

**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)	

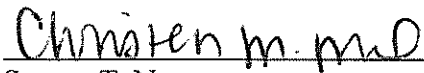
OHIO POWER COMPANY’S MOTION TO COMPEL

Pursuant to Rule 4901-1-23, Ohio Adm. Code, Ohio Power Company (“Ohio Power” or “AEP Ohio”) respectfully moves for an order compelling FirstEnergy Solutions Corp. (“FES”) to provide complete and responsive answers to Ohio Power Company’s Third Set of Interrogatories, Request for Admissions, and Request for Production of Documents (“Third Discovery Requests”) and Ohio Power Company’s Fourth Set of Interrogatories, Request for Admissions, and Request for Production of Documents (“Fourth Discovery Requests”). As was the case with FES’ responses to Ohio Power’s First and Second Sets of Interrogatories, Request for Admissions, and Request for Production of Documents, FES’ responses to the Third Discovery Requests and Fourth Discovery Requests are wholly insufficient, inadequate, and fail to meaningfully respond to properly propounded requests that seek information and documents relevant to this case. Because FES continues to disregard its discovery obligations, the Attorney Examiner should order it to provide the responses and produce the documents requested in Ohio Power’s Third and Fourth Discovery Requests and repeated in the memorandum in support that accompanies this motion. Based on FES’ filings already made in this docket in response to Ohio Power’s previous discovery requests and the fact that hearing has already begun, AEP Ohio is filing this motion to compel as indicated at the start of the hearing. Ohio Power’s continuing

efforts to resolve this dispute pursuant to Rule 4901-1-23(C) are set forth in the Affidavit of Counsel attached as Exhibit A.

The fact that this hearing has already begun and AEP Ohio is without the advantage of responsive discovery requests to prepare its cross-examination to adequately prepare its case and explore the bases of FES' litigation position necessitate a ruling that orders FES to immediately supplement its discovery responses.

Respectfully submitted,



Steven T. Nourse
Matthew J. Satterwhite
Yazen Alami
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
yalami@aep.com

Daniel R. Conway
Christen M. Moore
Porter, Wright, Morris & Arthur, LLP
41 South High Street
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

Ohio Power is constrained to file this motion, its third in just six days, seeking to compel FES to provide it with adequate discovery responses, because FES continues to evince a complete disregard for this Commission's discovery rules. FES' responses to the Third and Fourth Discovery Requests mirror the theme of its responses to the first two sets of discovery Ohio Power propounded to it in their vagueness, unresponsiveness, and inadequacy.¹ FES' witnesses are about to take the stand, yet AEP Ohio has not had a meaningful opportunity to engage in discovery to probe that testimony and prepare cross examination. FES' refusal to participate cooperatively and productively in discovery has not only affected Ohio Power – it now also forces the Attorney Examiner to take time that could be spent considering the substantive issues in this case to address this dispute. Ohio Power previously provided an alternative argument to its last motion to compel pointing out that if the Attorney Examiner accepts the rationale provided by FES and the lack of relevance of its retail operations and its interaction in the competitive market it asserts to protect, then such a decision would change the focus of the hearing and necessitate a striking of a large portion of the Intervenor testimony filed in this case. Ohio Power is caught in a revolving door held to one standard to defend, but unable to ask and receive discovery to probe into an Intervenor like FES' positions. The Attorney Examiner should compel FES to remedy its failings.

¹ Copies of FES' responses to Ohio Power's Third and Fourth Discovery Requests are attached as Exhibits B and C, respectively.

II. ARGUMENT

The arguments supporting this Motion to Compel have been fully laid out in Ohio Power Company's Motion to Compel and Request for Expedited Ruling, filed April 12, 2012 ("First Motion to Compel"), and in Ohio Power Company's Motion to Compel or, in the Alternative, Motion to Strike Testimony and Request for Expedited Ruling, filed April 16, 2012 ("Second Motion to Compel"), and do not need to be restated for a third time herein. Instead, Ohio Power incorporates by reference the arguments contained in its First Motion to Compel and Second Motion to Compel as if fully restated herein. As demonstrated below, many of FES' responses to the Third and Fourth Discovery Requests are deficient and the Attorney Examiner should order that they be supplemented immediately.

A. FES' Inadequate Responses To The Third Discovery Requests

The following responses to Ohio Power's Third Discovery Requests are deficient and warrant an order compelling FES to supplement them immediately.

