has no basis for giving any weight to the statements contained in Mr. Allen's affidavit. Mr. Allen's statements are not subject to cross-examination or discovery, and thus cannot be independently verified. Importantly, Mr. Allen's earlier testimony regarding supposed "head room" available to CRES providers was shown upon cross-examination at the hearing in this matter to be disingenuous and lacking any credibility.⁵ Given the procedural posture of AEP Ohio's proposed submission here, there is no reason to now give weight to these unsupported statements of Mr. Allen.

³ As noted in earlier briefing, AEP Ohio claims harm that will occur over a multi-year period, which is inconsistent with AEP Ohio's professed desire to obtain relief for a short period of approximately three months. Given that AEP Ohio now has advised the Commission that it will file a revised ESP on or before March 30, 2012, which it hopes to have in place by June 1, 2012, Mr. Allen's claims of financial harm to be incurred through December 2013 are entirely irrelevant. *See* Notice of Intent of Ohio Power Company, filed March 5, 2012, in Case Nos. 11-346-EL-SSO *et al.*

⁴ Memo. in Support of Motion for Leave, pp. 4-5.

⁵ *See* FES Post-Hearing Brief filed Nov. 10, 2011, at pp. 98-100, and FES Reply Brief filed Nov. 18, 2011, at pp. 61-62.

Besides being procedurally improper, Mr. Allen's affidavit also directly contradicts other testimony offered by AEP Ohio in this proceeding. In brief, AEP Ohio Witness Thomas calculated the competitive benchmark price in Exhibit LJT-1.⁶ Ms. Thomas identified several factors which together comprise the competitive benchmark price, and then used this competitive benchmark price to compare the proposed ESP with an MRO.⁷ Rather than simply using the numbers created by AEP Ohio for this case, Mr. Allen removed the Transaction Risk Adder and the Retail Administration Fee from Ms. Thomas' calculations when claiming that headroom was available.⁸ It is completely disingenuous for AEP Ohio to include these significant costs when calculating the competitive benchmark price but then exclude them when claiming headroom is available.

If Mr. Allen's calculations are corrected to include the Transaction Risk Adder and the Retail Administration Fee, then there is no headroom available even after the alleged 25% drop in energy prices identified by Mr. Allen.⁹ In brief, Mr. Allen claims that there is headroom of \$7.51/MWh for the OPCo Zone and \$5.00/MWh for the CSP Zone.¹⁰ However, Mr. Allen's analysis fails to include the Transaction Risk Adder (\$3.36/MWh) and the Retail Administration Fee (\$5.00/MWh) identified by Ms. Thomas.¹¹ If Mr. Allen's analysis is adjusted to simply incorporate these costs, then even *after* the alleged 25% decrease in power prices there is no headroom available for CRES providers in either the OPCo Zone (-\$0.85/MWh) or the CSP

⁶ Direct Testimony of Laura Thomas, AEP Ohio Ex. 5 ("Thomas Direct").

⁷ Thomas Direct, Exhibit LJT-3.

⁸ Allen Affidavit, Attachment 2.

⁹ Allen Affidavit, ¶ 8.

¹⁰ Allen Affidavit, Attachment 2.

¹¹ *Id.*; Thomas Direct, Exhibit LJT-1, page 1 of 3.

Zone (-\$3.36/MWh). AEP Ohio's own calculations show that capacity pricing at \$255/MW-day would eliminate headroom for CRES providers.

Finally, although Mr. Allen complains that AEP Ohio may have to charge RPM-based capacity rates for 36.7% of its connected load,¹² he neglects to mention that all other EDUs in Ohio are using RPM-based pricing resulting in much greater shopping percentages and that AEP Ohio has been voluntarily charging RPM prices throughout the term of its first ESP. As has consistently been the case with AEP Ohio, it seeks shelter from the market-based pricing that benefits all Ohio customers. In fact, Mr. Allen's reference to a significant decline in energy prices in the PJM market since the time of the hearing¹³ simply demonstrates how grossly above market AEP Ohio's proposed ESP was, despite AEP Ohio's and Mr. Allen's protestations to the contrary.

