

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

In the Matter of the Application of)	
Columbus Southern Power Company and)	
Ohio Power Company for Authority to)	Case No. 11-346-EL-SSO
Establish a Standard Service Offer)	Case No. 11-348-EL-SSO
Pursuant to §4928.143, Ohio Revs. Code,)	
in the Form of an Electric Security Plan.)	
In the Matter of the Application of)	
Columbus Southern Power Company and)	Case No. 11-349-EL-AAM
Ohio Power Company for Approval of)	Case No. 11-350-EL-AAM
Certain Accounting Authority.)	

**FIRSTENERGY SOLUTIONS CORP.'S
MEMORANDUM CONTRA THE APPLICATIONS FOR REHEARING
FILED BY AEP OHIO AND OTHER INTERVENORS**

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I. INTRODUCTION

The Commission should reject certain arguments raised in the Applications for Rehearing filed by Ohio Power Company (“AEP Ohio”), the Office of Ohio Consumers’ Counsel and the Appalachian Peace and Justice Network (“OCC/APJN”), and the Ohio Energy Group (“OEG”). The arguments discussed herein represent improper misreadings of the Commission’s August 8, 2012 Opinion and Order (the “Order”), misunderstandings of the bases for the Commission’s authority, or wholly new proposals that are unsupported by record evidence.

II. ARGUMENT

A. The Commission’s Quantitative Calculation Of AEP Ohio’s ESP As Compared To An MRO Is Not Overstated; It Remains Understated.

AEP Ohio argues that the Commission’s Order “overstated” the cost of the RSR because the Commission included in its RSR calculation an estimate of costs that will be imposed on customers prior to June 2013.¹ AEP Ohio argues that the Commission should have ignored those costs because the Commission limited the time period of its ESP v. MRO price test to June 1, 2013 through May 31, 2015.² However, as explained in FES’ Application for Rehearing, Ohio law requires that all of the costs of an ESP must be considered by the Commission in determining whether an ESP satisfies the statutory test.³ The Commission’s decision to ignore over 25% of the ESP’s costs in conducting its price test was misleading, unlawful and unreasonable.⁴ If the Commission similarly ignored over 25% of the RSR’s costs, it, too, would

¹ See AEP Ohio Application for Rehearing (“AEP Ohio App.”), pp. 45-47.

² AEP Ohio App., p. 46; Order, p. 74 (stating that the Commission must “begin evaluating the statutory price test analysis approximately ten months from the present” and limiting the price test analysis to a comparison of the ESP versus an MRO between June 1, 2013 and May 31, 2015).

³ See R.C. § 4928.143(C)(1).

⁴ See FES Application for Rehearing (“FES App.”), pp. 6-7 (noting that if, under an MRO, time was warranted to implement the auctions, the Commission should have taken into account the extension of AEP Ohio’s current ESP, which would have continued until the MRO prices were established); *see also* R.C. § 4928.143(C)(2)(b).

be misleading, unlawful and unreasonable. AEP Ohio has already instituted the RSR and customers have already started paying for the RSR.⁵ Thus, there is no basis on which to disregard the tens of millions of dollars⁶ that AEP Ohio's customers will pay AEP Ohio under the RSR prior to June 2013.

AEP Ohio also argues that the Commission improperly incorporated the costs of the RSR for June 2012 through August 2012, before the RSR was implemented in September 2012.⁷ AEP Ohio argues that as a result of this miscalculation, the RSR's cost was overstated by \$30 million and the overall cost of the ESP should be reduced accordingly.⁸ Of course, a reduction of \$30 million from the ESP's \$386 million price tag is immaterial to the results of the test. It does not serve to make the ESP more favorable in the aggregate than the expected results of an MRO. Regardless, any such correction would not change the fact that AEP Ohio's ESP, as modified by the Commission, would cost AEP Ohio's customers more than the \$386 million that the Commission calculated because the Commission's analysis included at least one other error that understated the cost impact of the ESP by more than this \$30 million.

