

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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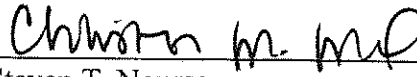
**OHIO POWER COMPANY’S MOTION TO COMPEL  
AND REQUEST FOR EXPEDITED RULING**

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Pursuant to Rule 4901-1-23, Ohio Adm. Code, Ohio Power Company (“Ohio Power” or “AEP Ohio”) respectfully moves the Commission for an order compelling FirstEnergy Solutions Corp. (“FES”) to provide complete responses to Ohio Power Company’s First Set of Interrogatories, Request for Admissions, and Request for Production of Documents (“First Discovery Requests”) As demonstrated in the attached memorandum in support, FES failed to adequately respond to certain requests seeking relevant information and documents. Because FES has failed to comply with its discovery obligations, the Attorney Examiner should order it to provide the responses and produce the documents requested in Ohio Power’s First Discovery Requests and repeated in this Motion. Ohio Power’s efforts to resolve this dispute pursuant to Rule 4901-1-23(C) are set forth in the Affidavit of Counsel attached as Exhibit A.

Pursuant to Rule 4901-1-12(C), Ohio Power also requests expedited ruling on this Motion to Compel. Given the expedited nature of this proceeding, the fact that hearing begins in only five days, and the complexity of the issues presented in this case, an expedited ruling is necessary to provide Ohio Power a fair opportunity to review the discovery responses and prepare its case.

Respectfully submitted,



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Steven T. Nourse  
Matthew J. Satterwhite  
American Electric Power Service  
Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, Ohio 43215  
(614) 716-1608  
Fax: (614) 716-2950  
Email: stnourse@aep.com  
mjsatterwhite@aep.com

Daniel R. Conway  
Christen M. Moore  
Porter, Wright, Morris & Arthur, LLP  
41 S. High St.  
Columbus, Ohio 43215  
(614) 227-2270  
Fax: (614) 227-2100  
Email: dconway@porterwright.com  
cmoore@porterwright.com

**Counsel for Ohio Power Company**

## MEMORANDUM IN SUPPORT

### **I. INTRODUCTION**

There is no question that the ultimate prices charged to customers and capacity charges that FES would be required to pay as a result of this case are issues directly advocated by FES in this proceeding. If FES wants to participate in this case and claim that the proposed capacity rate charged to it as a CRES provider will have an impact on end use customers and competition in Ohio, then it must also answer discovery questions dealing with those issues. FES claims in its testimony that the price it would be required to pay for capacity directly impacts its ability to operate in the state and the price that customers will pay as a result. Discovery questions exploring the relationship between those elements and testing FES own arguments are surely an appropriate topic for discovery that correspond to its participation in the case as a party with full intervention.

However, FES has failed to meet its basic obligation to respond to Ohio Power's discovery. In its First Discovery Requests, Ohio Power requested that FES provide relevant information and produce documents regarding FES's contracts with its retail customers, on whose behalf FES purports to oppose Ohio Power in this proceeding, and regarding the profitability of those contracts under various potential capacity prices. In response, FES has levied vague, boilerplate objections and has refused to meaningfully respond to the vast majority of Ohio Power's requests, leaving Ohio Power with little more information than before it propounded the First Discovery Requests. FES' responses are insufficient and do not satisfy FES's obligation to respond to discovery requests. Accordingly, the Attorney Examiner should order FES to provide complete responses and produce responsive documents immediately.

## II. ARGUMENT

Parties to Commission proceedings have “ample rights” to conduct “full and reasonable discovery.” *See* 4903.082, Ohio Rev. Code; Rule 4901-1-16, Ohio Adm. Code (“[A]ny party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding.”). These ample rights necessarily include a party’s right to receive complete, timely responses to discovery requests so that the party may prepare for hearing, particularly when a case is on an expedited schedule. *See* Rule 2901-1-23, Ohio Adm. Code; *In re Investigation into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI, Entry at 10 (Mar. 17, 1987) (stating that “the policy of discovery is to allow the parties to prepare cases and to encourage them to prepare thoroughly \* \* \*”).

### A. FES Has Failed To Provide Adequate Responses To Ohio Power’s First Discovery Requests.

FES’ responses to Ohio Power’s First Discovery Requests are deficient in several ways, and the Attorney Examiner should order it to supplement those responses immediately.<sup>1</sup>

#### 1. Interrogatory Nos. 5 and 8

In Interrogatories Nos. 5 and 8, Ohio Power requested that FES identify certain provisions in its contracts with retail customers. Specifically, Ohio Power requested that FES identify contract provisions that relate to “a change in the price of capacity that [FES] receives from an electric distribution utility” (*see* Ex. B at Interr. No. 5) and contract provisions regarding FES’ termination of a retail contract. (*See id.* at Interr. No. 8.)

