

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for the Establishment of a)	Case No. 12-2400-EL-UNC
Charge Pursuant to Revised Code Section)	
4909.18.)	

In the Matter of the Application of Duke)	Case No. 12-2401-EL-AAM
Energy Ohio, Inc., for Approval to Change)	
Accounting Methods.)	

In the Matter of the Application of Duke)	Case No. 12-2402-EL-ATA
Energy Ohio, Inc. , for the Approval of a)	
Tariff for a New Service.)	

**JOINT MOTION TO DISMISS
BY
SIGNATORY PARTIES**

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**JOINT MOTION TO DISMISS
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The Undersigned Parties,¹ including consumer advocates representing the approximately 611,000 residential utility consumers of Duke Energy Ohio Inc. (“Duke”), move the Public Utilities Commission of Ohio (“PUCO” or “Commission”) to dismiss Duke’s Applications to collect \$776 million from customers—about \$150-\$200 per year for three years for a typical residential customer. Dismissal will prevent unjust retail electric service rate increases from being imposed on customers in direct violation of a Stipulation agreed to by Duke and numerous parties and approved by the PUCO less than

¹ Office of the Ohio Consumers’ Counsel, the Ohio Energy Group, the City of Cincinnati, the Ohio Partners for Affordable Energy, Greater Cincinnati Health Council, Ohio Manufacturers’ Association, The Kroger Company, Industrial Energy Users-Ohio, Cincinnati Bell, Inc. and Wal-Mart Stores East LP and Sam’s East Inc.

one year ago.² The grounds for this motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

**BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL**

/s/ Maureen R. Grady

Maureen R. Grady, Counsel of Record
Kyle L. Kern
Assistant Consumers' Counsel

**Office of the Ohio Consumers'
Counsel**

10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (Grady) (614) 466-9567
Telephone: (Kern) (614) 466-9585
grady@occ.state.oh.us
kern@occ.state.oh.us

On Behalf of Ohio Energy Group

/s/ Michael L. Kurtz

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

**On Behalf of Ohio Manufacturers'
Association**

/s/ J. Thomas Siwo

J. Thomas Siwo
Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215
tsiwo@bricker.com
MWarnock@bricker.com

On Behalf of the City of Cincinnati

/s/ Thomas J. O'Brien

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

² *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, et al., Stipulation and Recommendation (Oct. 24, 2011) ("Stipulation"), *approved*, Opinion and Order (Nov. 22, 2011) ("Duke ESP Proceeding").

**On Behalf of Ohio Partners for
Affordable Energy**

/s/ Colleen L. Mooney

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839
Cmooney2@aol.com

**On Behalf of the Greater Cincinnati
Health Council**

/s/ Douglas E. Hart

Douglas E. Hart
441 Vine Street, Ste. 4192
Cincinnati, OH 45202
dhart@douglasschart.com

On Behalf of The Kroger Company

/s/ Kimberly W. Bojko

Kimberly W. Bojko
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 N. High Street
Columbus, OH 43215
Bojko@carpenterlipps.com

**On Behalf of Industrial Energy Users-
Ohio**

/s/ Samuel C. Randazzo

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

**On Behalf of Wal-Mart Stores East, LP
and Sam's East, Inc.**

/s/ Rick D. Chamberlain

Rick D. Chamberlain
6 Northeast 63rd St., Ste. 400
Oklahoma City, OK 73105
Rdc_law@swbell.net

On Behalf of Cincinnati Bell, Inc.

/s/ Douglas E. Hart

Douglas E. Hart
441 Vine Street, Ste. 4192
Cincinnati, OH 45202
dhart@douglasschart.com

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MEMORANDUM IN SUPPORT OF JOINT MOTION TO DISMISS

I. BACKGROUND³

A. Introduction

In 2011, Duke and 30 parties settled a case resolving Duke's electric security plan.⁴ That plan established the rates for 686,000 customers in Duke's service area that were to be paid over a three year period, ending in May, 2015. Under the settlement, inter alia, Duke was allowed to collect \$330 million from customers for its Electric Stability Service Charge ("ESSC") that otherwise would have been zealously contested by numerous parties to the proceeding, including customer advocates. The settlement also called for the default generation supply price to be established through a competitive bidding process, with the benefit of historically low market prices for all customers at the time.

³ Detailed in Stipulating Parties' Exhibit 1, attached hereto.