1. Interrogatory No. 3-1

In Interrogatory No. 3-1, Ohio Power requested that FES state any reason why it could not make offers to one or more retail customers or classes of customers during the period from June 1, 2012, through May 31, 2015, if FES paid a number of different prices for capacity. In response to the interrogatory, FES made the same boilerplate objections it has made repeatedly throughout the course of discovery and did not provide a meaningful response to the question asked.

2. Interrogatory Nos. 3-2 and 3-3

Interrogatory No. 3-2 requested that FES state whether it has analyzed, quantified, or calculated headroom or profitability at the capacity pricing levels listed in Interrogatory No. 3-1

or at any other levels. This request is relevant to the issue of whether Ohio Power's proposed capacity pricing structure would, as FES' witnesses claim, affect customers or inhibit FES' ability to compete in AEP Ohio's service territory. FES again levied its typical boilerplate objections, including an objection that the interrogatory purportedly seeks proprietary information. FES' contention that answering the interrogatory would force it to provide proprietary information is completely disingenuous. The interrogatory only asked FES to indicate whether or not it had performed any calculations or analyses and did not inquire as to the substance of any such calculations or analyses. Ohio Power counsel has also already signed a protective agreement to protect any sensitive information.

Interrogatory No. 3-3 requested, if FES affirmatively answered Interrogatory No. 3-2, that FES identify the levels or prices of capacity pricing that it has analyzed. FES incorporated its response to Interrogatory No. 3-2 by reference and did not provide the information requested or a valid explanation for its position that merely identifying the levels of pricing that it has analyzed would force to disclose proprietary information.

3. Interrogatory No. 3-4

Interrogatory No. 3-4 similarly sought information regarding whether FES has determined whether it has sufficient margin to avoid increasing retail rates for the same May 2012 through June 2015 period if it paid certain prices for capacity. FES again levied its same litany of objections and did not substantively respond to the interrogatory.

4. Interrogatory Nos. 3-8 and 3-9

FES made identical objections to Interrogatory Nos. 3-8(b) and 3-9(b) which, like other previous discovery requests, asked FES to identify certain customer contracts and provisions.

For the reasons set forth in Ohio Power's First and Second Motions to Compel, regarding FES' similar previous refusals, these responses are wholly insufficient.

5. Request for Admission Nos. 3-5 through 3-28

FES again made its boilerplate set of objections to Request for Admission Nos. 3-5 through 3-28, which sought relevant information regarding FES' ability to offer contracts to different classes of retail customers at a price lower than Ohio Power's price-to-compare at a number of different capacity prices.

6. Request for Production No. 3-3

Request for Production No. 3-3 provided: "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. FES claims that this request is overbroad, seeks confidential information, and is not reasonably calculated to lead to the discovery of admissible evidence. The request is reasonably tailored, specific, and demands a response. If there is a joint defense agreement protecting those communications, then that can be indicated and provided. If not then there is no claim to privilege of communications with another party or parties in this case.

B. FES' Inadequate Responses To The Fourth Discovery Requests

The following responses to Ohio Power's Fourth Discovery Requests are deficient and warrant an order compelling FES to supplement them immediately.

1. Interrogatory Nos. 4-1 through 4-10

Each of Interrogatory Nos. 4-1 through 4-10 asked FES an identical set of questions, each regarding a different one of ten customers randomly selected from a list and provided on a confidential attachment to the Fourth Discovery Requests. Each Interrogatory contained 8 subparts, seeking: (1) to know whether FES serves the listed customer; (2) a copy of the contract between FES and the customer; and (3) the rates currently charged or that would be charged under a number of circumstances. In response to each, FES levied objections nearly identical to its standard nonresponsive answer. Ohio Power is entitled to this information for the reasons set forth in its First and Second Motions to Compel. FES should be required to provide it immediately.

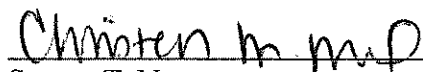
2. Interrogatory No. 4-11

FES also refused to answer Interrogatory No. 4-11, which requested that FES state how many customers it has entered into contracts with for retail service at higher-than-RPM pricing since September 7, 2011 (the date on which the Stipulation was entered in Case No. 11-346-EL-SSO, et. al). That information goes to the heart of FES' contention, made throughout this case, regarding the price that customers shopping prior to that date should be required to pay for capacity. This is an important factor that could be used in the cross-examination of FES witnesses to test their theories and statements on CRES actions above RPM rates. The fact that FES would like to argue there are circumstances relating to that is not a reason to not respond. FES should be ordered to provide it.