In response to these interrogatories, FES levied numerous objections and refused to answer the interrogatories because they allegedly sought “proprietary trade secrets.”

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<sup>1</sup> A copy of FES’ Responses to Ohio Power’s First Discovery Requests is attached as Exhibit B.

## **2. Interrogatory Nos. 6, 7, 9, and 10**

In Interrogatory No. 6, Ohio Power asked FES whether any contract between FES and any of its retail customers contains “any provision that would allow [FES] to increase amounts charged to the customer if [FES’] capacity cost increases.” (*Id.* at Interr. No. 6.) FES responded that its contracts do not “expressly allow FES to increase amounts charged \* \* \* because FES’ capacity cost increases” but also that “if AEP Ohio’s proposed capacity pricing was approved, some of FES’ contracts allow FES to pass through an increase in the cost of capacity.” (*Id.*) FES responded almost identically to Interrogatory No. 9, regarding provisions in its contracts with retail customers that would allow FES to terminate the contract in the event it becomes uneconomical for FES to continue to provide electric service. (*Id.* at Interr. No. 9.)

Interrogatory No. 7 asked, “[i]f your response to Interrogatory No. 6 is in the affirmative, please identify all customers and contracts that contain such a provision.” (*Id.* at Interr. No. 7.) Interrogatory No. 10 requested the same information with respect to contracts identified in response to Interrogatory No. 9. (*Id.* at Interr. No. 10.) Despite admitting that some of its contracts would allow it to pass through an increase in the cost of capacity and admitting that some of its contract could be terminated if AEP Ohio’s proposed capacity pricing is approved, FES again made numerous objections and refused to answer the interrogatories. (*Id.* at Interr. Nos. 7, 10.)

## **3. Interrogatory Nos. 11, 12, 13, 14, 15, 16, and 17**

Interrogatory Nos. 11, 13, and 15 sought information from FES regarding whether its contracts with residential, aggregation, commercial, and industrial customers would be profitable if Ohio Power provided capacity to FES for \$146/MW-Day (*see id.* at Interr. No. 11), \$255/MW-Day (*see id.* at Interr. No. 13), or \$355/MW-Day (*see id.* at Interr. No. 15.) Interrogatory Nos.

12, 14, and 16 requested that FES explain, if it answered the preceding interrogatory negatively, why its contracts with each customer class would not be profitable. (*Id.* at Interr. Nos. 12, 14, 16.) FES refused to provide responsive answers any of these interrogatories and, in response to Interrogatory Nos. 11, 13, and 15, stated, “FES’ profits, if any, are not at issue in this proceeding. Rather the issue is whether AEP Ohio’s proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.” FES’ response to Interrogatory No. 17, which requested that it identify the capacity price at which it would “break even” on its contracts with each class of customers, was identical to its responses to Interrogatory Nos. 11, 13, and 15.

#### **4. Requests for Admissions**

Ohio Power propounded requests that FES admit that some or all of its contracts with each class of customers would be profitable at the three capacity prices set forth above (\$146/MW-Day, \$255/MW-Day, \$355/MW-Day). (*Id.* at Req. for Adm. Nos. 1-24.) FES refused to answer these requests on the same basis described with respect to Interrogatory Nos. 11, 13, 15, and 17. (*Id.*)

#### **5. Request for Production of Documents No. 1**

In Request for Production of Documents No. 1, Ohio Power requested that FES produce copies of the documents FES “identified, consulted, referred to, or utilized” in preparing its responses to Ohio Power’s interrogatories. (*Id.* at Req. for Prod. No. 1.) FES responded by referring Ohio Power to its witnesses’ direct testimony and refused to produce any other documents, including contracts or contract provisions, responsive to the request. (*Id.*)

## **6. Request for Production of Documents No. 5**

In Request for Production of Documents No. 5, Ohio Power requested that FES “produce copies of **non-privileged** documents in FES’ possession \* \* \* regarding [this proceeding].” (*Id.* at Req. for Prod. No. 5. (emphasis added).) FES objected on the basis of attorney-client privilege and the attorney work-product doctrine, despite that the request specifically excluded privileged documents, and refused to produce any documents.

### **B. FES Should Be Required To Immediately Supplement Its Responses.**

FES’ responses to Ohio Power’s First Discovery Requests are wholly unsatisfactory, vague, and evasive. FES’ blanket refusal to provide Ohio Power with any of the information it seeks – information that is relevant to this proceeding – does not comport with the letter or the spirit of the Commission’s discovery rules. FES has attempted to make the impact on the competitive market in Ohio a central issue in this case, and doing so implicates the terms and conditions of service with its customers related to the treatment of the capacity component of its costs.