For the foregoing reasons, the Commission should deny AEP Ohio's Motion for Leave and also deny AEP Ohio's Motion for Relief.

Respectfully submitted,

/s/ Mark A. Hayden

Mark A. Hayden (0081077)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 761-7735
(330) 384-3875 (fax)
haydenm@firstenergycorp.com

James F. Lang (0059668)
Laura C. McBride (0080059)
N. Trevor Alexander (0080713)
CALFEE, HALTER & GRISWOLD LLP
The Calfee Building

¹² Allen Affidavit, ¶ 5.

¹³ Allen Affidavit, ¶ 8.

1405 East Sixth Street
Cleveland, OH 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

David A. Kutik (0006418)
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114
(216) 586-3939
(216) 579-0212 (fax)
dakutik@jonesday.com

Allison E. Haedt (0082243)
JONES DAY
P.O. Box 165017
Columbus, OH 43216-5017
(614) 469-3939
(614) 461-4198 (fax)
aehaedt@jonesday.com

Attorneys for FirstEnergy Solutions Corp.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Memorandum Contra* was served this 6th day of March, 2012, via e-mail upon the parties below.

/s/ Mark A. Hayden

One of the Attorneys for FirstEnergy Solutions Corp.

Steven T. Nourse
Matthew J. Satterwhite
Anne M. Vogel
American Electric Power Corp.
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
stnourse@aep.com
mjsatterwhite@aep.com
amvogel@aep.com

Daniel R. Conway
Porter Wright Morris & Arthur
41 South High Street
Columbus, Ohio 43215
dconway@porterwright.com

Cynthia Fonner Brady
David I. Fein
550 W. Washington Street, Suite 300
Chicago, IL 60661
cynthia.a.fonner@constellation.com
david.fein@constellation.com

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, Ohio 43215-3620
ricks@ohanet.org

Dorothy K. Corbett
Amy Spiller
Duke Energy Retail Sales
139 East Fourth Street
1303-Main
Cincinnati, Ohio 45202
dorothy.corbett@duke-energy.com
amy.spiller@duke-energy.com

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

Terry L. Etter
Maureen R. Grady
Jeffrey L. Small
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
etter@occ.state.oh.us
grady@occ.state.oh.us
small@occ.state.oh.us

Thomas J. O'Brien
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215-4291
tobrien@bricker.com

Shannon Fisk
2 North Riverside Plaza, Suite 2250
Chicago, IL 60606
sfisk@nrdc.org

John W. Bentine
Mark S. Yurick
Zachary D. Kravitz
Chester Willcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215
jbentine@cwsllaw.com
myurick@cwsllaw.com
zkravitz@cwsllaw.com

Terrence O'Donnell
Christopher Montgomery
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
todonnell@bricker.com
cmontgomery@bricker.com

Jesse A. Rodriguez
Exelon Generation Company, LLC
300 Exelon Way
Kennett Square, Pennsylvania 19348
jesse.rodriguez@exeloncorp.com

Glen Thomas
1060 First Avenue, Ste. 400
King of Prussia, Pennsylvania 19406
gthomas@gtpowergroup.com

Henry W. Eckhart
2100 Chambers Road, Suite 106
Columbus, Ohio 43212
henryeckhart@aol.com

Jay E. Jadwin
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
jejadwin@aep.com

Michael R. Smalz
Joseph V. Maskovyak
Ohio Poverty Law Center
555 Buttles Avenue
Columbus, Ohio 43215
msmalz@ohiopoveritylaw.org
jmaskovyak@ohiopoveritylaw.org

Lisa G. McAlister
Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
lmcaster@bricker.com
mwarnock@bricker.com

William L. Massey
Covington & Burling, LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004
wmassey@cov.com

Laura Chappelle
4218 Jacob Meadows
Okemos, Michigan 48864
laurac@chappelleconsulting.net

Pamela A. Fox
Law Director
The City of Hilliard, Ohio
pfox@hilliardohio.gov

Christopher L. Miller
Gregory H. Dunn
Asim Z. Haque
Stephen J. Smith
Schottenstein Zox & Dunn Co., LPA
250 West Street
Columbus, Ohio 43215
cmiller@szd.com
ahaque@szd.com
ssmith@szd.com
gdunn@szd.com

