

**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 COMBINED
MEMORANDUM CONTRA AEP OHIO’S MOTION TO COMPEL
AND MOTION FOR PROTECTIVE ORDER
& REQUEST FOR EXPEDITED RELIEF**

I. Introduction

In this proceeding, Ohio Power Company (“AEP Ohio”) seeks to establish a price for the capacity that AEP Ohio provides to competitive retail electric service (“CRES”) providers in AEP Ohio’s service territory. AEP Ohio alleges that it is entitled to a \$355/MW-day capacity price in order to recover its “full embedded costs.” FirstEnergy Solutions Corp. (“FES”) and numerous other parties, including other CRES providers, have challenged AEP Ohio’s allegations on a variety of fronts. FES and many others assert that market-based pricing arising out of PJM Interconnection, LLC’s (“PJM”) Reliability Pricing Model (“RPM”) is the only appropriate pricing for CRES providers and their customers.¹ FES’ (and others’) arguments include the argument that AEP Ohio’s proposed \$355/MW-day capacity price violates the State’s clear policy to ensure effective competition for retail electric service because the price is well

¹ See Direct Testimony of FES witnesses Tony C. Banks (“Banks Testimony”), Jonathan A. Lesser (“Lesser Testimony”) and Robert B. Stoddard, filed Apr. 4, 2012.

above-market and because the price AEP Ohio seeks to charge CRES providers is not the same as the price for capacity charged to AEP Ohio's SSO customers.²

Through overbroad and improperly intrusive discovery requests to FES and its customers, AEP Ohio is attempting to use the discovery process to seek proprietary and customer-specific information. This information has no bearing on whether AEP Ohio's \$355/MW-day capacity price is proper; it goes well beyond the information needed to assess whether the \$355/MW-day capacity price is anti-competitive. First, AEP Ohio has filed a Motion to Compel against FES -- *but, notably, against none of the other CRES provider intervenors who similarly objected to AEP Ohio's identical requests* -- to seek the Attorney Examiner's assistance in securing voluminous customer-specific data and contracts, as well as proprietary cost and pricing information. This information is central to FES' competitive strategy. Simply put, it forms the basis for FES' ability to compete. AEP Ohio seeks to put this information in FES' competitors' hand -- and for no good reason.

As set forth herein, AEP Ohio's Motion to Compel should be denied for several reasons. First, FES has provided the necessary information regarding its contracts that provide sufficient basis to understand how AEP Ohio's proposal will affect FES and its customers, without revealing proprietary trade secrets and customer specific information. There is no reason why AEP needs anything more -- and AEP Ohio never provides any explanation why it needs anything more. Indeed, the fact that AEP Ohio seeks to compel this information from FES and not from any other CRES provider speaks volumes about the lack of any legitimate purpose behind AEP Ohio's requests. Second, AEP Ohio has tried to procure this customer-specific, proprietary information via requests to certain FES customers. For the same reasons that AEP

² See Banks Testimony and Lesser Testimony.

Ohio's Motion to Compel should be denied, so too should AEP Ohio's attempts to run around FES to gain access to that proprietary information. FES' cost, pricing and customer-specific information is not reasonably calculated to lead to the discovery of admissible evidence as to whether AEP Ohio is entitled to recover its "full embedded costs" through capacity prices for CRES providers. FES and all other CRES providers must be able to raise competitive concerns without sacrificing their ability to compete by opening up all of its proprietary data and customers. AEP Ohio's improper discovery expeditions are yet another example of how AEP Ohio is seeking to take advantage of its failure to separate its competitive services from its non-competitive services.

Accordingly, pursuant to O.A.C. 4901-1-24(A) and (D), FES moves for a protective order finding that AEP Ohio is not entitled to discovery from FES or its customers regarding FES' costs of service and pricing information or customer contracts and that AEP Ohio is not permitted to use any of FES' proprietary contracts it may obtain at the hearing. In the alternative, FES moves for a protective order providing that any FES contracts produced by FES' customers be redacted to remove confidential pricing information and that AEP Ohio must agree to enter into a protective agreement with FES that protects the FES contracts and other competitively sensitive and prevents AEP Ohio personnel involved in the marketing and sales of generation from accessing the information. FES further requests, pursuant to Rule 4901-1-12 of the Ohio Administrative Code, that an expedited ruling be issued.

II. ARGUMENT & MEMORANDUM IN SUPPORT

A. AEP Ohio's Demand That FES Identify And Produce FES Contracts And Other Customer-Specific Information Is Inappropriate And Objectionable.