The discovery questions unanswered by FES relate directly to FES’ participation in this case and the testimony it filed. FES, in its Motion to Intervene, sought intervention based on the fact that it “would be charged the new wholesale capacity rates that the Ohio Power Company and Columbus Southern Power Company have filed for at the Federal Energy Regulatory Commission.” (Motion for Leave to Intervene of FES, January 6, 2011.). The impact of that charge is directly at issue in this case and questions related to that intervention request and the treatment of that charge in this case are all appropriate issues for discovery. Any argument that FES’ interests are not at issue and therefore not discoverable in this case contradict the grant of

intervention. If FES does not wish to act as an equal party subject to discovery in this case it should withdraw as an Intervenor, not deny that its interests are at issue in the case.

FES' own testimony also opens the door to a discoverable look into the how the issues raised by FES are impacted by the capacity charge to be established in this case. FES has argued that the capacity charge directly tied to competition in Ohio and its ability to serve retail customers. FES asserted in testimony that the Proposed Capacity Price would establish a significantly above-market price for capacity charged to CRES providers, which will constrain **customers'** ability to access savings. (See the Testimony of FES witness Tony Banks at 5.) FES witness Banks went on to state that "with every inappropriate increase in component costs, CRES providers' ability to offer savings is correspondingly limited." (Id.) While AEP Ohio disagrees that compensating the utility for its costs of capacity is an inappropriate cost, the matter still remains that FES has asserted end use customers' ability to save is impacted by increases in component costs, including capacity costs. Discovery that explores that argument by FES to determine whether FES can offer savings with various capacity prices or even what portions of an offer relate, not to the capacity costs but to the actions of FES instead, are appropriate grounds for discovery and ultimately may be important to enable the Commission to make a decision on a complete record.

FES witness Lesser also directly asserts that the price charged for capacity can affect the retail price and profit expectations for FES. Witness Lesser offered an extreme example of \$1,000/MW-day for capacity and the risk that CRES providers could not match AEP Ohio's price without losing money. See Testimony of FES witness Lesser at 10. Yet when discovery questions are sought to dig deeper into this type of analysis to see just what the impact is for particular capacity prices, FES asserts that it is not part of the case. FES cannot have it both



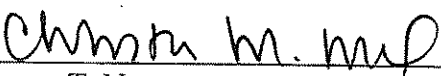
ways. FES cannot offer testimony denying its ability to offer customers retail service in the market as a result of certain capacity price points but then deny the relevance of discovery questions dealing with capacity price points or terms related to the treatment of the capacity charge that could impact the competitive market in Ohio.

Moreover, even accepting FES' assertion that this proceeding is focused not on an appropriate capacity recovery cost for AEP Ohio but instead on the provision of a "level playing field," the information Ohio Power seeks from FES is still relevant. In order to reach a "level playing field" for capacity charges, Ohio Power should be allowed to present, and the Commission should consider, the impacts on Ohio Power's competitors of any state compensation mechanism proposed or adopted. Only through a transparent and open discovery process will the Commission reach a truly just and reasonable resolution of the issues presented. To the extent that FES is concerned with the disclosure of proprietary or trade secret information, it has a number of options – including a protective agreement – available to it to safeguard that information.

### **III. CONCLUSION**

The Attorney Examiner should require FES to act as a full party in this case and live up to the duties that come with a grant of intervention and should order FES to immediately supplement its responses to Interrogatory Nos. 5, 7, 8, and 10 through 17; Request for Admission Nos. 1 through 24, and Request for Production Nos. 1 and 5 of Ohio Power's First Discovery Requests.

Respectfully submitted,

  
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Steven T. Nourse  
Matthew J. Satterwhite  
American Electric Power Service

Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, Ohio 43215  
(614) 716-1608  
Fax: (614) 716-2950  
Email: stnourse@aep.com  
mjsatterwhite@aep.com

Daniel R. Conway  
Christen M. Moore  
Porter, Wright, Morris & Arthur, LLP  
41 S. High St.  
Columbus, Ohio 43215  
(614) 227-2270  
Fax: (614) 227-2100  
Email: dconway@porterwright.com  
cmoore@porterwright.com

**Counsel for Ohio Power Company**

## CERTIFICATE OF SERVICE

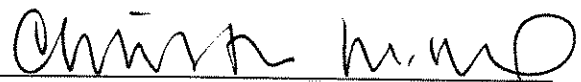
I hereby certify that a copy of Ohio Power Company's Motion to Compel and Request For Expedited Ruling was served by E-mail upon counsel for all other parties of record in this case on this 12th day of April, 2012.

