

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Edison Company, The Cleveland Electric	)	
Illuminating Company and The Toledo	)	
Edison Company for Authority to Provide	)	Case No. 12-1230-EL-SSO
for a Standard Service Offer Pursuant to	)	
R.C. § 4928.143 in the Form of an Electric	)	
Security Plan.	)	

---

**REPLY BRIEF OF  
THE CITY OF AKRON**

---

Cheri B. Cunningham  
Director of Law  
City of Akron  
161 South High Street, Suite 202  
Akron, OH 44308  
ccunningham@AkronOhio.gov

Joseph Olikier  
McNees Wallace & Nurick LLC  
21 E. State Street, 17<sup>th</sup> Floor  
Columbus, OH 43215  
joliker@mwncmh.com

**June 29, 2012**

**Attorneys for the City of Akron**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Edison Company, The Cleveland Electric	)	
Illuminating Company and The Toledo	)	
Edison Company for Authority to Provide	)	Case No. 12-1230-EL-SSO
for a Standard Service Offer Pursuant to	)	
R.C. § 4928.143 in the Form of an Electric	)	
Security Plan.	)	

---

**REPLY BRIEF OF  
THE CITY OF AKRON**

---

On April 13, 2012, Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("TE") (collectively, "FirstEnergy") filed an Application to establish a standard service offer ("SSO") in the form of an electric security plan ("ESP"). Concurrently with the filing of the Application, FirstEnergy and several signatory parties filed a Stipulation and Recommendation ("Stipulation") to set forth their understanding and agreement and to recommend approval of the Stipulation.

The Commission held hearings on the Application from June 4, 2012 to June 8, 2012. The Attorney Examiner ordered that Initial Briefs be filed on June 22, 2012 and Reply Briefs be filed on June 29, 2012.

The City of Akron ("Akron") is one of the signatories to the Stipulation and files this Reply Brief to address certain incorrect statements regarding the application of the three-part test as it is applied to settlements like the Stipulation.<sup>1</sup> More specifically,

---

<sup>1</sup> Akron's failure to address a position raised in this proceeding should not be interpreted as acceptance or support of that position.

Akron files this Reply Brief to address the positions of the Northeast Ohio Public Energy Council (“NOPEC”) and Northwest Ohio Aggregation Coalition (“NOAC”), Office of the Ohio Consumers’ Counsel (“OCC”), and AEP Retail Energy Partners LLC (“AEP Retail”) (collectively, “Non-Signatory Parties”). The Initial Briefs filed by the Non-Signatory Parties contain a common flaw — they claim that the Stipulation was not the product of serious bargaining because no “residential party” signed the Stipulation. This argument misstates the first prong of the three-part test the Commission has long applied to evaluate settlements like the Stipulation.

As mentioned above, the Public Utilities Commission of Ohio (“Commission”) reviews settlements under a three-part test. Under the three-part test, the Commission must determine whether the settlement: (i) is product of serious bargaining among capable, knowledgeable parties; (ii) benefits ratepayers and the public interest; and (iii) violates any important regulatory principles or practices.<sup>2</sup> Under the first prong, the Commission evaluates the quality of the process through which settlement was reached. This quality assessment is not dependent upon determinations regarding which parties did or did not sign the settlement.

In *Time Warner AXS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 241 (1996), the Supreme Court of Ohio indicated that a settlement is not the product of serious bargaining if an entire customer class is excluded from settlement negotiations. But the Non-Signatory Parties do not claim that the residential class was excluded from settlement negotiations, nor can they make that claim. OCC, NOPEC, and NOAC were

---

<sup>2</sup> *Office of Consumers’ Counsel v. PUCO* (1992), 64 Ohio St.3d 123, 125-126. The Ohio Supreme Court has endorsed the Commission’s analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities.

each contacted prior to execution of the settlement and given the opportunity to review and provide input regarding the proposed settlement before it was finalized and submitted to the Commission.<sup>3</sup> They and the other parties who have participated in this proceeding have been involved in many cases before the Commission, including a number of cases involving ESPs. Rather than claiming they were excluded, the Non-Signatory Parties claim that because OCC, NOPEC, and NOAC did not sign the Stipulation, the Stipulation is not a product of bargaining among knowledgeable parties. Such an interpretation of the first prong of the three-part test cannot be reconciled with precedent. Like other knowledgeable parties, the evidence shows that OCC, NOPEC, and NOAC had a meaningful seat at the table during negotiations and that is what matters for purposes of the first prong of the three-part test.