AEP Ohio's First Set of Discovery Requests to FES (and other CRES provider intervenors) included several interrogatories regarding whether FES' contracts: (a) allow FES to

terminate the contracts if the contracts become “uneconomical;”³ and/or (b) allow FES to pass-through any increase in capacity costs to customers.⁴ FES responded to AEP Ohio’s interrogatories -- and will soon be responding to follow-up interrogatories issued by AEP Ohio -- by confirming that some of FES’ contracts would allow FES to terminate the contracts if AEP Ohio’s capacity prices were increased through this proceeding.⁵ FES also confirmed that some of FES’ contracts would allow FES to pass through an increase in capacity costs to its customers if AEP Ohio’s capacity prices were increased through this proceeding.⁶ These responses provide all of the information necessary for AEP Ohio to challenge FES’ arguments that its capacity pricing proposal is anti-competitive. AEP Ohio’s further requests for the identity and production of “any” such provisions in FES contracts⁷ and “all customers and contracts” that include such provisions⁸ are overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and an inappropriate attempt to seek proprietary information about a competitor. As such, AEP Ohio’s motion to compel the disclosure of such information through

³ See Interrogatory Nos. 8-10, 20.

⁴ See Interrogatory Nos. 5-7, 21.

⁵ See FES’ Response to Interrogatory No. 9 and Request for Admission No. 25.

⁶ See FES’ Response to Interrogatory Nos. 6 and Request for Admission No. 26.

⁷ Interrogatory No. 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.”) and No. 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.”); and No. 20 (“*[I]dentify the customers whose contracts you would be able to cancel and the contractual provisions or documents that allow you to make such cancellation*”) (emphasis added); see also Request for Production No. 1.

⁸ Interrogatory No. 7 (“[P]lease identify *all customers and contracts* that contain such a provision [that would allow you to increase amounts charged to the customer if your capacity cost increases].”) and No. 10 (“[P]lease identify *all customers and contracts* that contain such a provision [that would allow you to terminate the contract in the event it becomes uneconomical for you to continue to provide electric service].”), and No. 21 (“*[I]dentify the customers whose rates you could increase and the contractual provisions or documents that allow you to make such an increase.*”) (emphasis added); see also Request for Production No. 1.

Interrogatories Nos. 5-10 and 20-21, Requests for Admission Nos. 25 and 26, and Request for Production No. 1 (collectively, the “Contract-Specific Requests”) should be denied.

- **The Contract-Specific Requests seek information that is not reasonably calculated to lead to the discovery of admissible evidence.**

AEP Ohio’s Motion to Compel vaguely asserts that the Contract-Specific Requests are appropriate because “the impact of [AEP Ohio’s proposed capacity charge] is directly at issue in this case and questions related to [FES’] intervention request and the treatment of that charge in this case are all appropriate issues for discovery.”⁹ AEP Ohio also argues that it “should be allowed to present, and the Commission should consider, the impacts on [AEP Ohio’s] competitors of any state compensation mechanism proposed or adopted.”¹⁰ Neither of these assertions provides any reason to require FES to disclose customer-specific contract information to AEP Ohio, a competitor, or to allow AEP Ohio to disclose this information to other competitors of FES. While the impact of AEP Ohio’s proposed capacity pricing is an important consideration for the Commission, the identification of FES’ customers and contracts does not provide any information relevant to that consideration. All that is relevant and appropriate are the responses that FES has already provided to AEP Ohio -- namely that, if AEP Ohio’s proposal was approved, FES could terminate some of its contracts and could pass through any increase in capacity prices to some of its customers. Who those customers are and the specific terms of their contracts with FES are irrelevant. Tellingly, AEP Ohio never suggests what use it would have for this customer-specific information.

AEP Ohio’s argument that FES witnesses’ testimony triggers the need to review FES’ customer-specific contract information also falls far short. As discussed further below with

⁹ Motion, p. 7.

regard to AEP Ohio's request for FES' proprietary cost and pricing data, FES' arguments regarding the anti-competitive impact of AEP Ohio's proposed capacity pricing do not depend or rely on any customer-specific information. None of the FES witnesses have asserted that AEP Ohio's proposal will lock FES into any uneconomic contracts or that FES will be harmed because it will have to absorb any increase in price. Rather, FES' arguments focus on the fact that the \$355/MW-day capacity price for CRES providers is not the same as the (apparently unknown) price charged to SSO customers and the basic pricing principles discussed further below. None of these arguments require (or should allow) AEP Ohio to access all of FES' customer-specific contract information.

- **The Contract-Specific Requests are overbroad and unduly burdensome.**

FES objected to the Contract-Specific Requests because they are overbroad and unduly burdensome in that they are unlimited in scope. First, the Requests are not limited to FES contracts with customers in AEP Ohio's service territory. FES serves millions of customers across several states. Certainly FES' contracts with customers outside of AEP Ohio's service territory cannot be said to be in any way relevant to this proceeding. Even if the Contract-Specific Requests were limited to FES' contracts with customers in AEP Ohio's service territory, such requests would remain overbroad and unduly burdensome because they would require FES to review all of its customer contracts to identify responsive information. As set forth above, the Contract-Specific Requests are not reasonably calculated to lead to the discovery of admissible evidence regarding the propriety of AEP Ohio's proposed capacity pricing. Therefore, there is little to no value that could outweigh the time and cost that would be incurred in reviewing all of FES' contracts. Moreover, FES would be required to incur further time and cost because FES

¹⁰ Motion, p. 9.

would need the customers' consent to share their information with AEP Ohio -- an additional burden and harassment for customers. The Motion to Compel FES' responses to the Contract-Specific Requests should be denied.