⁴ Duke ESP Proceeding, Stipulation (Oct. 24, 2011).

All seemed well—for a while. However, on August 29, 2012, Duke filed an application to improve on its 2011 settlement. Duke, having now seen the outcome of another Public Utilities Commission of Ohio (“PUCO” or “Commission”) proceeding, in which the Commission granted another electric utility certain capacity costs and deferral authority,⁵ has returned hat in hand to the PUCO to seek an additional \$776 million more from customers. In this pleading, signatories to the settlement explain why Duke’s new proposal violates its settlement and undermines important state policies supporting settlements and the finality of the Commission’s orders, why Duke should be precluded from seeking additional capacity revenues from its retail customers, and why Duke’s application should be summarily dismissed.

B. On October 24, 2011, Duke Stipulated To RPM Priced Capacity, Plus an Electric Stability Service Charge (“ESSC”) of \$330 Million, Waiving Its Right To Seek Cost Based Capacity Rates During The Term Of Its ESP - January 1, 2012 Through May 31, 2015.

On June 20, 2011, Duke filed an application for authority to establish a standard service offer (“SSO”) in the form of an electric security plan (“ESP”).⁶ As part of its application, Duke proposed to collect its embedded costs of providing capacity to all

⁵ A number of Signatory Parties to this pleading continue to contest the PUCO’s authority to: (1) allow an EDU an opportunity to collect “transition revenue” beyond the term provided by law and contrary to prior settlements resolving any transition revenue claim and (2) invent and apply a cost-based ratemaking methodology for purposes of substantially increasing an EDU’s compensation for generation capacity. See *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Applications for Rehearing filed by IEU-Ohio, OCC, OEG (Aug. 1, 2012). See also *In the Matter of the Application of Columbus Southern Power Company and Ohio Power 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. 11-346-EL-SSO, et al., Applications for Rehearing filed by IEU-Ohio, OCC, OEG (Sept. 7, 2012). These issues remain pending on rehearing.

⁶ Duke ESP Proceeding, Application (June 20, 2011)(“ESP Application”).

customers in its territory, plus a reasonable rate of return, on a non-bypassable basis.⁷

The term of Duke's proposed ESP was to be nine years and five months.⁸

Duke proposed that the cost of its capacity would be based on its election to provide capacity in PJM as a Fixed Resource Requirement ("FRR") entity who self-supplies all of the capacity in its footprint. In other words, Duke sought a cost-based rate (as opposed to the market-based Reliability Pricing Model ("RPM") auction rate) for capacity provided to CRES providers to serve shopping load.

Importantly, when Duke sought a cost-based rate for capacity in its initial application to the PUCO in its ESP Proceeding, Duke relied upon the PJM Reliability Assurance Agreement (RAA) as legal authority for the Commission to establish a cost-based rate as the state compensation mechanism. In its ESP Application Duke asserted:

As discussed in the Direct Testimony of Duke Energy Ohio witnesses Trent and Kenneth J. Jennings, there are two capacity pricing alternatives in PJM – the Reliability pricing Model and the Full Resource Requirements (FRR) option. Under the former, capacity prices are determined through three-year, forward-looking auctions; whereas, under the FRR alternative, options exist for the supply and pricing of capacity. Significantly, the FRR option, as elected by Duke Energy Ohio, enables a state-determined rate for capacity.⁹

Further, in the direct testimony of Duke witness Keith Trent, he explained that its proposal for a cost-based capacity charge was authorized by the PJM RAA.

Q. PLEASE EXPLAIN HOW THE WHOLESALE MARKET INTERACTS WITH THE COMPETITIVE RETAIL MARKET, WITH FOCUS ON THE COMPETITIVENESS AND TERM OF THE MARKET FOR EACH COMPONENT.

⁷ Id. at 26.

⁸ Id., Volume 1 at 10.

⁹ Id. at 25-26.

The second alternative is the Fixed Resource Requirement (FRR), where a load serving entity opts out of the RPM and instead secures its own capacity outside of the competitive market. The price for capacity that FRR entities charge their customers may be market-based, cost-based, or a combination thereof. Alternatively, the capacity price may be a state-determined rate.