Regardless, the Non-Signatory Parties overplay their claim regarding residential support for the Stipulation. First, as NOPEC/NOAC witness Frye admitted, municipalities may represent residential customers.<sup>4</sup> In fact, NOPEC and NOAC would not have any connection to residential and other non-mercantile customers but for their agency relationship with units of local government.<sup>5</sup> Akron, as a charter city with home rule authority, directly represents the interests of its citizens, including those who are residential electric customers. Unlike OCC, NOPEC and NOAC, Akron also has the authority to set rates and charges for utility service provided by investor-owned utilities within the City of Akron. Additionally, Akron has actively participated in utility rate

---

<sup>3</sup> Tr. Vol. III at 25, 26, 101.

<sup>4</sup> Tr. Vol. III at 27-29.

<sup>5</sup> *Id.*

proceedings affecting the interests of residential and commercial customers that live or reside within Akron.<sup>6</sup>

Akron does not seek to diminish or foreclose the opportunity for OCC, NOPEC, and NOAC to exercise their rights as Non-Signatory Parties. But, there is no legitimate basis for the Non-Signatory Parties to claim that Akron's support of the package contained in the Stipulation causes the Non-Signatory Parties to become the only representatives of residential customers or entitles them to more relief than the merits would otherwise allow.<sup>7</sup>

Akron urges the Commission to approve the Stipulation which, among other things, is the product of serious bargaining among knowledgeable parties.

Respectfully submitted,

/s/ Joseph E. Olikier  
Cheri B. Cunningham  
Director of Law, City of Akron  
161 South High Street, Suite 202  
Akron, OH 44308  
ccunningham@AkronOhio.gov

Joseph Olikier  
McNees Wallace & Nurick LLC  
21 E. State Street, 17<sup>th</sup> Floor  
Columbus, OH 43215  
joliker@mwncmh.com

**Attorneys for the City of Akron**

---

<sup>6</sup> See *In the Matter of the Application of Akron Thermal, Limited Partnership for an Emergency Increase in its Rates and charges for Steam and Hot Water Service*, Case Nos. 09-453-HT-AEM, et al., Opinion and Order (September 2, 2009); *In The Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish A Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order (August 25, 2010).

<sup>7</sup> Akron would also note the recent corrections that the Non-Signatory Parties made to their public claims regarding the effect of the Stipulation on residential customers suggest that the Non-Signatory Parties' understanding of the Stipulation may still be evolving.

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Reply Brief of the City of Akron* was served upon the following parties of record this 29<sup>th</sup> day of June 2012, *via* hand-delivery, electronic transmission, or first class mail, U.S. postage prepaid.

/s/ Joseph E. Olikar

JOSEPH E. OLICKER

James W. Burk, Counsel of Record  
Arthur E. Korkosz  
FIRSTENERGY SERVICE COMPANY  
76 South Main Street  
Akron, OH 44308  
burkj@firstenergycorp.com  
korkosza@firstenergycorp.com

James F. Lang  
Laura C. McBride  
CALFEE, HALTER & GRISWOLD LLP  
1405 East Sixth Street  
Cleveland, OH 44114  
jlang@calfee.com  
lmcbride@calfee.com

David A. Kutik  
JONES DAY  
901 Lakeside Avenue  
Cleveland, OH 44114  
dakutik@jonesday.com

**COUNSEL FOR OHIO EDISON COMPANY, THE  
CLEVELAND ELECTRIC ILLUMINATING  
COMPANY AND THE TOLEDO EDISON  
COMPANY**

Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street  
PO Box 1793  
Findlay, OH 45839-1793  
cmooney2@columbus.rr.com