III. CONCLUSION

Ohio Power would prefer not to have to take this matter to the Attorney Examiners and not have to file motions to compel. It is Ohio Power's preference to use this time more productively developing focused cross-examination to crystallize issues for the Commission's consideration. But a denial of any information related to Ohio Power's relevant requests, in particular for a party with so much testimony in the case, leaves the Company with no choice but to seek the assistance of the Attorney Examiner. Ohio Power signed the same protective agreement it asks those receiving the information it provides to sign. The fact is the hearing has begun and is moving forward and AEP Ohio is not able to act as an equal party to the case without responses to its discovery requests on matters throughout FES' testimony. For the reasons set forth above, as well as those set forth in its First Motion to Compel and Second Motion to Compel, Ohio Power respectfully requests that the Attorney Examiner order FES to comply with its discovery obligations as a party in this case and compel FES to immediately supplement its responses to the requests identified above.

Respectfully submitted,



Steven T. Nourse
Matthew J. Satterwhite
Yazen Alami
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
yalami@aep.com

Daniel R. Conway
Christen M. Moore
Porter, Wright, Morris & Arthur, LLP
41 South High Street
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 was served by

E-mail upon counsel for all other parties of record in this case on this 18th 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.oh.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@kmlaw.com,
mjsatterwhite@aep.com,
ned.ford@fuse.net,
pfox@hilliardohio.gov,
ricks@ohanet.org,
stnourse@aep.com,
cathy@theoec.org,
dsullivan@nrdc.org,
achaedt@jonesday.com,
dakutik@jonesday.com,
haydenm@firstenergycorp.com,
dconway@porterwright.com,
jlang@calfee.com,
lmcbride@calfee.com,
tallexander@calfee.com,
etter@occ.state.oh.us,
grady@occ.state.oh.us,
small@occ.state.oh.us,
cynthia.a.fonner@constellation.com,
David.fein@constellation.com,
Dorothy.corbett@duke-energy.com,
Amy.spiller@duke-energy.com,
todonnell@bricker.com,
cmontgomery@bricker.com,
lmcaster@bricker.com,
mwarnock@bricker.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,
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,
afreinfeld@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,
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,
henryeckhart@aol.com,
laurac@chappelleconsulting.net,
whitt@whitt-sturtevant.com,

gthomas@gtpowergroup.com,
wmassey@cov.com,
sandy.grace@exeloncorp.com,
cmiller@szd.com,
ahaque@szd.com,
gdunn@szd.com,
mhpeticoff@vorys.com,
smhoward@vorys.com,
mjsettineri@vorys.com,
carolyn.flahive@thompsonhine.com,

thompson@whitt-sturtevant.com,
lkalepsclark@vorys.com,
bakahn@vorys.com,
Gary.A.Jeffries@dom.com,
Stephen.chriss@wal-mart.com,
dmeyer@kmlaw.com,
holly@raysmithlaw.com,
barthroyer@aol.com,
philip.sineneng@thompsonhine.com,

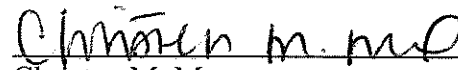

Christen M. Moore

Exhibit A

**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)	

AFFIDAVIT OF COUNSEL

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 April 9, 2012, Ohio Power's Third 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 Third Discovery Requests are attached to Ohio Power Company's Motion to Compel as Exhibit B. Ohio Power received FES' responses on April 16, 2012.
4. On April 10, 2012, Ohio Power's Fourth 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 FES and all other counsel of record.

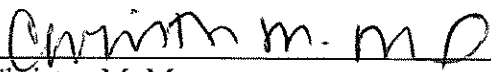
True and accurate copies of FES' responses to Ohio Power's Fourth Discovery Requests are attached to Ohio Power Company's Motion to Compel as Exhibit C. Ohio Power received FES' responses on April 17, 2012.

5. On April 17, 2012, counsel for Ohio Power sent email correspondence to counsel for FES, requesting that FES supplement and appropriately respond to those requests in Ohio Power's Third Discovery Requests that are the subject of Ohio Power Company's Motion to Compel. That same day, counsel for Ohio Power also informed the Attorney Examiners that its Motion to Compel would be forthcoming.