The Commission incorporated \$188.8/MW-day as the capacity price charged to winning bidders in an MRO competitive bid process ("CBP").⁹ As discussed in FES' Application for Rehearing, this was improper because Ohio law requires a market-based price – the PJM

⁵ AEP Ohio filed compliance tariffs, including the RSR, to be effective with the first billing cycle of September 2012.

⁶ AEP Ohio App., p. 46 (calculating the "\$120 million reduction to the cost of the RSR that results from determining the RSR's cost for the 24 month period, June 2013 through May 2015").

⁷ AEP Ohio App., pp. 46-47.

⁸ AEP Ohio App., p. 47.

⁹ Order, p. 74.

Reliability Pricing Model (“RPM”) price – for capacity provided in an MRO CBP.¹⁰ Correcting the Commission’s analysis to properly include market prices for capacity under an MRO reflects that the incremental costs of the ESP over an MRO increase by \$47 million.¹¹ Therefore, even with AEP Ohio’s correction to the Commission’s calculation of the cost of the RSR, the ESP as modified by the Commission would remain \$403 million¹² more expensive than the expected results of an MRO. Because AEP Ohio’s plan fails the ESP v. MRO price test by hundreds of millions of dollars, it cannot be approved.

B. AEP Ohio Is Not Guaranteed Any Specific Level Of Generation-Related Revenue And, Therefore, Its Request To Increase The Target ROE Is Improper.

AEP Ohio argues that the Commission should further increase the revenue AEP Ohio would receive through the RSR by using a higher, 10.5% target return on equity (“ROE”), as this is in line with the results of other recent AEP Ohio proceedings and would provide AEP Ohio with an additional \$309 million in revenues.¹³ However, any arguments about whether a 9.5%, 10.2% or 10.5% ROE is appropriate are irrelevant. As discussed in FES’ Application for Rehearing, Ohio law does not authorize the Commission to provide AEP Ohio with a revenue

¹⁰ See FES App., pp. 7-10; R.C. § 4928.142(C)(3) (providing that “all costs incurred by the electric distribution utility as a result of . . . procuring generation service to provide the [SSO], including the costs of energy and capacity . . . procured as a result of the competitive bidding process” shall be recovered by the electric distribution utility under the MRO) (emphasis added); see also Direct Testimony of Robert Stoddard on behalf of FES (“Stoddard Direct”), pp. 5-6.

¹¹ See FES App., p. 10, fn. 30.

¹² The Commission calculated that the modified ESP would cost \$386 million more than the expected results of an MRO. Order, p. 75. Subtracting AEP Ohio’s correction of \$30 million for the cost of the RSR between June 2012 and August 2012, but adding the \$47 million in additional cost over an MRO when incorporating RPM prices for capacity, would result in a net increase of \$17 million to the Commission’s calculation based on these two modifications alone.

¹³ See AEP Ohio App., pp. 21-22. AEP Ohio’s Application requested a target ROE of 10.5%, which would result in a revenue target of \$929 million -- or \$103 million more than the Commission’s \$826 million revenue target, for each year of the ESP.

guarantee or revenue stream targeted to a certain ROE.¹⁴ To the contrary, Ohio law requires that AEP Ohio's generation service stand on its own in the competitive market.¹⁵ Thus, AEP Ohio's argument that a 10.5% ROE should be used for "the combined operations of AEP Ohio, including generation, transmission, and distribution" because it is in line with the 10%/10.3% ROEs used in AEP Ohio's distribution rate case is meaningless and simply illustrative of AEP Ohio's improper goals.¹⁶ Only AEP Ohio's distribution service is entitled to cost-based rate regulation that takes such measures into account.¹⁷ The RSR cannot be approved and must be eliminated from the ESP because: the RSR reflects improper guaranteed generation-related revenues; the RSR is not authorized by R.C. § 4928.143(B)(2); and the RSR provides unlawful transition-related revenues.¹⁸

C. The Challenges To The State Compensation Mechanism's Deferral Provision Fail.

1. Neither Ohio law nor the RAA preclude the state compensation mechanism's deferral, which reflects a subsidy to AEP Ohio properly payable by all of AEP Ohio's customers, rather than a wholesale charge.