B. AEP Ohio's Demand That FES Disclose Its Cost And Pricing Structure And The Identity Of "Profitable" Contracts Is Also Objectionable And Inappropriate for several reasons.

AEP Ohio's improper First Set of Discovery Requests include numerous Interrogatories and Requests for Admission that seek to require FES to identify whether FES' contracts would be "profitable" at different capacity prices and "why" any of the contracts would not be profitable.¹¹ AEP Ohio also asks FES to identify the specific customers whose contracts would be "profitable" at different capacity prices and to "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 [each of the customer classes]."¹² These requests are an egregious attempt to harass FES and its customers and to try to quash a legitimate challenge to the anti-competitive impact of AEP Ohio's proposed capacity pricing. These requests are also overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and an inappropriate attempt to seek a competitor's proprietary information. As such, AEP Ohio's Motion to Compel

¹¹ See Requests for Admission No. 1-24 ("Admit that [some/all] of your contracts with [residential/commercial/industrial/governmental aggregation] customers would remain profitable if Ohio Power provided capacity to you for [\$146/\$255/\$355]/MW-Day."); Interrogatory Nos. 11, 13, 15 ("[P]lease state whether your contracts with your customers in each of [customer classes] would be profitable if Ohio Power provided capacity to you for [\$146/\$255/\$355]/MW-Day."); Interrogatory Nos. 12, 14, and 16 ("[P]lease explain why your contracts with that class of customers would not be profitable if Ohio Power provided capacity to you for [\$146/\$255/\$355]/MW-Day."); Interrogatory No. 18 ("Identify any documents that you consulted or relied upon in making, or which contain information regarding, your responses to Requests for Admission Nos. 1-24."); Request for Production No. 1.

¹² Interrogatory No. 17; Interrogatory No. 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.*") (emphasis added); Request for Production No. 1.

FES' responses to Interrogatories 11-19, Requests for Admission Nos. 1-24 and Request for Production No. 1 (collectively, the "Cost and Pricing Data Requests") should be denied.

- **The Cost and Pricing Data Requests seek information that is not reasonably calculated to lead to the discovery of admissible evidence.**

AEP Ohio's Motion to Compel offers only vague arguments that do not come anywhere near to establishing AEP Ohio's right to discover whether and when FES' CRES contracts would be "profitable." As an initial matter, the discovery on this issue is hopelessly vague and confusing since AEP Ohio has defined "profitable" to mean "any amount greater than \$0." Thus, if FES garnered any revenue, rather than earning revenues that exceed its costs, FES would be forced to give a misleading answer to this discovery. Thus, AEP Ohio's motion to compel FES' responses to Requests for Admission Nos. 1-16 and Interrogatory Nos. 11-14 should be denied out of hand.

More generally, and ignoring AEP Ohio's misleading definition of the word "profitable," whether FES' contracts would be "profitable" (as that word would be normally construed) under a capacity price of \$146/MW-day or \$255/MW-day cannot be relevant given that AEP Ohio is seeking to establish a capacity price of \$355/MW-day in this proceeding. Neither AEP Ohio nor any CRES provider has advocated that these specific prices be adopted as the state compensation mechanism under PJM's Reliability Assurance Agreement for AEP Ohio.

Moreover, even when the Cost and Pricing Data Requests refer to a capacity price of \$355/MW-day, there is no basis on which to compel FES' responses. AEP Ohio cites FES witness Tony Banks' testimony that "with every increase in component costs, CRES providers' ability to offer savings to customers correspondingly decreases."¹³ No customer-specific

¹³ Motion, p. 8.

information is needed to support (or somehow challenge) this obvious and most basic of sales principles. AEP Ohio's cite to FES witness Lesser's hypothetical regarding the impact of a \$1,000/MW-day capacity price is similarly unrelated to an analysis of each of every FES contract and the identification of which contract is "profitable" (under whatever definition).¹⁴ As set forth further in Section C *infra*, this type of analysis is the bedrock of competition. Whether FES is able to minimize other costs in the competitive environment so as to be able to make a profit if capacity is priced at \$146/MW-day is not the point of this proceeding. AEP Ohio is seeking to increase its capacity price for CRES providers to a price several times higher than the market price that it has been charging for the past several years -- and to a price that is different from the price charged to SSO customers. Those impacts, and not the details behind FES or any other CRES providers' cost and pricing structure, are what are relevant to the Commission's consideration.