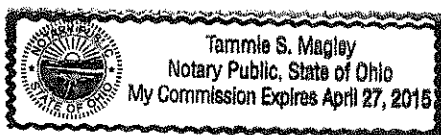
6. By return email that day, counsel for FES requested clarification regarding which responses to Ohio Power's Third Discovery Requests Ohio Power believes should be supplemented.

7. On April 18, 2012, I emailed counsel for FES and identified the specific requests in Ohio Power's Third Discovery Requests that Ohio Power would like FES to supplement. I also identified those requests in Ohio Power's Fourth Discovery Requests that are the subject of the present Motion to Compel and requested that FES timely supplement and appropriately respond to those requests.

FURTHER AFFIANT SAYETH NAUGHT.


Christen M. Moore

Sworn to and subscribed before me this 18th day of April, 2012.



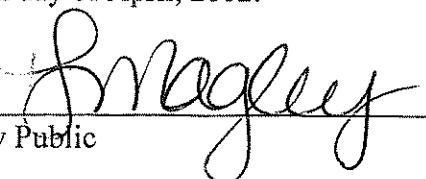

Notary Public

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)	

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

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

3-1. Is there any reason why you could not make offers to one or more retail customers or classes of retail customers if, during the period from June 1, 2012, through May 31, 2015:

- a. You paid \$146/MW-day for capacity?
- b. You paid \$255/MW-day for capacity?
- c. You paid \$355/MW-day for capacity?

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

PREPARED BY: Counsel.

3-2. Please state whether you have analyzed, quantified, and/or calculated headroom or profitability at the capacity pricing levels listed in Interrogatory No. 3-1, or at any other levels or prices of capacity pricing.

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

PREPARED BY: Counsel.

3-3. If your response to the previous interrogatory was in the affirmative, please identify all levels or prices of capacity pricing for which you have performed profitability analysis, quantification, or calculations, or for which you have calculated, analyzed, or quantified your headroom.

RESPONSE: See Response to Interrogatory No. 3-2.

3-4. Please state whether you have examined whether you have sufficient margin to avoid increasing retail rates at the following capacity charge levels during the period from June 1, 2012, through May 31, 2015:

- a. \$146/MW-day.
- b. \$255/MW-day.
- c. \$355/MW-day.

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

PREPARED BY: Counsel.

3-5. If you contend that AEP Ohio's charging a capacity charge of \$146/MW-day, during the period from June 1, 2012, through May 31, 2015, would not be a "just and reasonable" price for capacity, explain the basis for that contention.

RESPONSE: *See Testimony of FES witnesses Robert Stoddard, Jonathan Lesser, and Tony Banks, all of which were filed with the Commission in this proceeding.*

PREPARED BY: Counsel.

3-6. If you contend that AEP Ohio's charging a capacity charge of \$255/MW-day, during the period from June 1, 2012, through May 31, 2015, would not be a "just and reasonable" price for capacity, explain the basis for that contention.

RESPONSE: *See Testimony of FES witnesses Robert Stoddard, Jonathan Lesser, and Tony Banks, all of which were filed with the Commission in this proceeding.*

PREPARED BY: Counsel.

3-7. If you contend that AEP Ohio's charging a capacity charge of \$355/MW-day, during the period from June 1, 2012, through May 31, 2015, would not be a "just and reasonable" price for capacity, explain the basis for that contention.

RESPONSE: *See Testimony of FES witnesses Robert Stoddard, Jonathan Lesser, and Tony Banks, all of which were filed with the Commission in this proceeding.*

PREPARED BY: Counsel.

3-8. In your response to Interrogatory No. 6 of AEP Ohio's First Set of Discovery, you stated: "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."

a. Please explain the basis for the quoted statement.

b. Identify the contracts that "allow FES to pass through an increase in the cost of capacity" and the specific provisions of the contracts that allow FES to pass through such an increase.

c. Explain how some of FES's contracts allow FES to pass through an increase in the cost of capacity.

RESPONSE:

- a. **Objection.** FES objects to this Interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to its objections, FES states that its contracts do not specifically allow for an automatic increase based on any change in the price of capacity, but rather allow for an increase associated with a regulatory event.
- b. **Objection.** FES objects to this Interrogatory because it is overbroad and unduly burdensome, and because it seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.
- c. *See Response to Interrogatory 3-8(a).*

PREPARED BY: Counsel/Tony Banks.