Certain intervenors argue that the deferred portion of the state compensation mechanism is unlawful and/or can only be charged to CRES providers or shopping customers.¹⁹ For example, several parties challenge the Commission's authority to approve the nonbypassable recovery of the deferral by arguing that it is an improper wholesale rate included in a retail

¹⁴ See FES App., pp. 10-12.

¹⁵ See, e.g., R.C. § 4928.17 (requiring separate accounting functions for competitive and noncompetitive services).

¹⁶ See AEP Ohio App., p. 21 (emphasis added).

¹⁷ R.C. §§ 4928.05, 4928.03; see generally R.C. Chpt. 4909.

¹⁸ See FES App., pp. 10-15; R.C. §§ 4928.38 (prohibiting the Commission from authorizing an EDU to recover "transition revenues or equivalent revenues" after the close of the market development period), 4928.143(B)(2).

¹⁹ See, e.g., OCC/APJN App., p. 68; OEG App., p. 8.)

charge, the RSR.²⁰ OCC/APJN and OEG argue that CRES providers should be charged the state compensation mechanism's full \$188.88/MW-day for capacity because CRES providers are the "cost causers"²¹ and because the Commission purportedly does not have the authority to defer a portion of the \$188.88/MW-day in an ESP.²² AEP Ohio argues that the Commission should confirm that CRES providers would be liable for the full \$188.88/MW-day capacity price if the deferral is later removed or overruled.²³ None of these arguments have merit.

The state compensation mechanism's deferral of the difference between \$188.88/MW-day and the RPM price charged for capacity to CRES providers is a subsidy to AEP Ohio, not a "wholesale rate" or a CRES provider "cost." In the Capacity Case Order, the Commission recognized that RPM prices are the appropriate price for Ohio's competitive market. As thoroughly discussed in connection with that proceeding, Ohio law does not allow for an above-market capacity charge to be imposed on CRES providers. Ohio's competitive market requires that the same RPM prices used across all of the unconstrained zones of PJM should be used for shopping customers in AEP Ohio's territory.²⁴ AEP Ohio's generation service, including capacity, is part of the competitive market, and AEP Ohio is not entitled to any guarantee – through the state compensation mechanism or otherwise – to recover above-market prices or fully embedded costs. Accordingly, CRES providers are not liable for a \$188.88/MW-day

²⁰ See, e.g., The OMA Energy Group's and Ohio Hospital Association's Joint Application for Rehearing ("OMA/OHA App."), pp. 15-18; Ohio Association of School Business Officials, Ohio Schools Council, Ohio School Board Association and Buckeye Association of School Administrators' Joint Application for Rehearing ("Schools App."), p. 11.

²¹ OCC/APJN App., pp. 66-68.

²² The Ohio Energy Group Application for Rehearing ("OEG App."), pp. 9-11.

²³ AEP Ohio App., p. 26.

²⁴ See Order, p. 51 ("AEP-Ohio's capacity charge to CRES providers shall be the auction-based rate, as determined by PJM via its reliability pricing model (RPM), including final zonal adjustments . . .") *citing* Capacity Case Order, p. 23.

capacity price. Instead, the deferred above-market amount reflects an additional above-market revenue stream for the benefit of AEP Ohio.

The Commission's Capacity Case Order specifically states that the additional above-market revenue included in the deferral was authorized because RPM prices would provide AEP Ohio with "an unusually low return on equity" and would be "insufficient to yield reasonable compensation" to AEP Ohio.²⁵ Accordingly, it is not a "wholesale rate" or a double-charge for capacity, as suggested by OCC/APJN.²⁶ The deferral provides additional revenue to AEP Ohio in support of all of AEP Ohio's services – distribution, transmission and (competitive) generation services. Because the deferral revenue is made available to AEP Ohio for all of AEP Ohio's services, the deferral is properly allocated to all of AEP Ohio's customers – not just shopping customers. For these same reasons, OCC/APJN's argument that the state compensation mechanism provides a subsidy to CRES providers fails. *See* OCC/APJN App., p. 71.