- **The Cost and Pricing Data Requests are overbroad and unduly burdensome.**

As with the Customer-Specific Requests, the Cost and Pricing Data Requests would require FES to review all of its customer contracts and to perform calculations regarding the "profitability" (assuming the generally accepted meaning of that term) of all of its contracts under different capacity pricing variables. Moreover, the Requests would require FES to reach some sort of judgment about the "profitability" of contracts when the future impact of other cost components is wholly unknown. FES has no obligation under the Commission's Rules or the Civil Rules to perform such analyses, particularly when the information is irrelevant to the proceedings and highly proprietary. The Motion to Compel FES' responses to the Cost and Pricing Data Requests should be denied.

¹⁴ Motion, p. 8.

C. All of The Requests Seek Information That Ohio Law Protects As Trade Secrets.

The customer-specific contract and pricing information that AEP Ohio seeks to compel through the Contract-Specific Requests and the Cost & Pricing Data Requests clearly constitute trade secrets that the Commission and Ohio law has long recognized deserve protection. Indeed, as a CRES provider, FES' trade secret pricing, cost and customer information is the lifeblood of its business.¹⁵ Therefore, the harm to FES in disclosing this information to a competitor far outweighs any "benefit" to AEP Ohio - particularly where, as discussed above, the information is neither relevant nor reasonably necessary to the proceeding and AEP Ohio has done nothing to establish a "compelling need" for the trade secret information.¹⁶

While the Commission has often expressed its preference for open proceedings, the Commission also has long recognized its statutory obligations to protect trade secrets.¹⁷ Indeed, the Ohio Supreme Court has held that not only does the Commission have the authority to

¹⁵ The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act "means . . . any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. [and] (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." R. C. § 1333.61(D). The factors to be considered in recognizing a trade secret include: (1) The extent to which the information is known outside the business; (2) The extent to which it is known to those inside the business, *i.e.*, by the employees; (3) The precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) The savings effected and the value to the holder in having the information as against competitors; (5) The amount of effort or money expended in obtaining and developing the information, and (6) The amount of time and expense it would take for others to acquire and duplicate the information. *See State ex rel. Perrea v. Cincinnati Pub. Sch.*, 123 Ohio St.3d 410, 414, 2009-Ohio-4762 (2009); *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga App. 1983) *citing Koch Engineering Co. v. Faulconer*, 210 U.S.P.Q. 854, 861 (Kansas 1980).

¹⁶ *See Splater v. Thermal Ease Hydronic Systems, Inc.*, 169 Ohio App.3d 514, 519 (Cuyahoga Cty. 2006) (denying the competitor's motion to compel because the competitor "has failed to present the kind of need that is so compelling as to warrant the risk that [the other entity's] trade secrets could be disseminated to a direct competitor").

¹⁷ *See In re: General Telephone Co.*, Case No. 81-383-TP-AIR (Entry, February 17, 1982) (recognizing necessity of protecting trade secrets).

protect trade secrets, the trade secret statute creates a duty to protect them.¹⁸ For the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings.¹⁹ The Commission has also protected the trade secrets of other parties in this same proceeding.²⁰ More specifically, O.A.C. 4901-1-24(A)(7) authorizes the Commission to order that a trade secret, including commercial information, not be disclosed or be disclosed only in a designated way. Thus, the Attorney Examiner has the authority to order -- and should order -- that FES' pricing, cost, and customer-specific information not be disclosed.

The necessity of protecting this information is particularly important given FES' status as an electric services company operating in a competitive market. As the Ohio Supreme Court recently noted, the Commission "has a duty to encourage competitive providers of electric generation."²¹ The Court explained that in the competitive and relatively new market in which electric services companies operate, "[e]xposing a competitor's business strategies and pricing points would likely have a negative impact on that provider's viability."²² Here, the business strategies that AEP Ohio is seeking to compel FES to disclose would provide its competitors with specific information regarding FES' contract terms and pricing structure, which would

¹⁸ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 2009-Ohio-604 (2009).

¹⁹ *See, e.g., Elyria Tel. Co.*, Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR (Entry, August 17, 1990).

²⁰ *See* Entry, April 13, 2012 (granting motions for protective order).

²¹ *Ohio Consumers' Counsel*, 121 Ohio St.3d at 370 (affirming Commission's decision to redact information due, in part, to "the volatility and competitiveness of the electric industry").

²² *Id.*

provide its competitors -- including AEP Ohio and other intervenors -- with a detailed roadmap to target FES' customers, damaging FES' business.

The non-price terms of FES' contracts also reflect trade secrets. A contract is not defined by its pricing term alone. Contracts also include the negotiation of other elements, such as the service to be provided, payment terms, duration, and termination provisions. FES has treated the terms of the contracts that are the subject of AEP Ohio's Requests as proprietary, confidential business information, and are not disclosed to anyone. **The contracts themselves state that the parties will keep them confidential.** Additionally, the information AEP Ohio seeks to compel would reveal details of FES' business strategies, which would competitively disadvantage FES if disclosed.