greta.see@puc.state.oh.us,  
jeff.jones@puc.state.oh.us,  
Daniel.Shields@puc.state.oh.us,  
Tammy.Turkenton@puc.state.oh.us,  
Sarah.Parrot@puc.state.ohio.us,  
Jodi.Bair@puc.state.oh.us,  
Bob.Fortney@puc.state.oh.us,  
Doris.McCarter@puc.state.oh.us,  
Greg.Price@puc.state.oh.us,  
Werner.Margard@puc.state.oh.us,  
William.Wright@puc.state.oh.us,  
john.jones@puc.state.oh.us,  
Kim.Wissman@puc.state.oh.us,  
Hisham.Choueiki@puc.state.oh.us,  
Dan.Johnson@puc.state.oh.us,  
steven.beeler@puc.state.oh.us,  
dclark1@aep.com,  
grady@occ.state.oh.us,  
keith.nusbaum@snrdenton.com,  
kpkreider@kmklaw.com,  
mjsatterwhite@aep.com,  
ned.ford@fuse.net,  
pfox@hilliardohio.gov,  
ricks@ohanet.org,  
stnourse@aep.com,  
cathy@theoec.org,  
dsullivan@nrdc.org,  
aehaedt@jonesday.com,  
dakutik@jonesday.com,  
haydenm@firstenergycorp.com,  
dconway@porterwright.com,  
cmoore@porterwright.com,  
jlang@calfee.com,  
lmcbride@calfee.com,  
talexander@calfee.com,  
etter@occ.state.oh.us,  
grady@occ.state.oh.us,  
small@occ.state.oh.us,

todonnell@bricker.com,  
cmontgomery@bricker.com,  
lmcaster@bricker.com,  
mwarnock@bricker.com,  
gthomas@gtpowergroup.com,  
wmassey@cov.com,  
henryeckhart@aol.com,  
laurac@chappelleconsulting.net,  
whitt@whitt-sturtevant.com,  
thompson@whitt-sturtevant.com,  
sandy.grace@exeloncorp.com,  
cmiller@szd.com,  
ahaque@szd.com,  
gdunn@szd.com,  
mhpetricoff@vorys.com,  
smhoward@vorys.com,  
mjsettineri@vorys.com,  
lkalepsclark@vorys.com,  
bakahn@vorys.com,  
Gary.A.Jeffries@dom.com,  
Stephen.chriss@wal-mart.com,  
dmeyer@kmklaw.com,  
holly@raysmithlaw.com,  
barthroyer@aol.com,  
philip.sineneng@thompsonhine.com,  
carolyn.flahive@thompsonhine.com,  
terrance.mebane@thompsonhine.com,  
cmooney2@columbus.rr.com,  
drinebolt@ohiopartners.org,  
trent@theoec.org,  
nolan@theoec.org,  
gpoulos@enernoc.com,  
emma.hand@snrdenton.com,  
doug.bonner@snrdenton.com,  
clinton.vince@snrdenton.com,  
sam@mwncmh.com,  
joliker@mwncmh.com,  
fdarr@mwncmh.com,

cynthia.a.fonner@constellation.com,  
David.fein@constellation.com,  
Dorothy.corbett@duke-energy.com,  
Amy.spiller@duke-energy.com,  
dboehm@bkllawfirm.com,  
mkurtz@bkllawfirm.com,  
ricks@ohanet.org,  
tobrien@bricker.com,  
jbentine@cwslaw.com,  
myurick@cwslaw.com,  
zkravitz@cwslaw.com,  
jejadwin@aep.com,  
msmalz@ohiopoveritylaw.org,  
jmaskovyak@ohiopoveritylaw.org,

jestes@skadden.com,  
paul.wight@skadden.com,  
dstahl@eimerstahl.com,  
aaragona@eimerstahl.com,  
ssolberg@eimerstahl.com,  
tsantarelli@elpc.org,  
callwein@wamenergylaw.com,  
malina@wexlerwalker.com,  
jkooper@hess.com,  
kguerry@hess.com,  
afreifeld@viridityenergy.com,  
swolfe@viridityenergy.com,  
korenergy@insight.rr.com,  
sasloan@aep.com,  
Dane.Stinson@baileycavalieri.com,  
Jeanne.Kingery@duke-energy.com,  
zkravitz@taftlaw.com,  
rsugarman@keglerbrown.com,  
bpbarger@bcslawyers.com,  
dbweiss@aep.com

A handwritten signature in black ink, appearing to read "Christen M. Moore". The signature is fluid and cursive, with a large loop at the end.