Moreover, CRES providers are not the "cost causers," as argued by OCC/APJN – AEP Ohio, the vertically integrated utility that voluntarily chose to become a Fixed Resource Requirement ("FRR") entity, is. AEP Ohio has a monopoly on the capacity required for all of its distribution customers by virtue of its FRR election. Through this election, AEP Ohio chose, on behalf of all of its customers, to bear the (competitive) obligation to provide the capacity allocable to its entire load. Its capacity "costs" would be generated with or without CRES providers. CRES providers are not "causing" AEP Ohio to incur any additional costs that would not otherwise be required for AEP Ohio's customers – and, indeed, CRES providers would have preferred to have the option to procure their own capacity, but AEP Ohio took that option away.

²⁵ Capacity Case Order, p. 23.

²⁶ *See* OCC/APJN App., p. 71.

The only “cost” properly allocable to CRES providers is what the market sets. The recovery of above-market costs as a subsidy to protect AEP Ohio’s financial integrity is not a CRES provider cost and, thus, it is reasonable to spread those costs across all customers.

Indeed, PJM’s RAA and OATT, as approved by the FERC – and not Ohio law – establish the parameters for AEP Ohio’s compensation for its FRR obligations. The only limitation in the RAA regarding the state compensation mechanism is that capacity should be priced based on avoidable – and not fully embedded – costs.²⁷ Thus, the RAA further confirms that the deferred amount, which represents AEP Ohio’s above-market, purportedly incremental “embedded costs,” is not a charge allocable to CRES providers. CRES providers cannot be charged more than the RPM price that results from the RAA and that is based on avoidable costs. Under the state compensation mechanism, CRES providers properly are paying the same price to AEP Ohio as they are paying to all other FRR entities in the state. At the same time, nothing in Ohio law prohibits the Commission from tailoring the mechanism to carry out Ohio’s law and policy requiring the Commission to ensure an effective competitive market for generation service. Nothing in R.C. Chapters 4905 or 4909 limits the Commission’s authority to create a deferral, by modifying accounting procedures, under R.C. § 4905.13. Thus, while FES shares OCC/APJN’s and others’ concerns about the substance of the deferral – i.e., the right or the need to subsidize AEP Ohio by providing AEP Ohio with guaranteed, above-market generation-related revenue – the RAA allows the Commission to structure a state compensation mechanism in any manner it sees fit, including through a partial deferral recovered on a nonbypassable basis.

²⁷ See, e.g., FES Post-Hearing Brief, pp. 49-51; Direct Testimony of Robert B. Stoddard on behalf of FES, p. 21.

2. AEP Ohio is not entitled to recover any deferral that accrued after its corporate separation.

AEP Ohio requests confirmation that it is entitled to collect “the full deferral balance (subject to verification) that is not collected through the . . . RSR during the ESP term . . . over the three years following the ESP term.”²⁸ To the extent the Commission provides such confirmation, the Commission must also make clear that AEP Ohio’s right to recover the deferral balance of the state compensation mechanism is limited to the deferred amounts accrued prior to AEP Ohio’s corporate separation, which is anticipated for January 1, 2014. As is true for the non-deferral RSR revenues and any above-market capacity and energy prices, once AEP Ohio completes corporate separation, its generation affiliate, AEP Generation Resources, Inc. (“AEP GenCo”) will be an independent participant in the competitive market. The Commission has no authority to provide AEP GenCo with guaranteed, above-market revenues and no authority to allow AEP Ohio to abuse its status as an EDU to provide preferential treatment to its competitive affiliate.²⁹ Indeed, the deferral and all such additional revenues would represent unlawful cross-subsidies³⁰ if transferred to AEP GenCo. The cross-subsidies would improperly provide AEP GenCo with competitive advantages and the additional revenue security to undercut the competitive market.³¹ Thus, AEP Ohio can be entitled only to confirmation that it may recover, in full, the deferral balance that accrues prior to its corporate separation.