**COUNSEL FOR OHIO PARTNERS FOR  
AFFORDABLE ENERGY**

Joseph M. Clark, Counsel of Record  
Direct Energy  
6641 North High Street, Suite 200  
Worthington, OH 43085  
jmclark@vectren.com

Asim Z. Haque  
Christopher L. Miller  
Gregory H. Dunn  
Alan G. Starkoff  
Ice Miller LLP  
250 West Street  
Columbus, OH 43215  
christopher.miller@icemiller.com  
asim.haque@icemiller.com  
Gregory.dunn@icemiller.com

**COUNSEL FOR DIRECT ENERGY SERVICES,  
LLC AND DIRECT ENERGY BUSINESS, LLC**

Larry S. Sauer, Counsel of Record  
Terry L. Etter  
Melissa R. Yost  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
sauer@occ.state.oh.us  
etter@occ.state.oh.us  
yost@occ.state.oh.us

**COUNSEL FOR THE OFFICE OF THE OHIO  
CONSUMERS' COUNSEL**

Vincent Parisi  
Matthew White  
Interstate Gas Supply, Inc.  
6100 Emerald Parkway  
Dublin, OH 43016  
vparisi@igsenergy.com  
mswhite@igsenergy.com

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

**COUNSEL FOR INTERSTATE GAS SUPPLY,  
INC.**

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

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

Stephen Bennett  
Retail Policy Manager  
Exelon Generation Company, LLC  
300 Exelon Way  
Kennett Square, PA 19348  
Stephen.bennett@exeloncorp.com

David I. Fein  
Vice President, State Government Affairs-  
East  
Exelon Corporation  
550 West Washington Boulevard, Suite 300  
Chicago, IL 60661  
David.fein@constellation.com

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

David M. Stahl (for Exelon)  
Eimer Stahl LLP  
224 S. Michigan Avenue, Suite 1100  
Chicago, IL 60604  
dstahl@eimerstahl.com

**COUNSEL FOR EXELON GENERATION  
COMPANY, LLC AND CONSTELLATION  
NEWENERGY, INC.**

Christopher J. Allwein, Counsel of Record  
Williams, Allwein and Moser, LLC  
1373 Grandview Avenue, Suite 212  
Columbus, OH 43212  
callwein@wamenergylaw.com

Robb W. Kapla  
Sierra Club  
Environmental Law Program  
85 Second Street, Second Floor  
San Francisco, CA 94105-3459  
Robb.kapla@sierraclub.org

**COUNSEL FOR NATURAL RESOURCES  
DEFENSE COUNCIL AND THE SIERRA CLUB**

Leslie A. Kovacik  
City of Toledo  
420 Madison Avenue, Suite 100  
Toledo, OH 43604-1219  
leslie.kovacik@toledo.oh.gov

Thomas R. Hays  
John Borrell  
Lucas County Prosecutor's Office  
700 Adams Street, Suite 251  
Toledo, OH 43604  
Trhayslaw@gmail.com

**COUNSEL FOR THE NORTHWEST OHIO  
AGGREGATION COALITION**

Glenn S. Krassen  
Bricker & Eckler LLP  
1375 East Ninth Street, Suite 1500  
Cleveland, OH 44114  
gkrassen@bricker.com

Matthew W. Warnock  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215  
mwarnock@bricker.com

**COUNSEL FOR NORTHEAST OHIO PUBLIC  
ENERGY COUNCIL**

Judi L. Sobecki  
Randall V. Griffin  
The Dayton Power and Light Company  
1065 Woodman Drive  
Dayton, OH 45432  
Judi.sobecki@DPLINC.com  
Randall.griffin@DPLINC.com

**COUNSEL FOR THE DAYTON POWER AND  
LIGHT COMPANY**

David F. Boehm  
Michael L. Kurtz  
Jody M. Kyler  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202  
dboehm@BKLawfirm.com  
mkurtz@BKLawfirm.com  
jklyer@BKLawfirm.com

**COUNSEL FOR OHIO ENERGY GROUP**

Lisa G. McAlister, Counsel of Record  
J. Thomas Siwo  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215-4291  
lmcAlister@bricker.com  
tsiwo@bricker.com