Thus, regardless of whether capacity prices are established using the RPM rate, as in the case for customers of FirstEnergy's Ohio distribution companies, or via a cost-based, state-determined rate under the FRR alternative as proposed here, competitive suppliers do not compete on capacity. Rather, they compete on energy.¹⁰

Between August 2011 and October 24, 2011, numerous settlement conferences were held between the parties to the Duke ESP Proceeding.¹¹ The settlement discussions resulted in numerous modifications to Duke's proposal, including its plan to charge CRES providers a cost-based rate (not RPM) for capacity needed to serve shopping customers. A Stipulation and Recommendation was reached and filed at the Commission on October 24, 2011. That Stipulation and Recommendation was supported by Duke and thirty of the thirty-four intervenors in the proceeding.¹²

Under the Stipulation the term of the ESP was to be much shorter than the nine year plus period proposed in Duke's ESP Application. The term under the Stipulation was to run from January 1, 2012 through May 31, 2015.¹³

Another significant modification to the ESP Application related to establishing the wholesale capacity charge for CRES providers. Instead of the cost-based capacity

¹⁰ Duke ESP Proceeding, Direct Testimony of Keith Trent at 5-6 (June 20, 2011).

¹¹ See Duke ESP Proceeding, Supplemental Testimony of Witness Janson (Oct. 28, 2011); Opinion and Order at 42 (Nov. 22, 2011).

¹² AEP Ohio and Dominion Retail, Inc. took no position with regard to the Stipulation. Eagle Energy LLC. also did not sign the Stipulation.

¹³ Duke ESP Stipulation at 4.

charge that had been proposed in Duke's ESP Application, the Stipulation expressly adopted capacity priced at RPM prices, as can be seen in two separate sections of the document. Specifically the Stipulation at I.B provides that:

***for so long as Duke Energy Ohio is a Fixed Resource Requirements (FRR) entity under PJM Interconnection LCC, (PJM), it will provide capacity at the Final Zonal Capacity Price (FZCP) in the unconstrained regional transmission organization (RTO) region. For the period during which Duke Energy Ohio participates in PJM's Reliability Pricing Model (RPM) and Base Residual Auction (BRA), the capacity price is the FCZP for the DEOK load zone region, and capacity shall be provided pursuant to the PJM RPM process.¹⁴

And a separate section of the Stipulation, at II.B, provides as follows:

Acknowledging Duke Energy Ohio's status as an FRR entity in PJM, the Parties agree that Duke Energy Ohio shall supply capacity to PJM, which, in turn, will charge for capacity to all wholesale supply auction winners for the applicable time periods of Duke Energy Ohio's ESP with the charge for said capacity determined by the PJM RTO, which is the FZCP in the unconstrained RTO region.¹⁵

Thus, the Stipulation explicitly provided for capacity to be priced at RPM prices, not Duke's embedded cost.

The testimony of Duke Witness Janson, who testified in support of the Stipulation explicitly confirms that Duke agreed to be compensated for capacity based on RPM prices:

In the Stipulation and Recommendation, the parties recognized Duke Energy Ohio's obligations as an FRR entity and, for the term of the ESP, Duke Energy Ohio will supply capacity resources to PJM, which, in turn, will charge wholesale suppliers for capacity. But the charge applicable to these wholesale suppliers will not reflect Duke Energy Ohio's costs of service as defined above. Rather, the charge will be predicated upon PJM's capacity market

¹⁴Id. at 6-7.

¹⁵Id.

pricing structure. To clarify, Duke Energy Ohio bears the obligation to provide the capacity resources necessary to serve all customers in our footprint for the term of the ESP and the Company will be compensated for capacity resources based upon competitive PJM prices.¹⁶

Thus, it is clear by the plain language within the ESP Stipulation, and the testimony of Duke Witness Janson, that Duke agreed to provide capacity for its fixed resource requirement obligation based on the PJM reliability pricing model.¹⁷ There was no option, alternative, or condition whereby Duke was entitled to receive a cost-based rate. Nor was there any suggestion that the RPM compensation agreed to was only an “interim” measure. Nor did Duke reserve any right to modify the capacity pricing mechanism in the Stipulation.

The RPM compensation for Duke was balanced out by other provisions of the Stipulation. For instance, the Signatory Parties agreed to pay Duke an addition \$110 million per year for three years “to provide stability and certainty regarding Duke’s provision of retail electric service as an FRR entity while continuing to operate under an ESP.”¹⁸ The Stipulation created a non-bypassable rider called the Electric Service Stability Charge Rider (ESSC) to collect this \$330 million. Notably, this \$330 million was in addition to capacity revenues Duke would receive from CRES providers and SSO customers.