²⁸ AEP Ohio App., p. 23.

²⁹ R.C. §§ 4928.05, 4928.17(A)(3) (requiring corporate separation plans that preclude an EDU from “extend[ing] any undue preference or advantage to any affiliate . . . engaged in the business of supplying the competitive retail electric service”).

³⁰ R.C. §§ 4928.06(A) (“Beginning on the starting date of competitive retail electric service, the public utilities commission shall ensure that the policy specified in section 4928.02 of the Revised Code is effectuated.”), 4928.02(H) (it is state policy to “[e]nsure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service”).

³¹ See FES App., pp. 24-29.

D. The Commission Should Disregard AEP Ohio's and OEG's New Proposals Regarding The Auctions Included In The ESP.

1. The Order does not allow AEP Ohio to maintain the base G rate for all SSO customers and recover the additional auction costs through the FAC when the partial auctions are in place.

AEP Ohio requests “a clarification or modification” of the Order to allow it to charge all of its customers the same base generation rate throughout the term of the ESP, even when part or all of the energy provided to its load is supplied by others.³² Thus, AEP Ohio believes it is entitled to the same revenues, even when it does not have to provide the energy. Such a construct is unsupported and unreasonable, and cannot have been intended by the Order. As the Commission and AEP Ohio have recognized, competition benefits customers – most notably by promoting lower prices for customers.³³ Under AEP Ohio's proposal, its customers would have little to no opportunity to enjoy a price decrease because SSO customers' generation prices would only decrease if the auction results were lower than AEP Ohio's fuel costs.³⁴ Auction results that were lower than SSO customers' current generation charges (base G + FAC) would be meaningless because AEP Ohio's customers also would have to pay the base generation charge on top of the auction price.

At the same time, AEP Ohio would enjoy revenue for service it did not provide. AEP Ohio has stated, under oath, that its base generation rate reflects charges for SSO customers' energy, capacity and ancillary services.³⁵ AEP Ohio witness Allen also admitted that the base generation price was set to allow AEP Ohio to recover capacity and other costs, such as nonfuel

³² See AEP Ohio App., pp. 8-16

³³ See, e.g., AEP Ohio Post-Hearing Brief, pp. 54-56; Order, pp. 39-40; Direct Testimony of Tony C. Banks on behalf of FES, pp. 21-23.

³⁴ See AEP Ohio App., pp. 12-16.

³⁵ Hearing Transcript (“Tr.”) Vol. IV, p. 1297 (AEP Ohio witness Thomas).

O&M costs.³⁶ Its suggestion now that the base generation price is really only a capacity rate is disingenuous and should be disregarded.³⁷ Because the base generation rate includes non-capacity charges for generation service, AEP Ohio should not be entitled to recover 100% of those costs from customers, who are not taking 100% of their service from AEP Ohio. SSO customers would be paying twice for certain generation charges and AEP Ohio would receive a subsidy. The base generation rate “freeze” touted by the Commission and AEP Ohio cannot be said to be any sort of benefit under this proposal. AEP Ohio’s new proposal – for which there is no record evidence in support – should be rejected.

2. OEG’s auction proposals are unreasonable and unsupported.

OEG argues that the Commission should modify the Order to require separate auctions for each AEP Ohio rate zone³⁸ and to maintain Commission authority to reject any auction results that result in rate increases.³⁹ Both proposals are unsupported, unreasonable, and harmful to the competitive process. There is, indeed, no evidence in the record that either of OEG’s new proposals would benefit AEP Ohio’s customers. OEG presented no evidence regarding any such concepts. To the contrary, the evidence suggests that lower prices are better promoted when more suppliers participate in the CBPs.⁴⁰ OEG’s proposals likely would limit supplier participation and, thus, be less likely to promote strong competition and lower prices. Separate auctions for each rate zone would decrease the available load in each auction. With less load

³⁶ Vol. V, pp. 1440-1441.