3-9. In your response to Interrogatory No. 9 of AEP Ohio's First Set of Discovery, you stated: "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."

- a. Please explain the basis for the quoted statement.
- b. Identify the contracts that "could be terminated" under the circumstances described above and the specific provisions of those contracts that allow FES to terminate them.
- c. Explain how some of FES's contracts allow FES to terminate them under the circumstances described above.

RESPONSE:

- a. **Objection.** FES objects to this Interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to its objections, FES states that its contracts do not specifically allow for FES to unilaterally terminate a contract simply because the contract becomes uneconomical, but rather allow for termination based on a change in the economics of a contract due to a regulatory event.
- b. **Objection.** FES objects to this Interrogatory because it is overbroad and unduly burdensome, and because it seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence.

c. *See Response to Interrogatory 3-9(a).*

PREPARED BY: Counsel/Tony Banks.

REQUEST FOR ADMISSIONS

3-1. Admit that AEP Ohio's FRR obligation remains until mid-2015.

RESPONSE: FES admits that AEP Ohio elected to remain an FRR entity for PJM planning year 2014/2015.

3-2. Admit that AEP Ohio will remain an FRR entity through mid-2015.

RESPONSE: FES admits that AEP Ohio elected to remain an FRR entity for PJM planning year 2014/2015.

3-3. Admit that RPM pricing for a given time period could be higher than AEP Ohio's embedded costs.

RESPONSE: Admit.

3-4. Admit the RPM pricing for a given time period could be lower than AEP Ohio's embedded costs.

RESPONSE: Admit.

3-5. Admit that if Ohio Power provides capacity to you at \$146/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to Ohio Power's residential retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: Objections. FES objects to this Request because it is vague, ambiguous, capable of inconsistent interpretation and because it seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence. Further objecting, FES states that this Request is impossible to answer given that, among other things, AEP Ohio's price-to-compare for this time period is unknown.

3-6. Admit that if Ohio Power provides capacity to you at \$255/MW-day you will be able to offer contracts to Ohio Power's residential retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-7. Admit that if Ohio Power provides capacity to you at \$355/MW-day you will be able to offer contracts to Ohio Power's residential retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-8. Admit that if Ohio Power provides capacity to you at \$146/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to Ohio Power's commercial retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-9. Admit that if Ohio Power provides capacity to you at \$255/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to Ohio Power's commercial retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-10. Admit that if Ohio Power provides capacity to you at \$355/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to Ohio Power's commercial retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-11. Admit that if Ohio Power provides capacity to you at \$146/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to Ohio Power's industrial retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-12. Admit that if Ohio Power provides capacity to you at \$255/MW-day during the period from June 1, 2012, through May 31, 2015 you will be able to offer contracts to Ohio Power's industrial retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-153. Admit that if Ohio Power provides capacity to you at \$355/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to Ohio Power's industrial retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-14. Admit that if Ohio Power provides capacity to you at \$146/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to aggregation customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-15. Admit that if Ohio Power provides capacity to you at \$255/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to aggregation customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-16. Admit that if Ohio Power provides capacity to you at \$355/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to aggregation customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-17. Admit that if Ohio Power provides capacity to you at \$146/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to Ohio Power's residential retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-18. Admit that if Ohio Power provides capacity to you at \$255/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to Ohio Power's residential retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-19. Admit that if Ohio Power provides capacity to you at \$355/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to Ohio Power's residential retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-20. Admit that if Ohio Power provides capacity to you at \$146/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer

to Ohio Power's commercial retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-21. Admit that if Ohio Power provides capacity to you at \$255/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to Ohio Power's commercial retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-22. Admit that if Ohio Power provides capacity to you at \$355/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to Ohio Power's commercial retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-23. Admit that if Ohio Power provides capacity to you at \$146/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to Ohio Power's industrial retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-24. Admit that if Ohio Power provides capacity to you at \$255/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to Ohio Power's industrial retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-25. Admit that if Ohio Power provides capacity to you at \$355/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to Ohio Power's industrial retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-26. Admit that if Ohio Power provides capacity to you at \$146/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to aggregation customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: *See Response to Request for Admission No. 3-5.*

3-27. Admit that if Ohio Power provides capacity to you at \$255/MW-day during the period

from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to aggregation customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: See Response to Request for Admission No. 3-5.