The Requests are particularly inappropriate, prejudicial and questionable given AEP Ohio's continued ownership of competitive generation services. In this continuing dual role as an electric distribution utility and an owner of competitive generation service, AEP Ohio is uniquely (and unfairly) able to control the development of the competitive market in its service territory. AEP Ohio continues to have the incentive to limit competition so that customers will remain on the SSO, which is supplied by its competitive generation service. Indeed, this animus against competition and competitors has been expressed by one AEP executive who will be an AEP Ohio witness in this proceeding.²³ AEP Ohio should not now be able to further abuse this position by demanding all of FES' competitive cost, pricing and customer-specific information, including information about under what pricing structure FES can earn a profit and which of

²³ Richard Munczinski, AEP's Senior VP for Regulatory Services, admitted during an AEP Conference Call on September 7, 2011, to investors to announce its previous ESP Stipulation, which was rejected by the Commission, that: "Over those [shopping cap] percentages, if you want to shop, you pay the full cost of \$255 per megawatt day. So the thought and the theory is that the shopping will be constrained to the discounted RPM price."

FES' contracts may be profitable. FES respectfully urges the Commission and the Attorney Examiner to move quickly to deny AEP Ohio's attempt to abuse the discovery process by seeking significant cost, pricing, and customer-specific information that form the foundation of the competitive market that state policy seeks to ensure.²⁴

D. AEP Ohio's Requests To FES' Customers To Disclose Their Contracts With FES And Pricing Terms Also Are Improper.

In order to access the information to which FES objected, AEP Ohio has requested that certain of FES' customers produce their contracts with FES.²⁵ For the same reasons that AEP Ohio is not entitled to information from FES directly regarding the pricing terms of these contracts, AEP Ohio should not be permitted to obtain this information from FES' customers indirectly. The contracts contain confidential prices that were negotiated by FES and the customer, and their production is not reasonably calculated to lead to the discovery of admissible evidence. These contracts also contain competitively sensitive information, including the confidential terms negotiated by the parties to those agreements. FES could be significantly harmed if its competitors and the public were provided with copies of FES contracts -- particularly when several of FES' competitors are parties to this proceeding. FES requests a protective order that would preclude AEP Ohio from receiving FES' and its customers' confidential and proprietary contracts.

Notably, the improper purpose of AEP Ohio's discovery can be demonstrated by AEP Ohio's unreasonable stance when FES attempted to resolve this issue. Specifically, FES requested that AEP Ohio agree to a protective agreement that would provide FES' Competitively

²⁴ See R.C. § 4928.02(H).

²⁵ See AEP Ohio Discovery Requests issued to the Ohio Manufacturers' Association and several school groups, copies of which are attached as Exhibits A-1 and A-2 to the Affidavit of N. Trevor Alexander ("Alexander Aff.").

Sensitive Confidential information with the same protections as were provided to AEP Ohio's Competitively Sensitive Confidential information, *i.e.*, FES requested the same treatment that AEP Ohio had already received.²⁶ AEP Ohio refused this very reasonable accommodation. AEP Ohio indicated that it was willing to enter into a reciprocal protective agreement with FES, but demanded that this agreement only apply to documents produced by FES.²⁷ This absurd distinction would mean that the documents produced by FES' customers, rather than FES, would not be treated as Competitively Sensitive Confidential and could be disclosed to the competitive arm of AEP Ohio's business.

III. CONCLUSION

The cost, pricing and customer-specific information that AEP Ohio has requested from FES and its customers is irrelevant to any fact at issue in this proceeding. Rather, AEP Ohio's Requests clearly represent an unsupported attempt to quash an intervenor from challenging the anti-competitive impact of its capacity pricing proposal. Accordingly, FES respectfully requests that AEP Ohio's Motion to Compel be denied. FES further requests, pursuant to O.A.C. 4901-1-24(A) and (D), that the Commission enter a protective order finding that AEP Ohio is not entitled to discovery of FES' costs of service and pricing agreements with customers or any customer-specific contracts.

²⁶ See Alexander Aff., attached hereto as Exhibit A, ¶ 6.

²⁷ See Alexander Aff., ¶ 7. Indeed, to the extent any information subject to the instant Motion should be produced, it should be ordered that all price and customer specific information be redacted and that the disclosure of such materials be limited to AEP Ohio personnel who are not involved in the marketing or sales of generation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *FirstEnergy Solutions Corp.'s Combined Memorandum Contra AEP Ohio's Motion to Compel and Motion for Protective Order & Request for Expedited Relief* was served this 16th day of April, 2012, via e-mail upon the parties below.

s/ Laura C. McBride

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**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.)	