³⁷ AEP Ohio App., p. 11.

³⁸ See OEG App., pp. 5-6.

³⁹ See OEG App., pp. 6-7.

⁴⁰ See, e.g., Direct Testimony of Tony C. Banks on behalf of FES, pp. 21-23 (discussing the positive results of the recent Duke Energy Ohio and FirstEnergy Ohio Utilities auctions, many of which were over-subscribed).

available, the potential benefits to a supplier and chances of winning the auction would similarly lessen, along with supplier interest.

Further, if the Commission could retroactively nullify the auction results if the competitive results reflected an increase above AEP Ohio's current, arbitrary generation rate, this too would disincentivize supplier participation. Suppliers must invest time and resources into participating in an auction. If a winning bidder could stand to lose the opportunity to serve load because the auction was rendered null and void, suppliers likely would feel less inclined to participate and competition – and the benefits it provides to customers – would suffer. OEG's proposals should be rejected.

E. The Commission Did Not Err In Denying OCC/APJN's Request To Take Administrative Notice of Materials From The Capacity Case.

OCC/APJN argue that the Commission abused its discretion in denying their request to add factual evidence to the evidentiary record in this proceeding after the hearing and post-hearing briefing had closed.⁴¹ However, the Commission properly denied OCC/APJN's request because adding evidence at such a late time would improperly prevent other parties from contesting the new evidence.⁴² While there is overlap between the Capacity Case and this proceeding, the narrow issue on which OCC/APJN sought to add evidence was relevant in this proceeding and OCC/APJN had every opportunity to present such evidence at hearing.⁴³ There

⁴¹ See OCC/APJN App., pp. 32-36.

⁴² Order, pp. 12-13.

⁴³ OCC/APJN sought to introduce misleading testimony from the Capacity Case regarding the amount that SSO customers pay for capacity. However, that amount is not generally known and is not "capable of accurate and ready determination" – and, thus, is not subject to administrative notice. See Ohio R. Evid. 201(B) ("A judicially notice fact must be one not subject to reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."); see also Tr. Vol. V, pp. 1438-1439 ("the company has not done a cost-of-service study to establish rates for retail customers in excess of 20 years or nearly 20 years depending on the company").

is no reasonable basis on which to allow a party to present partial evidence after-the-fact to the prejudice of other parties, who have no ability to contest the evidence or to put the evidence in context. The Commission properly denied OCC/APJN's Motion to Take Administrative Notice.

III. CONCLUSION

For the reasons and to the extent set forth herein, AEP Ohio's, OCC/APJN's, OEG's and OMA's Applications for Rehearing should be rejected.

Respectfully submitted,

s/ Mark A. Hayden

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

James F. Lang (0059668)
Laura C. McBride (0080059)
N. Trevor Alexander (0080713)
CALFEE, HALTER & GRISWOLD LLP
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 Memorandum Contra the Applications for Rehearing Filed by AEP Ohio and Other Intervenors* was served this 17th day of September, 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, OH 43215
stnourse@aep.com
mjsatterwhite@aep.com
amvogel@aep.com

Jeanne Kingery
Dorothy K. Corbett
Duke Energy Retail Sales
139 East Fourth St.
1303-Main
Cincinnati, OH 45202
jeanne.kingery@duke-energy.com
dorothy.corbett@duke-energy.com

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

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

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

Terry L. Etter
Office of the Ohio Consumers' Counsel
10 West Broad St., Suite 1800
Columbus, OH 43215
etter@occ.state.oh.us