Christen M. Moore

## Exhibit A

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**AFFIDAVIT OF COUNSEL**

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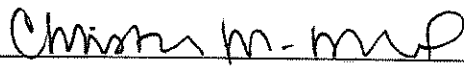
STATE OF OHIO                    )  
  ) ss:  
COUNTY OF FRANKLIN    )

Christen M. Moore, being first duly sworn, states as follows:

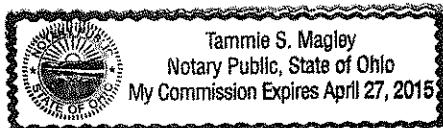
1.     I am more than eighteen (18) years of age and I am competent to testify to the matters set forth herein from my personal knowledge.
2.     I am one of counsel for Ohio Power Company ("Ohio Power").
3.     On March 30, 2012, Ohio Power's First Set of Interrogatories, Request for Admissions, and Request for Production of Documents to FirstEnergy Solutions Corp. ("First Discovery Requests") were served by e-mail on counsel for FirstEnergy Solutions Corp. ("FES") and all other counsel of record. True and accurate copies of FES' responses to Ohio Power's First Discovery Requests are attached to Ohio Power Company's Motion to Compel and Request for Expedited Ruling as Exhibit B. Ohio Power received FES' responses on April 6, 2012.

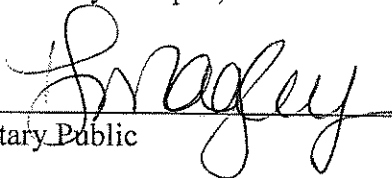
4. On April 12, 2012, I sent correspondence to counsel for FES by email, requesting that FES supplement and appropriately respond to those requests in Ohio Power's First Discovery Requests that are the subject of Ohio Power Company's Motion to Compel and Request for Expedited Ruling. By return correspondence that same day, counsel for FES restates FES' previous objections to Ohio Power's requests but did not agree to supplement FES' discovery responses.

FURTHER AFFIANT SAYETH NAUGHT.

  
Christen M. Moore

Sworn to and subscribed before me this 12th day of April, 2012.



  
Notary Public

COLUMBUS/1627446v.1

## Exhibit B



BEFORE  
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	)	

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**FIRSTENERGY SOLUTIONS CORP.'S RESPONSES TO OHIO POWER COMPANY'S  
FIRST SET OF DISCOVERY REQUESTS**

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Pursuant to Rules 4901-1-16, 4901-1-19, 4901-1-20, and 4901-1-22 of the Ohio Administrative Code, FirstEnergy Solutions Corp. ("FES") hereby objects and responds to the First Set of Discovery Requests (the "Requests") issued by Ohio Power Company, as set forth below.

**GENERAL OBJECTIONS**

1. FES objects to the Requests to the extent they seek information not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.
2. FES objects to the Requests to the extent they seek to impose obligations greater than, or otherwise inconsistent with, those imposed by the Commission's Rules.
3. FES objects to the Requests to the extent they seek confidential or proprietary information.

## INTERROGATORIES

1. Please identify each consultant FES has retained to assist it in the Capacity Charge proceeding.

- a) If the consultant is an organization, please identify each individual employed by the organization who is assisting FES in the Capacity Charge proceeding.
- b) If FES has not yet retained a particular consultant, please promptly identify the consultant (and the individuals employed by the consultant who are assisting FES if the consultant is an organization) as soon as FES does retain the consultant.

**RESPONSE: Objection.** FES objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to its objections, FES states that it has not retained any consultant in connection with this proceeding.

**PREPARED BY: Counsel**

2. For each consultant that FES retains, please describe in detail the scope and purpose of the consultant's engagement, including the subject matters, issues, and positions regarding which the consultant will analyze and advise FES. If FES has not yet determined a particular subject matter, issue, or position regarding which the consultant will analyze and advise FES, please promptly provide a description as soon as you have determined it.

**RESPONSE: Objection.** FES objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to its objections, *see* Response to Interrogatory No. 1.

**PREPARED BY: Counsel**

3. Please identify each witness that FES will present at the hearing for the Capacity Charge proceeding. To the extent that FES does not yet know all of the witnesses whom it will present at the hearing, please promptly identify each witness as soon as you determine that you will present the witness at the hearing.

**RESPONSE: *See* Direct Testimony of Tony C. Banks, Jonathan A. Lesser and Robert B. Stoddard, filed on behalf of FES.**

**PREPARED BY: Counsel**

4. For each witness that FES identifies in response to the previous Interrogatory, please describe in detail the and purpose of the witness's testimony, including the subject matters, issues, and positions regarding which the witness will present testimony on behalf of FES. If FES has not yet identified a particular witness that it will present at the hearing, or if FES has not

yet determined the particular subject matter, issue, or position regarding which the witness will present testimony on behalf of FES, please promptly provide a description as soon as you have identified the witness, subject matter, issue, or position.

**RESPONSE:** *See Direct Testimony of Tony C. Banks, Jonathan A. Lesser (Continental Economics, Inc.) and Robert A. Stoddard (Charles Rivers Associates, Inc.), filed on behalf of FES.*

**PREPARED BY:** Counsel

5. Please identify any provision in any contract between you and any of your retail customers that relates to or discusses a change in the price of capacity that you receive from an electric distribution utility.