AFFIDAVIT OF N. TREVOR ALEXANDER

STATE OF OHIO)	
)	SS:
COUNTY OF FRANKLIN)	

N. Trevor Alexander, being first duly sworn in accordance with the law, deposes and states:

1. I am over the age of 18 years, am personally familiar with all facts attested to herein, and am competent to testify thereto
2. I am one of the lawyers for FirstEnergy Solutions Corp. ("FES").
3. On April 6, 2012, Ohio Power Company ("AEP Ohio") issued discovery requests to the Ohio Manufacturers' Association ("OMA"). A true and accurate copy of these discovery requests is attached hereto as Exhibit 1.
4. On April 9, 2012, AEP Ohio issued discovery requests to the Ohio Association of School Business Officials, the Ohio School Boards Association, the Buckeye Association of School Administrators, and the Ohio Schools Council (collectively, the "Schools"). A true and accurate copy of these discovery requests is attached hereto as Exhibit 2.
5. On April 13, 2012, I engaged in several email and telephone communications with counsel for AEP Ohio regarding FES' objections to these discovery requests in an effort to find a mutually acceptable resolution to this discovery dispute.

6. In the communications on April 13, 2012, FES requested that AEP Ohio agree to a protective agreement that would provide FES' Competitively Sensitive Confidential information with the same protections as were provided to AEP Ohio's Competitively Sensitive Confidential information. This included, among other things, the documents to be produced by OMA and the Schools.


7. AEP Ohio offered to enter into a protective agreement with FES which would apply only to documents produced by FES, not by customers of FES. AEP Ohio refused to agree to a protective agreement with FES which would also include the documents produced by OMA and the Schools.

FURTHER AFFIANT SAYETH NAUGHT.



N. Trevor Alexander

SWORN TO BEFORE ME, and subscribed in my presence, this 16th day of April, 2012.



NOTARY PUBLIC

My Commission expires on _____.

DIANE COOK, Notary Public
State of Ohio
My Commission Expires Feb. 12, 2014

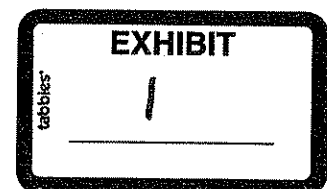
**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**OHIO POWER COMPANY'S SECOND SET OF INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS TO
THE OHIO MANUFACTURERS' ASSOCIATION**

Ohio Power Company ("Ohio Power" or "AEP Ohio") submits the following discovery requests to The Ohio Manufacturers' Association ("OMA") to be answered as provided by the rules of the Public Utilities Commission of Ohio ("PUCO"), O.A.C. 4901-1-19 and 20. In particular, as to each interrogatory, indicate the name(s) of the person(s) responsible for the answer. You are also requested to supplement your responses in accordance with the requirements of O.A.C. 2901-1-16(D) and (E). You responses to these requests should be delivered via E-Mail and/or hand delivery to Steven T. Nourse, AEP Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, E-mail: stnourse@aep.com; Matthew J. Satterwhite, AEP Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, E-mail: mjsatterwhite@aep.com; and Daniel R. Conway, Porter, Wright, Morris & Arthur, LLP, 41 S. High St., Columbus, Ohio 43215, E-Mail: dconway@porterwright.com, within seven (7) days of receipt by you; that is, by no later than April 13, 2012, in accordance with the Attorney Examiner's Entry issued March 23, 2012.

For purposes of these requests, the following definitions apply:



1. **“Identify”** or **“identify”** means to state or a statement of:
 - a) in the case of a person other than a natural person, its name, the address of its principal place of business, and its telephone number;
 - b) in the case of a natural person, his or her name, business address and telephone number, employer, title or position, duties, obligations or responsibilities, and date of separation from your organization or company, if applicable;
 - c) in the case of a communication, its date, type (*e.g.*, telephone conversation, letter, or meeting), the place where it occurred, the identity of each person who received or made the communication or who was present when it was received or made, and the subject matter discussed; and
 - d) in the case of a document or other writing, its date, title, and subject matter, as well as the name, address, and telephone number of the authority or other person(s) responsible for its preparation and the name, address, and telephone number of the person(s) presently having custody of the document.
2. **“Capacity Charge proceeding”** means the matter captioned above.
3. **“You”** or **“yours”** means OMA, as well as any of its agents, legal representatives, consultants, experts, all representatives and other persons acting on its behalf, and its present and former employees.
4. **“Person”** means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, or other business or legal entity and all present and former directors, officers, employees, agents, consultants or other persons acting for or on behalf of any such person.

5. **“Document”** includes any written or graphic material, however produced or reproduced, including, but not limited to: prepared speeches, articles, papers, treatises, books, memoranda or white papers, correspondence, or other written, typed, or printed communications, notes in any form, voice recording tapes, videotapes, microfilms, microfiche, pictures, data processing cards or disks, computer generated or stored information or databases, now or previously in your possession. If a document has been destroyed or is otherwise unavailable, such should be indicated in the response.