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

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

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

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

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

Terrence O'Donnell
Christopher Montgomery
Bricker & Eckler LLP
100 South Third St.
Columbus, OH 43215
todonnell@bricker.com
cmontgomcry@bricker.com

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

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

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

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

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

Lisa G. McAlister
Matthew W. Warnock
Bricker & Eckler LLP
100 South Third St.
Columbus, OH 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, MI 48864
laurac@chappelleconsulting.net

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

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

Sandy Grace
Exelon Business Services Company
101 Constitution Ave. 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 St., Suite 1400
Cincinnati, OH 45202
kpkreider@kmmklaw.com
dmeyer@kmmklaw.com

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

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

Stephanie M. Chmiel
Terrance A. Mebane
Carolyn S. Flahive
Thompson Hine LLP
41 S. High St., Suite 1700
Columbus, OH 43215
Stephanie.chmiel@thompsonhine.com
carolyn.flahive@thompsonhine.com
terrance.mebane@thompsonhine.com

Gary A. Jeffries
Dominion Resources Services, Inc.
501 Martindale St., Suite 400
Pittsburgh, PA 15212
gary.a.jeffries@dom.com

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

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

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

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

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

Diem N. Kaelber
Robert J. Walter
Buckley King LPA
10 West Broad St., Suite 1300
Columbus, OH 43215
kaelber@buckleyking.com
walter@buckleyking.com

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

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

Mark A. Whitt
Melissa L. Thompson
Whitt Sturtevant LLP
PNC Plaza, Suite 2020
155 East Broad St.
Columbus, OH 43215
whitt@whitt-sturtevant.com
thompson@whitt-sturtevant.com

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

Trent A. Dougherty
Cathryn Loucas
Ohio Environmental Council
1207 Grandview Ave., Suite 201
Columbus, OH 43212
trent@theoec.org
cathy@theoec.org

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

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

Dane Stinson
Bailey Cavalieri LLC
10 W. Broad Street, Ste. 2100
Columbus, OH 43215-3422
dane.stinson@baileycavalieri.com

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

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

Joseph M. Clark
6641 North High Street, Suite 200
Worthington, OH 43085
jmclark@vectren.com

Judi L. Sobecki
Randall V. Griffin
The Dayton Power & Light Company
1065 Woodman Dr.
Dayton, OH 45432
judi.sobecki@dplinc.com
randall.griffin@dplinc.com

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

Jack D'Aurora
The Behal Law Group LLC
501 S. High Street
Columbus, OH 43215
jdaurora@behallaw.com

Robert Burke
Braith Kelly
Competitive Power Ventures, Inc.
8403 Colesville Rd., Suite 915
Silver Spring, MD 20910
rburke@cpv.com
bkelly@cpv.com

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

Sarah Reich Bruce
Ohio Automobile Dealers Association
655 Metro Place South, Suite 270
Dublin, OH 43017
sbruce@oada.com

Matthew R. Cox
Matthew Cox Law Ltd.
4145 St. Theresa Blvd.
Avon, OH 44011
matt@matthewcoxlaw.com

Randy J. Hart
Rob Remington
David J. Michalski
Hahn Loeser & Parks LLP
200 Public Square, Suite 2800
Cleveland, OH 44114
rjhart@hahnlaw.com
rrremington@hahnlaw.com
djnichalski@hahnlaw.com

Todd M. Williams
Williams Allwein and Moser LLC
Two Maritime Plaza, 3rd Floor
Toledo, OH 43604
toddm@wamenergylaw.com

Larry F. Eisenstat
Richard Lehfeldt
Robert L. Kinder, Jr.
Dickstein Shapiro LLP
1825 Eye St. NW
Washington, DC 20006
eisenstatl@dicksteinshapiro.com
lehfeldtr@dicksteinshapiro.com
kinderr@dicksteinshapiro.com

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Summary: Memorandum Contra AEP Ohio's and Other Intervenors' Applications for Rehearing electronically filed by Ms. Laura C. McBride on behalf of FirstEnergy Solutions Corp.