**COUNSEL FOR THE OMA ENERGY GROUP**

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

**COUNSEL FOR AEP RETAIL ENERGY  
PARTNERS, LLC**

Trent Dougherty, Counsel of Record  
Cathryn N. Loucas  
The Ohio Environmental Council  
1207 Grandview venue, Suite 201  
Columbus, OH 43212-3449  
Trent@theoec.org  
Cathy@theoec.org

**COUNSEL FOR THE OHIO ENVIRONMENTAL  
COUNCIL**

Jeanne W. Kingery  
Associate General Counsel  
Amy B. Spiller  
Deputy General Counsel  
Duke Energy Business Services LLC  
139 East Fourth Street, 1303-Main  
Cincinnati, OH 45202  
Jeanne.Kingery@duke-energy.com  
Amy.spiller@duke-energy.com

**COUNSEL FOR DUKE ENERGY COMMERCIAL  
ASSET MANAGEMENT, INC.**

Amy B. Spiller, Counsel of Record  
Deputy General Counsel  
Jeanne W. Kingery  
Associate General Counsel  
Duke Energy Business Services LLC  
139 East Fourth Street  
Cincinnati, OH 45202  
Amy.spiller@duke-energy.com  
Jeanne.Kingery@duke-energy.com

**COUNSEL FOR DUKE ENERGY RETAIL SALES,  
LLC**



Matthew J. Satterwhite  
Steven T. Nourse  
Marilyn McConnell  
American Electric Power Service  
Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, OH 43215  
mjsatterwhite@aep.com  
stnourse@aep.com  
mmconnell@aep.com

**COUNSEL FOR OHIO POWER COMPANY**

M. Howard Petricoff  
Michael J. Settineri  
Lija Kaleps-Clark  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
PO Box 1008  
Columbus OH 43216-1008  
mhpetricoff@vorys.com  
mjsettineri@vorys.com  
lkalepsclark@vorys.com

**COUNSEL FOR RETAIL ENERGY SUPPLY  
ASSOCIATION**

Gregory J. Poulos  
EnerNOC, Inc.  
471 E. Broad Street, Suite 1520  
Columbus, OH 43215  
gpoulos@enernoc.com

**COUNSEL FOR ENERNOC, INC.**

Theodore S. Robinson  
Citizen Power, Inc.  
2121 Murray Avenue  
Pittsburgh, PA 15217  
robinson@citizenpower.com

**COUNSEL FOR CITIZEN POWER, INC.**

Craig I. Smith  
15700 Van Aken Blvd, Suite #26  
Cleveland, OH 44120  
vttpmlc@aol.com

**COUNSEL FOR MATERIALS SCIENCE  
CORPORATION**

Mark S. Yurick  
Taft Stettinius & Hollister LLP  
65 E. State Street, Suite 1000  
Columbus, OH 43215-4213  
myurick@taftlaw.com

**COUNSEL FOR THE KROGER CO.**

Douglas M. Mancino  
McDermott Will & Emery LLP  
2049 Century Park East, Suite 3800  
Los Angeles, CA 90067-3218  
dmancino@mwe.com

Gregory K. Lawrence  
McDermott Will & Emery LLP  
28 State Street  
Boston, MA 02109  
glawrence@mwe.com

**COUNSEL FOR MORGAN STANLEY CAPITAL  
GROUP INC.**

Glenn S. Krassen  
Bricker & Eckler LLP  
1001 Lakeside Avenue East, Suite 1350  
Cleveland, OH 44114-1142  
gkrassen@bricker.com

Matthew W. Warnock  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215  
mwarnock@bricker.com

**COUNSEL FOR OHIO SCHOOLS COUNCIL**

Morgan E. Parke, Counsel of Record  
Michael R. Beiting  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308  
mparke@firstenergycorp.com  
beitingm@firstenergycorp.com

**COUNSEL FOR FIRSTENERGY SOLUTIONS  
CORP. ("FES")**

C. Todd Jones  
Gregory H. Dunn  
Christopher L. Miller  
Asim Z. Haque  
Ice Miller LLP  
250 West Street  
Columbus, OH 43215  
Gregory.dunn@icemiller.com  
christopher.miller@icemiller.com  
asim.haque@icemiller.com