These requests are continuing in nature. If you do not have present knowledge sufficient for any response or a complete response, or any event has not yet occurred, you are requested to so state, and to furnish such response as soon as possible. If additional information becomes known regarding any of these requests, you are to furnish a supplemental response when such information becomes available.

It is not necessary to produce copies of any documents responsive to this request that OMA has filed at the PUCO. With regard to documents responsive to this request that are withheld because of a claim that they contain privileged communications, please identify each such document and each such communication in the manner set forth in the definition of “identify” produced above.

INTERROGATORIES

6. Please describe the analysis used to determine that, for the Belden Brick Company, LLC, “the difference between the market prices for capacity and AEP-Ohio’s proposed \$355/MW-day [capacity charge] is approximately \$896,270 over the next three years.”

RESPONSE:

7. Please describe the analysis used to determine that, for OSCO Industries, Inc., “the difference between the market prices for capacity and AEP-Ohio’s proposed \$355/MW-day [capacity charge] is approximately \$2,572,000 over the next three years.”

RESPONSE:

8. Please describe the analysis used to determine that, for AMG Vanadium Inc., “the difference between the market prices for capacity and AEP-Ohio’s proposed \$355/MW-day [capacity charge] is approximately \$2,343,405 over the next three years.”

RESPONSE:

9. Please describe the analysis used to determine that, for Whirlpool Corporation, “the difference between the market prices for capacity and AEP-Ohio’s proposed \$355/MW-day [capacity charge] is approximately \$3.4 million over the next three years.”

RESPONSE:

10. Please describe the analysis used to determine that, for Lima Refining Company, “the difference between the market prices for capacity and AEP-Ohio’s proposed \$355/MW-day [capacity charge] is approximately \$ 51,700,000 over the next three years.”

RESPONSE:

11. Please state the baseline capacity charge that applies to each of the following witness's electric service contracts:

- a. The Belden Brick Company, LLC
- b. OSCO Industries, Inc.
- c. AMG Vanadium Inc.
- d. Whirlpool Corporation
- e. Lima Refining Company

RESPONSE:

12. Please identify the competitive retail electric service provider that presently provides electric service to the following witnesses:

- a. The Belden Brick Company, LLC
- b. OSCO Industries, Inc.
- c. AMG Vanadium Inc.
- d. Whirlpool Corporation
- e. Lima Refining Company

RESPONSE:

REQUEST FOR PRODUCTION OF DOCUMENTS

6. Please produce copies of each of the following witnesses' contracts for electric service:
- a. The Belden Brick Company, LLC
 - b. OSCO Industries, Inc.
 - c. AMG Vanadium Inc.
 - d. Whirlpool Corporation
 - e. Lima Refining Company
7. Please produce all workpapers, tables, spreadsheets, and other backup documentation, including electronic files with formulae intact and active, used to conduct the analysis referred to in Interrogatory Nos. 6-10.

By: /s/ Matthew J. Satterwhite
(by CMM per auth.)

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Counsel for Ohio Power Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of Ohio Power Company's Second Set of Interrogatories and Request for Production of Documents was served by E-mail upon counsel for The Ohio Manufacturers' Association and upon counsel for all other parties of record in this case, on this 6th day of April, 2012.

/s/ Christen M. Moore
Christen M. Moore

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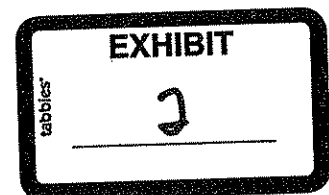
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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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)	

**OHIO POWER COMPANY'S SECOND SET OF INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS TO THE OHIO ASSOCIATION OF SCHOOL
BUSINESS OFFICIALS, THE OHIO SCHOOL BOARDS ASSOCIATION, THE
BUCKEYE ASSOCIATION OF SCHOOL ADMINISTRATORS AND THE OHIO
SCHOOLS COUNCIL**

Ohio Power Company ("Ohio Power" or "AEP Ohio") submits the following discovery requests to The Ohio Association of School Business Officials, The Ohio School Boards Association, The Buckeye Association of School Administrators and The Ohio Schools Council (collectively, "Schools"), to be answered as provided by the rules of the Public Utilities Commission of Ohio ("PUCO"), O.A.C. 4901-1-19 and 20. In particular, as to each interrogatory, indicate the name(s) of the person(s) responsible for the answer. You are also requested to supplement your responses in accordance with the requirements of O.A.C. 2901-1-16(D) and (E). You responses to these requests should be delivered via E-Mail and/or hand delivery to Steven T. Nourse, AEP Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, E-mail: stnourse@aep.com; Matthew J. Satterwhite, AEP Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, E-mail: mjsatterwhite@aep.com; and Daniel R. Conway, Porter, Wright, Morris & Arthur, LLP, 41 S. High St., Columbus, Ohio 43215, E-Mail:



dconway@porterwright.com, within seven (7) days of receipt by you; that is, by no later than April 16, 2012, in accordance with the Attorney Examiner's Entry issued March 23, 2012.