3-28. Admit that if Ohio Power provides capacity to you at \$355/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to aggregation customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: See Response to Request for Admission No. 3-5.

3-29. Admit that a capacity charge of \$146/MW-day is just and reasonable.

RESPONSE: Deny.

3-30. Admit that a capacity charge of \$255/MW-day is just and reasonable.

RESPONSE: Deny.

3-31. Admit that a capacity charge of \$355/MW-day is just and reasonable.

RESPONSE: Deny.

REQUEST FOR PRODUCTION OF DOCUMENTS

3-1. Produce a copy of each document, including service contracts, you identified, consulted, referred to, or utilized in preparing your responses to Interrogatory Nos. 3-1 through 3-9.

RESPONSE: See Response to Interrogatory Nos. 3-1 through 3-9.

3-2. Produce copies of any and all analyses, quantifications, or calculations identified in response to Interrogatory No. 3-3.

RESPONSE: See Response to Interrogatory No. 3-3.

3-3. 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.

RESPONSE: Objection. FES objects to this Interrogatory because it is overbroad, unduly burdensome, seeks confidential information, is harassing in that it seeks

information within the possession, custody and control of AEP Ohio, and because it is not reasonably calculated to lead to the discovery of admissible evidence.

Dated: April 16, 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 Third Set of Discovery Requests* was served this 16th 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

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

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

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

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

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

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

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

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

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

Exhibit C

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)	

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

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 Fourth 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

- 4-1. Does FES currently serve customer "1" on confidential attachment 1?
- a. If the answer to 4-1 is affirmative, please provide a copy of the contract FES has with that customer?
 - b. If the answer to 4-1 is affirmative, please provide the rate or rates FES currently charges that customer?
 - c. If the answer to 4-1 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at the current RPM rate?
 - d. If the answer to 4-1 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at \$255/MW-day?
 - e. If the answer to 4-1 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at the current RPM rate?
 - f. If the answer to 4-1 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$255/MW-day?
 - g. If the answer to 4-1 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$355.79/MW-day?

RESPONSE: Objection. FES objects to this Interrogatory because it is overbroad, unduly burdensome, and an incomplete hypothetical, is not reasonably calculated to lead to the discovery of admissible evidence, particularly in its reference to capacity prices not at issue in this proceeding, and because it seeks confidential, proprietary trade secrets.

PREPARED BY: Counsel.

- 4-2. Does FES currently serve customer "2" on confidential attachment 1?
- a. If the answer to 4-2 is affirmative, please provide a copy of the contract FES has with that customer?

- b. If the answer to 4-2 is affirmative, please provide the rate or rates FES currently charges that customer?
- c. If the answer to 4-2 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at the current RPM rate?
- d. If the answer to 4-2 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at \$255/MW-day?
- e. If the answer to 4-2 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at the current RPM rate?
- f. If the answer to 4-2 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$255/MW-day?
- g. If the answer to 4-2 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$355.79/MW-day?

RESPONSE: Objection. FES objects to this Interrogatory because it is overbroad, unduly burdensome, and an incomplete hypothetical, is not reasonably calculated to lead to the discovery of admissible evidence, particularly in its reference to capacity prices not at issue in this proceeding, and because it seeks confidential, proprietary trade secrets.

PREPARED BY: Counsel.

4-3. Does FES currently serve customer "3" on confidential attachment 1?

- a. If the answer to 4-3 is affirmative, please provide a copy of the contract FES has with that customer?
- b. If the answer to 4-3 is affirmative, please provide the rate or rates FES currently charges that customer?
- c. If the answer to 4-3 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at the current RPM rate?

- d. If the answer to 4-3 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at \$255/MW-day?
- e. If the answer to 4-3 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at the current RPM rate?
- f. If the answer to 4-3 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$255/MW-day?
- g. If the answer to 4-3 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$355.79/MW-day?

RESPONSE: Objection. FES objects to this Interrogatory because it is overbroad, unduly burdensome, and an incomplete hypothetical, is not reasonably calculated to lead to the discovery of admissible evidence, particularly in its reference to capacity prices not at issue in this proceeding, and because it seeks confidential, proprietary trade secrets.

PREPARED BY: Counsel.

- 4-4. Does FES currently serve customer "4" on confidential attachment 1?
- a. If the answer to 4-4 is affirmative, please provide a copy of the contract FES has with that customer?
 - b. If the answer to 4-4 is affirmative, please provide the rate or rates FES currently charges that customer?
 - c. If the answer to 4-4 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at the current RPM rate?
 - d. If the answer to 4-4 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at \$255/MW-day?
 - e. If the answer to 4-4 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at the current RPM rate?