**RESPONSE:** Objection. FES objects to this Interrogatory because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence.

**PREPARED BY:** Counsel

6. Does any contract between you and any of your retail customers contain any provision that would allow you to increase amounts charged to the customer if your capacity cost increases?

**RESPONSE:** Objection. FES objects to this Interrogatory because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to its objections, FES states that its contracts in AEP Ohio's service territory do not expressly allow FES to increase amounts charged to the customer because FES' capacity cost increases. FES further states that if AEP Ohio's proposed capacity pricing was approved, some of FES' contracts allow FES to pass through an increase in the cost of capacity.

**PREPARED BY:** Counsel/Tony Banks

7. If your response to Interrogatory No. 6 is in the affirmative, please identify all customers and contracts that contain such a provision.

**RESPONSE:** Objection. FES objects to this Interrogatory because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to its objections, *see Response to Interrogatory No. 6.*

**PREPARED BY: Counsel**

8. Please identify any provision in any contract between you and any of your retail customers that relates to or provides for your termination of the contract.

**RESPONSE: Objection.** FES objects to this Interrogatory because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence.

**PREPARED BY: Counsel**

9. Does any contract between you and any of your retail customers contain any provision that would allow you to terminate the contract in the event it becomes uneconomical for you to continue to provide electric service?

**RESPONSE: Objection.** FES objects to this Interrogatory because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to its objections, FES states that its contracts in AEP Ohio's service territory do not expressly allow FES to terminate its contracts because the contract becomes uneconomical for FES to continue to provide electric service. FES further states that if AEP Ohio's proposed capacity pricing was approved, some of FES' contracts could be terminated.

**PREPARED BY: Counsel/Tony Banks**

10. If your response to Interrogatory No. 9 is in the affirmative, please identify all customers and contracts that contain such a provision.

**RESPONSE: Objection.** FES objects to this Interrogatory because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to its objections, FES states: *see Response to Interrogatory No. 9.*

**PREPARED BY: Counsel**

11. Assuming that your other pricing inputs remain constant, please state whether your contracts with your customers in each of the following classes would be profitable if Ohio Power provided capacity to you for \$146/MW-Day:

a) residential customers.

- b) aggregation customers.
- c) commercial customers.
- d) industrial customers.

**RESPONSE: Objection.** FES objects to this Interrogatory because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

**PREPARED BY: Counsel**

12. If your response with respect to any customer class listed in Interrogatory No. 11 is in the negative, please explain why your contracts with that class of customers would not be profitable if Ohio Power provided capacity to you for \$146/MW-Day.

**RESPONSE: Objection.** FES objects to this Interrogatory because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to its objections, FES states: *see* Response to Interrogatory No. 11.

**PREPARED BY: Counsel**

13. Assuming that your other pricing inputs remain constant, please state whether your contracts with your customers in each of the following classes would be profitable if Ohio Power provided capacity to you for \$255/MW-Day:

- a) residential customers.
- b) aggregation customers.
- c) commercial customers.
- d) industrial customers.

**RESPONSE: Objection.** FES objects to this Interrogatory because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

**PREPARED BY: Counsel**

14. If your response with respect to any customer class listed in Interrogatory No. 13 is in the

negative, please explain why your contracts with that class of customers would not be profitable if Ohio Power provided capacity to you for \$255/MW-Day.

**RESPONSE: Objection.** FES objects to this Interrogatory because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to its objections, FES states: *see Response to Interrogatory No. 13.*

**PREPARED BY: Counsel**

15. Assuming that your other pricing inputs remain constant, please state whether your contracts with your customers in each of the following classes would be profitable if Ohio Power provided capacity to you for \$355/MW-Day:

- a) residential customers.
- b) aggregation customers.
- c) commercial customers.
- d) industrial customers.

**RESPONSE: Objection.** FES objects to this Interrogatory because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

**PREPARED BY: Counsel**

16. If your response with respect to any customer class listed in Interrogatory No. 15 is in the negative, please explain why your contracts with that class of customers would not be profitable if Ohio Power provided capacity to you for \$355/MW-Day.

**RESPONSE: Objection.** FES objects to this Interrogatory because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to its objections, FES states: *see Response to Interrogatory No. 15.*

**PREPARED BY: Counsel**

17. Assuming that your other pricing inputs remain constant, please identify the capacity price at which you would "break even" (i.e., the point at which your profit would equal zero) on your contracts with customers in the following classes:

- a) residential customers.

- b) aggregation customers.
- c) commercial customers.
- d) industrial customers.

**RESPONSE: Objection.** FES objects to this Interrogatory because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

**PREPARED BY: Counsel**

18. Identify any documents that you consulted or relied upon in making, or which contain information regarding, your responses to Request for Admission Nos. 1-24.