**COUNSEL FOR THE ASSOCIATION OF  
INDEPENDENT COLLEGES AND UNIVERSITIES  
OF OHIO AND THE CITY OF GROVE CITY,  
OHIO**

Dane Stinson  
Bailey Cavalieri LLC  
One Columbus  
10 West Broad Street, Suite 2100  
Columbus, OH 43215  
dane.stinson@baileycavalieri.com

**COUNSEL FOR GEXA ENERGY-OHIO, LLC**

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

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

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

**COUNSEL FOR PJM POWER PROVIDERS  
GROUP ("P3")**

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

**COUNSEL FOR VIRIDITY ENERGY, INC.  
(PARTICIPANT IN "DEMAND RESPONSE  
COALITION")**

Justin M. Vickers  
Robert Kelter  
Environmental Law & Policy Center  
35 East Wacker Drive, Suite 1600  
Chicago, IL 60601  
jvickers@elpc.org  
rkelter@elpc.org

**COUNSEL FOR ENVIRONMENTAL LAW &  
POLICY CENTER ("ELPC")**

Matthew R. Cox  
McDonald Hopkins LLC  
600 Superior Avenue, East  
Suite 2100  
Cleveland, OH 44114  
mcox@mcdonaldhopkins.com

**COUNSEL FOR COUNCIL OF SMALLER  
ENTERPRISES ("COSE")**

Garrett A. Stone  
Michael K. Lavanga  
Brickfield, Burchette, Ritts & Stone, P.C.  
1025 Thomas Jefferson Street, NW  
8<sup>th</sup> Floor, West Tower  
Washington, DC 20007  
gas@bbrslaw.com  
mkl@bbrslaw.com

**COUNSEL FOR NUCOR STEEL MARION, INC.**

Robert J. Triozzi, Director of Law  
City of Cleveland  
Cleveland City Hall  
601 Lakeside Avenue, Room 106  
Cleveland, OH 44114-1077  
RTriozzi@city.cleveland.oh.us

**COUNSEL FOR THE CITY OF CLEVELAND**

Richard L. Sites  
General Counsel & Senior Director of  
Health Policy  
Ohio Hospital Association  
155 E. Broad Street, 15<sup>th</sup> Floor  
Columbus, OH 43215-3620  
ricks@ohanet.org

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

**COUNSEL FOR THE OHIO HOSPITAL  
ASSOCIATION ("OHA")**

Samuel C. Randazzo (Counsel of Record)  
Frank P. Darr  
Matthew R. Pritchard  
MCNEES WALLACE & NURICK LLC  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, OH 43215-4228  
sam@mwncmh.com  
fdarr@mwncmh.com  
mpritchard@mwncmh.com

**COUNSEL FOR INDUSTRIAL ENERGY USERS-  
OHIO**

Christopher Horn  
3030 Euclid Avenue, Suite 406  
Cleveland, OH 44118  
chorn@mcserryllaw.com

**COUNSEL FOR THE EMPOWERMENT CENTER  
OF GREATER CLEVELAND, CLEVELAND  
HOUSING NETWORK AND CONSUMERS  
PROTECTION ASSOCIATION**

joe

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

**COUNSEL FOR THE CLEVELAND MUNICIPAL  
SCHOOL DISTRICT**

Thomas McNamee  
Public Utilities Section  
Ohio Attorney General's Office  
180 East Broad Street, 6th Floor  
Columbus, OH 43215  
thomas.mcnamee@puc.state.oh.us

**COUNSEL FOR THE STAFF OF THE PUBLIC  
UTILITIES COMMISSION OF OHIO**

Mandy Willey  
Gregory Price  
Public Utilities Commission of Ohio  
180 East Broad Street, 12th Floor  
Columbus, OH 43215  
mandy.willey@puc.state.oh.us  
greg.price@puc.state.oh.us

**ATTORNEY EXAMINERS**

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**6/29/2012 2:41:46 PM**

**in**

**Case No(s). 12-1230-EL-SSO**

Summary: Brief Reply Brief of the City of Akron electronically filed by Mr. Joseph E. Olier on behalf of City of Akron