- f. If the answer to 4-4 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$255/MW-day?
- g. If the answer to 4-4 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$355.79/MW-day?

RESPONSE: Objection. Objection. FES objects to this Interrogatory because it is overbroad, unduly burdensome, and an incomplete hypothetical, is not reasonably calculated to lead to the discovery of admissible evidence, particularly in its reference to capacity prices not at issue in this proceeding, and because it seeks confidential, proprietary trade secrets.

PREPARED BY: Counsel.

- 4.5. Does FES currently serve customer "5" on confidential attachment 1?
 - a. If the answer to 4-5 is affirmative, please provide a copy of the contract FES has with that customer?
 - b. If the answer to 4-5 is affirmative, please provide the rate or rates FES currently charges that customer?
 - c. If the answer to 4-5 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at the current RPM rate?
 - d. If the answer to 4-5 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at \$255/MW-day?
 - e. If the answer to 4-5 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at the current RPM rate?
 - f. If the answer to 4-5 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$255/MW-day?
 - g. If the answer to 4-5 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$355.79/MW-day?

RESPONSE: Objection. FES objects to this Interrogatory because it is overbroad, unduly burdensome, and an incomplete hypothetical, is not reasonably calculated to lead to the discovery of admissible evidence, particularly in its reference to capacity prices not at issue in this proceeding, and because it seeks confidential, proprietary trade secrets.

PREPARED BY: Counsel.

- 4-6. Does FES currently serve customer "6" on confidential attachment 1?
- a. If the answer to 4-6 is affirmative, please provide a copy of the contract FES has with that customer?
 - b. If the answer to 4-6 is affirmative, please provide the rate or rates FES currently charges that customer?
 - c. If the answer to 4-6 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at the current RPM rate?
 - d. If the answer to 4-6 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at \$255/MW-day?
 - e. If the answer to 4-6 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at the current RPM rate?
 - f. If the answer to 4-6 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$255/MW-day?
 - g. If the answer to 4-6 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$355.79/MW-day?

RESPONSE: Objection. FES objects to this Interrogatory because it is overbroad, unduly burdensome, and an incomplete hypothetical, is not reasonably calculated to lead to the discovery of admissible evidence, particularly in its reference to capacity prices not at issue in this proceeding, and because it seeks confidential, proprietary trade secrets.

PREPARED BY: Counsel.

4-7. Does FES currently serve customer "7" on confidential attachment 1?

- a. If the answer to 4-7 is affirmative, please provide a copy of the contract FES has with that customer?
- b. If the answer to 4-7 is affirmative, please provide the rate or rates FES currently charges that customer?
- c. If the answer to 4-7 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at the current RPM rate?
- d. If the answer to 4-7 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at \$255/MW-day?
- e. If the answer to 4-7 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at the current RPM rate?
- f. If the answer to 4-7 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$255/MW-day?
- g. If the answer to 4-7 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$355.79/MW-day?

RESPONSE: Objection. FES objects to this Interrogatory because it is overbroad, unduly burdensome, and an incomplete hypothetical, is not reasonably calculated to lead to the discovery of admissible evidence, particularly in its reference to capacity prices not at issue in this proceeding, and because it seeks confidential, proprietary trade secrets.

PREPARED BY: Counsel.

4-8. Does FES currently serve customer "8" on confidential attachment 1?

- a. If the answer to 4-8 is affirmative, please provide a copy of the contract FES has with that customer?
- b. If the answer to 4-8 is affirmative, please provide the rate or rates FES currently charges that customer?

- c. If the answer to 4-8 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at the current RPM rate?
- d. If the answer to 4-8 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at \$255/MW-day?
- e. If the answer to 4-8 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at the current RPM rate?
- f. If the answer to 4-8 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$255/MW-day?
- g. If the answer to 4-8 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$355.79/MW-day?

RESPONSE: Objection. FES objects to this Interrogatory because it is overbroad, unduly burdensome, and an incomplete hypothetical, is not reasonably calculated to lead to the discovery of admissible evidence, particularly in its reference to capacity prices not at issue in this proceeding, and because it seeks confidential, proprietary trade secrets.

PREPARED BY: Counsel.