**RESPONSE: Not applicable.**

**PREPARED BY: Counsel**

19. For each of Request for Admission Nos. 1-24 that you answered with an admission, identify, with reference to the Request for Admission No., the customers whose contract with you would remain profitable.

**RESPONSE: Objection.** FES objects to this Interrogatory because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to its objections, FES states: *see Answers to Request for Admission Nos. 1-24.*

**PREPARED BY: Counsel**

20. If you answered Request for Admission No. 25 with an admission, identify the customers whose contracts you would be able to cancel and the contractual provisions or documents that allow you to make such cancellation

**RESPONSE: Objection.** FES objects to this Interrogatory because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to its objections, FES states: *see Answer to Request for Admission No. 25.*

**PREPARED BY: Counsel**

21. If you answered Request for Admission No. 26 with an admission, identify the customers

whose rates you could increase and the contractual provisions or documents that allow you to make such an increase.

**RESPONSE: Objection.** FES objects to this Interrogatory because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to its objections, FES states: *see Answer to Request for Admission No. 26.*

**PREPARED BY: Counsel**

22. Please identify any joint defense agreement that you have entered into with any other party to these proceedings, including the date of that joint defense agreement, the identities of the parties to the joint defense agreement, and the scope and duration of the joint defense agreement.

**RESPONSE: Objection.** FES objects to this Interrogatory because it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to its objections, FES states that it has not entered into a joint defense agreement for this proceeding.

**PREPARED BY: Counsel**

### **REQUEST FOR ADMISSIONS**

1. Admit that all of your contracts with your residential retail customers would remain profitable if Ohio Power provided capacity to you for \$146/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

2. Admit that some of your contracts with your residential retail customers would remain profitable if Ohio Power provided capacity to you for \$146/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing



**provides a level-playing field for competition and is otherwise proper, just and/or reasonable.**

3. Admit that all of your contracts with your aggregation customers would remain profitable if Ohio Power provided capacity to you for \$146/MW-Day.

**ANSWER: Objection. FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.**

4. Admit that some of your contracts with your aggregation customers would remain profitable if Ohio Power provided capacity to you for \$146/MW-Day.

**ANSWER: Objection. FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.**

5. Admit that all of your contracts with commercial customers would remain profitable if Ohio Power provided capacity to you for \$146/MW-Day.

**ANSWER: Objection. FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.**

6. Admit that some of your contracts with commercial customers would remain profitable if Ohio Power provided capacity to you for \$146/MW-Day.

**ANSWER: Objection. FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.**

7. Admit that all of your contracts with industrial customers would remain profitable if Ohio Power provided capacity to you for \$146/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

8. Admit that some of your contracts with industrial customers would remain profitable if Ohio Power provided capacity to you for \$146/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

9. Admit that all of your contracts with your residential retail customers would remain profitable if Ohio Power provided capacity to you for \$255/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

10. Admit that some of your contracts with your residential retail customers would remain profitable if Ohio Power provided capacity to you for \$255/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

11. Admit that all of your contracts with your aggregation customers would remain profitable

if Ohio Power provided capacity to you for \$255/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

12. Admit that some of your contracts with your aggregation customers would remain profitable if Ohio Power provided capacity to you for \$255/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

13. Admit that all of your contracts with commercial customers would remain profitable if Ohio Power provided capacity to you for \$255/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

14. Admit that some of your contracts with commercial customers would remain profitable if Ohio Power provided capacity to you for \$255/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

15. Admit that all of your contracts with industrial customers would remain profitable if Ohio Power provided capacity to you for \$255/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

16. Admit that some of your contracts with industrial customers would remain profitable if Ohio Power provided capacity to you for \$255/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

17. Admit that all of your contracts with your residential retail customers would remain profitable if Ohio Power provided capacity to you for \$355/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

18. Admit that some of your contracts with your residential retail customers would remain profitable if Ohio Power provided capacity to you for \$355/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

19. Admit that all of your contracts with your aggregation customers would remain profitable if Ohio Power provided capacity to you for \$355/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because

it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

20. Admit that some of your contracts with your aggregation customers would remain profitable if Ohio Power provided capacity to you for \$355/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

21. Admit that all of your contracts with commercial customers would remain profitable if Ohio Power provided capacity to you for \$355/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

22. Admit that some of your contracts with commercial customers would remain profitable if Ohio Power provided capacity to you for \$355/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

23. Admit that all of your contracts with industrial customers would remain profitable if Ohio Power provided capacity to you for \$355/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this

proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

24. Admit that some of your contracts with industrial customers would remain profitable if Ohio Power provided capacity to you for \$355/MW-Day.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. FES' profits, if any, are not at issue in this proceeding. Rather, the issue is whether AEP Ohio's proposed capacity pricing provides a level-playing field for competition and is otherwise proper, just and/or reasonable.