For purposes of these requests, the following definitions apply:

1. **"Identify"** or **"identify"** means to state or a statement of:
 - a) in the case of a person other than a natural person, its name, the address of its principal place of business, and its telephone number;
 - b) in the case of a natural person, his or her name, business address and telephone number, employer, title or position, duties, obligations or responsibilities, and date of separation from your organization or company, if applicable;
 - c) in the case of a communication, its date, type (*e.g.*, telephone conversation, letter, or meeting), the place where it occurred, the identity of each person who received or made the communication or who was present when it was received or made, and the subject matter discussed; and
 - d) in the case of a document or other writing, its date, title, and subject matter, as well as the name, address, and telephone number of the authority or other person(s) responsible for its preparation and the name, address, and telephone number of the person(s) presently having custody of the document.
2. **"Capacity Charge proceeding"** means the matter captioned above.
3. **"You"** or **"yours"** means Schools, as well as any of its agents, legal representatives, consultants, experts, all representatives and other persons acting on its behalf, and its present and former employees.
4. **"Person"** means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, or other business or legal entity and all

present and former directors, officers, employees, agents, consultants or other persons acting for or on behalf of any such person.

5. **“Document”** includes any written or graphic material, however produced or reproduced, including, but not limited to: prepared speeches, articles, papers, treatises, books, memoranda or white papers, correspondence, or other written, typed, or printed communications, notes in any form, voice recording tapes, videotapes, microfilms, microfiche, pictures, data processing cards or disks, computer generated or stored information or databases, now or previously in your possession. If a document has been destroyed or is otherwise unavailable, such should be indicated in the response.
6. **“Profitable”** means, with respect to you contract(s) with retail customers or customer classes, net revenue greater than \$0.

These requests are continuing in nature. If you do not have present knowledge sufficient for any response or a complete response, or any event has not yet occurred, you are requested to so state, and to furnish such response as soon as possible. If additional information becomes known regarding any of these requests, you are to furnish a supplemental response when such information becomes available.

It is not necessary to produce copies of any documents responsive to this request that you have filed at the PUCO. With regard to documents responsive to this request that are withheld because of a claim that they contain privileged communications, please identify each such document and each such communication in the manner set forth in the definition of “identify” produced above.

INTERROGATORIES

2-1. On page 9 of his direct testimony, Schools witness Frye characterizes AEP Ohio's request for cost-based capacity pricing as resulting in "large increases" in rates. Do your calculations presume that the full extent of capacity charge changes (positive and negative) are passed through from a CRES provider to the Schools?

RESPONSE:

2-2. If you responded to the previous interrogatory affirmatively, please explain the basis for that presumption.

RESPONSE:

2-3. Do your constituents' service contracts with CRES providers in AEP Ohio's service territory provide that increases in capacity charges are passed through from the CRES provider to the customer?

RESPONSE:

2-4. Do your constituents' service contracts with CRES providers in AEP Ohio's service territory provide that decreases in capacity charges are passed through from the CRES provider to the customer?

RESPONSE:

2-5. For each of your constituents that presently receives electric generation service from a CRES provider in AEP Ohio's service territory, please identify the CRES provider that provides service to the constituent and the term of the constituent's contract with the CRES provider.

RESPONSE:

2-6. Do any of your constituents' contracts with CRES providers in AEP Ohio's service territory allow the CRES provider to terminate service to the constituent prior to the expiration of the contract?

RESPONSE:

2-7. If you responded to the previous interrogatory affirmatively, please state when or under what circumstances a CRES provider would be permitted to terminate service prior to the expiration of the contract and identify all contracts that contain such a provision.

RESPONSE:

REQUEST FOR PRODUCTION OF DOCUMENTS

2-1. Produce copies of all contracts between your constituents and CRES providers for electric generation service in AEP Ohio's service territory.

2-2. If you responded to Interrogatories 2-3, 2-4, or 2-6 affirmatively, please produce copies of those contract provisions identified in each Interrogatory.

2-3. Produce a copy of each document you identified, consulted, referred to, or utilized in preparing your responses to Interrogatories 2-1 through 2-7.

2-4. You did not produce a joint defense agreement in response to AEP Ohio's first set of discovery requests. Accordingly, produce copies of all communications between you and any other party to this proceeding concerning or relating to:

- a. the development of witness testimony; and
- b. the development of positions in this case that you or any other party may take.

By: /s/ Steven T. Nourse (by CMM per auth.)

Steven T. Nourse

Matthew J. Satterwhite

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Counsel for Ohio Power Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of Ohio Power Company's Second Set of Interrogatories and Request for Production of Documents was served by E-mail upon counsel for The Ohio Association of School Business Officials, The Ohio School Boards Association, The Buckeye Association of School Administrators and The Ohio Schools Council and upon counsel for all other parties of record in this case, on this 9th day of April, 2012.

/s/ Christen M. Moore
Christen M. Moore

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