- 4-9. Does FES currently serve customer “9” on confidential attachment 1?
- a. If the answer to 4-9 is affirmative, please provide a copy of the contract FES has with that customer?
 - b. If the answer to 4-9 is affirmative, please provide the rate or rates FES currently charges that customer?
 - c. If the answer to 4-9 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at the current RPM rate?
 - d. If the answer to 4-9 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at \$255/MW-day?

- e. If the answer to 4-9 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at the current RPM rate?
- f. If the answer to 4-9 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$255/MW-day?
- g. If the answer to 4-9 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$355.79/MW-day?

RESPONSE: Objection. FES objects to this Interrogatory because it is overbroad, unduly burdensome, and an incomplete hypothetical, is not reasonably calculated to lead to the discovery of admissible evidence, particularly in its reference to capacity prices not at issue in this proceeding, and because it seeks confidential, proprietary trade secrets.

PREPARED BY: Counsel.

4-10. Does FES currently serve customer "10" on confidential attachment 1?

- a. If the answer to 4-10 is affirmative, please provide a copy of the contract FES has with that customer?
- b. If the answer to 4-10 is affirmative, please provide the rate or rates FES currently charges that customer?
- c. If the answer to 4-10 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at the current RPM rate?
- d. If the answer to 4-10 is affirmative, what rate or rates would FES charge that customer in May if the capacity to serve that customer was priced at \$255/MW-day?
- e. If the answer to 4-10 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at the current RPM rate?
- f. If the answer to 4-10 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$255/MW-day?

- g. If the answer to 4-10 is affirmative, what rate or rates would FES charge that customer in June if the capacity to serve that customer was priced at \$355.79/MW-day?

RESPONSE: Objection. FES objects to this Interrogatory because it is overbroad, unduly burdensome, and an incomplete hypothetical, is not reasonably calculated to lead to the discovery of admissible evidence, particularly in its reference to capacity prices not at issue in this proceeding, and because it seeks confidential, proprietary trade secrets.

PREPARED BY: Counsel.

4-11 How many customers has FES signed up that are subject to higher than RPM-based pricing since September 7, 2011? Please quantify the number. Please provide the assumed capacity prices.

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

PREPARED BY: Counsel.

REQUEST FOR ADMISSIONS

4-1. Admit that if FES has to pay anything higher than RPM-based pricing for capacity to serve a contract, that it will withdraw from each and every contract subject to higher than RPM-based pricing.

RESPONSE: Objection. FES objects to this Request because it is not reasonably calculated to lead to the discovery of admissible evidence, and because it seeks confidential and proprietary trade secrets. Further objecting, FES states that it cannot respond to this Request because it seeks FES' position at a future date and time that would be subject to a number of different factors that cannot be predicted at this time.

4-2. Admit that if FES will not seek to market to any other customers if it is required to pay anything higher than RPM-based pricing for capacity to serve a contract.

RESPONSE: Objection. FES objects to this Request because it is not reasonably calculated to lead to the discovery of admissible evidence, and because it seeks confidential and proprietary trade secrets. Further objecting, FES states that it cannot respond to this Request because it seeks FES' position at a future date and time that would be subject to a number of different factors that cannot be predicted at this time.

REQUEST FOR PRODUCTION OF DOCUMENTS

- 4-1. Provide a copy of any and all workpapers and justification for the \$100 million in annual savings reflected on line 3 page 5 of the prefiled testimony of FES witness Banks?

RESPONSE: See workpapers of Tony C. Banks, which were previously produced to AEP Ohio.

- 4-2. Provide a copy of the contract language FES witness Banks references on page 7 lines 19-21 of his testimony.

RESPONSE: Objection. FES objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, because it seeks confidential, proprietary information and to the extent it assumes that there is form contract language. Subject to its objections, FES states that, upon information and belief, AEP Ohio already possesses a form of the contract language referenced by Mr. Banks' testimony.

- 4-3. Please provide a copy of all contracts and information referenced in Interrogatories 4-1 through 4-10.

RESPONSE: See Responses to Interrogatory Nos. 4-1 through 4-10.

Dated: April 17, 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 Fourth Set of Discovery Requests* was served this 17th 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

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

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

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

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

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

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

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

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

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@kkmklaw.com
dmeyer@kkmklaw.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
mhpeticoff@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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Summary: Motion Ohio Power Company's Motion to Compel electronically filed by Ms. Christen M Moore on behalf of Ohio Power Company