25. Admit that you can terminate some of your contracts with your customers if it becomes unprofitable to continue to provide them with electric service.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to its objections, FES denies that it can terminate some of its contracts with customers in AEP Ohio's service territory simply because the contracts become unprofitable. FES further states that if AEP Ohio's proposed capacity pricing was approved, some of FES' contracts could be terminated.

26. Admit that you can pass through to some of your customers, by raising the price they pay for electric service, an increase in your cost of capacity.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to its objections, FES denies that it can pass through an increase in FES' cost of capacity to some of its customers in AEP Ohio's service territory simply because FES' cost of capacity increases. FES further states that if AEP Ohio's proposed capacity pricing was approved, FES could pass through an increase in the cost of capacity to some of its customers.

## REQUEST FOR PRODUCTION OF DOCUMENTS

1. Produce a copy of each document you identified, consulted, referred to, or utilized in preparing your responses to Interrogatories 1-22.

**RESPONSE: Objection.** FES objects to this Request because it is, in part, vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to its objections, FES responds: *see* Direct Testimony of Tony C. Banks, Jonathan A. Lesser and Robert B. Stoddard, filed on behalf of FES.

2. Please produce copies of FES's responses to all data requests or discovery requests that any other party submits to FES.

**RESPONSE: Not applicable.**

3. For each witness identified in response to Interrogatory No. 3, please produce copies of all workpapers and other backup documentation supporting that witnesses' testimony. Each workpaper should be identified in a manner that links it to the particular witness's testimony that it supports and to the particular issue addressed by, or to the specific schedule/exhibit attached to, that witness' testimony. Please produce the workpapers by no later than the time the testimony is filed.

**RESPONSE: Responsive documents will be produced.**

4. Please produce copies of any:
- a) Requests for proposals that you issue or have issued for the retention of any consultants for this proceeding.
  - b) Contracts that you enter or have entered into with any such consultant(s).

**RESPONSE: Objection.** FES objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to its objections, FES states: *see* Response to Interrogatory No. 1.

5. Please produce copies of all non-privileged documents in FES's possession, including any documents created or possessed by any employee, agent, or representative of FES, regarding AEP Ohio's Capacity Charge proceeding.

**ANSWER: Objection.** FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and because it seeks information protected by attorney-client privilege and the attorney work-product doctrine.

Dated: April 6, 2012

As to objections,

/s/ Laura C. McBride

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  
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)  
Allison E. Haedt (0082243)  
JONES DAY  
901 Lakeside Avenue  
Cleveland, OH 44114  
(216) 586-3939  
(216) 579-0212 (fax)  
dakutik@jonesday.com  
aehaedt@jonesday.com

*Attorneys for FirstEnergy Solutions Corp.*



## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *FirstEnergy Solutions Corp.'s Responses to Ohio Power Company's First Set of Discovery Requests* was served this 6th day of April, 2012, via e-mail upon the parties below.

/s/ Laura C. McBride  
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

Jeanne W. Kingery  
Amy Spiller  
139 East Fourth Street  
1303-Main  
Cincinnati, Ohio 45202  
jeanne.kingery@duke-energy.com  
amy.spiller@duke-energy.com

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

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

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

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

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@nrhc.org

Mark S. Yurick  
Zachary D. Kravitz  
Taft Stettinius & Hollister LLP  
65 East State Street, Suite 1000  
Columbus, Ohio 43215  
myurick@taftlaw.com  
zkravitz@taftlaw.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

C. Todd Jones  
Christopher L. Miller  
Gregory H. Dunn  
Asim Z. Haque  
Ice Miller  
250 West Street  
Columbus, Ohio 43215  
christopher.miller@icemiller.com  
asim.haque@icemiller.com  
gregory.dunn@icemiller.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@kmklaw.com  
dmeyer@kmklaw.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@dom.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  
Steven Beeler  
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  
steven.beeler@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

Christopher J. Allwein  
Williams, Allwein and Moser, LLC  
1373 Grandview Avenue, Suite 212  
Columbus, Ohio 43212  
callwein@williamsandmoser.com

Emma F. Hand  
Douglas G. Bonner  
Keith C. Nusbaum  
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  
keith.nusbaum@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

Roger P. Sugarman  
Kegler, Brown, Hill & Ritter  
65 East State St., Suite 1800  
Columbus, OH 43215  
rsugarman@keglerbrown.com

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

Chad A. Endsley  
Ohio Farm Bureau Federation  
280 North High Street  
P.O. Box 182383  
Columbus, OH 43218  
cendsley@ofbf.org

Brian P. Barger  
4052 Holland-Sylvania Road  
Toledo, OH 43623  
bpbarger@bcslawyers.com

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