Sandy Grace
Exelon Business Services Company
101 Constitution Avenue N.W., Suite 400 East
Washington, DC 20001
sandy.grace@exeloncorp.com

Kenneth P. Kreider
David A. Meyer
Keating Muething & Klekamp PLL
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202
kpkreider@kmmklaw.com
dmeyer@kmmklaw.com

Holly Rachel Smith
Holly Rachel Smith, PLLC
Hitt Business Center
3803 Rectortown Road
Marshall, Virginia 20115
holly@raysmithlaw.com

Gregory J. Poulos
EnerNOC, Inc.
101 Federal Street, Suite 1100
Boston, MA 02110
gpoulos@enernoc.com

M. Howard Petricoff
Stephen M. Howard
Michael J. Settineri
Lija Kaleps-Clark; Benita Kahn
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, Ohio 43215
mhpetricoff@vorys.com
smhoward@vorys.com
mjsettineri@vorys.com
lkalepsclark@vorys.com
bakahn@vorys.com

Gary A. Jeffries
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817
gary.a.jeffries@aol.com

Steve W. Chriss
Wal-Mart Stores, Inc.
2001 SE 10th Street
Bentonville, Arkansas 72716
stephen.chriss@wal-mart.com

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
barthroyer@aol.com

Werner L. Margard III
John H. Jones
William Wright
Thomas Lindgren
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215
werner.margard@puc.state.oh.us
john.jones@puc.state.oh.us
William.wright@puc.state.oh.us
Thomas.Lindgren@puc.state.oh.us

Philip B. Sineneng
Terrance A. Mebane
Carolyn S. Flahive
Thompson Hine LLP
41 S. High Street, Suite 1700
Columbus, Ohio 43215
philip.sineneng@thompsonhine.com
carolyn.flahive@thompsonhine.com
terrance.mebane@thompsonhine.com

Samuel C. Randazzo
Joseph E. Olikier
Frank P. Darr
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, Ohio 43215
sam@mwncmh.com
joliker@mwncmh.com
fdarr@mwncmh.com

John N. Estes III
Paul F. Wight
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Ave., N.W.
Washington, DC 20005
jestes@skadden.com
paul.wight@skadden.com

Tara C. Santarelli
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212
tsantarelli@elpc.org

Emma F. Hand
Douglas G. Bonner
Clinton A. Vince
SNR Denton US LLP
1301 K Street, NW, Suite 600, East Tower
Washington, DC 20005-3364
emma.hand@snrdenton.com
doug.bonner@snrdenton.com
Clinton.vince@snrdenton.com

Colleen L. Mooney
David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45840
cmooney2@columbus.rr.com
drinebolt@ohiopartners.org

Trent A. Dougherty
Cathryn Loucas (0073533)
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
trent@theoeg.org
cathy@theoec.org

Joel Malina
Executive Director
COMPLETE Coalition
1317 F Street, NW
Suite 600
Washington, DC 20004
malina@wexlerwalker.com

David M. Stahl
Arin C. Aragona
Scott C. Solberg
Eimer Stahl Klevorn & Solberg LLP
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
dstahl@eimerstahl.com
aaragona@eimerstahl.com
ssolberg@eimerstahl.com

Jay L. Kooper
Katherine Guerry
Hess Corporation
One Hess Plaza
Woodbridge, NJ 07095
jkooper@hess.com
kguerry@hess.com

Robert Korandovich
KOREnergy
P. O. Box 148
Sunbury, OH 43074
korenergy@insight.rr.com

Allen Freifeld
Samuel A. Wolfe
Viridity Energy, Inc.
100 West Elm Street, Suite 410
Conshohocken, PA 19428
afreifeld@viridityenergy.com
swolfe@viridityenergy.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/6/2012 5:08:52 PM

in

Case No(s). 10-2929-EL-UNC

Summary: Memorandum Contra The Motion Of Ohio Power Company For Leave To File A
Reply To The Memorandum Contra Ohio Power's February 27, 2012 Motion For Relief
electronically filed by Mr. Nathaniel Trevor Alexander on behalf of FirstEnergy Solutions Corp.