¹⁶ Duke ESP Proceeding, Supplemental Testimony of Witness Janson at 4-5 (Oct. 28, 2011).

¹⁷ It should be noted that the RPM Base Residual Auction results are known **three years in advance** of when the capacity price goes into effect. To this end, the RPM capacity BRA clearing price for 2012/2013 (\$16.46 per MW-day) was known in May of 2009. The clearing prices for 2013/2014 (\$27.73) and 2014/2015 (\$136.00/ MW-day) were set in May of 2010 and 2011, respectively. Thus, when Duke signed the Stipulation in October 2011, the RPM capacity clearing prices were already known to Duke and knowing those prices, Duke still agreed to price capacity based on at RPM auction clearing prices in lieu of Duke’s embedded cost of capacity.

¹⁸ Duke ESP Proceeding Stipulation at 16. OCC, IEU-Ohio, FirstEnergy Solutions, and OMA expressly took no position regarding the ESSC, and did not support or oppose it. See footnote 5.

Witness Janson testified that the ESSC was intended to protect the Company's financial integrity and ensure that the overall revenues under the ESP are adequate to compensate Duke for providing its SSO.¹⁹ This was the heart of the bargain—Duke would get RPM capacity revenues plus the \$330 million ESSC. In exchange, Duke gave up its right to collect wholesale capacity revenues from CRES providers for shopping load based on its embedded costs of capacity. Conspicuously absent from the Stipulation was any reference to cost-based capacity revenues. It was intentionally not part of the Stipulation.

The Commission, on November 22, 2011, adopted the Duke Stipulation, after finding that it satisfied the three prong criteria employed by the PUCO for considering the reasonableness of a stipulation.²⁰ Additionally, the Commission found that the ESP, as proposed in the Stipulation, was more favorable in the aggregate than an MRO.²¹ With minor revisions, the Commission adopted and approved the Stipulation. An Application for Rehearing on the Commission Order adopting the Stipulation was made by AEP Ohio. That application was denied.²² There were no appeals filed of the Commission's final order.²³

¹⁹ Supplemental Testimony of Witness Janson at 14 (Oct. 28, 2011).

²⁰ Duke ESP Proceeding, Opinion and Order at 48 (Nov. 22, 2011).

²¹ Id. at 47.

²² Id. Entry (Jan. 18, 2012).

²³ See R.C. 4903.11, which requires an appeal to be filed at the Ohio Supreme Court within sixty days from the Commission's denial of an application for rehearing. The sixtieth day was March 19, 2012.

C. On April 26, 2011, Duke Stipulated That It Will Not Seek Approval From the Federal Energy Regulatory Commission (FERC) Of Cost-Based Wholesale Capacity Charges As An FRR Entity from January 1, 2012 through May 31, 2016.

On April 26, 2011, Duke filed an application at the PUCO seeking approval to establish a base transmission rider and a regional transmission organization rider. This was the proceeding where Duke sought PUCO approval to transfer from the Midwest Independent System Operator (“MISO”) to PJM. Along with the Application, Duke filed a Stipulation and Recommendation under which it agreed not to seek FERC approval (under Section 8.1 of the PJM RAA) of a wholesale capacity charge based upon its costs as a FRR entity.²⁴ Duke’s commitment to forego seeking a cost-based rate for capacity from FERC lasts for the period between January 1, 2012 and May 31, 2016. Signatory parties to the Stipulation were Duke, the PUCO Staff, OCC, and the Ohio Energy Group. The PUCO approved the Stipulation, finding it to be reasonable and further finding that it met the three prong settlement criteria.²⁵ On July 15, 2011, the PUCO affirmed its holding, denying an application for rehearing filed by the Ohio Partners for Affordable Energy.²⁶

D. Prior To Signing Both Of These Stipulations, Duke Was Aware Of Challenges Pertaining To Wholesale Capacity Pricing.

In November 2010, American Electric Power Service Corporation (“AEPSC”) filed an application at FERC seeking to establish a rate that would compensate its affiliate, AEP Ohio, for its cost of providing CRES providers capacity to serve retail

²⁴ *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of the Establishment of Rider BTR and Rider RTO and Associated Tariffs*, Case No. 11-2641, et al., Stipulation and Recommendation at ¶20 (Apr. 26, 2012).

²⁵ *Id.*, Opinion and Order at 14-16 (May 25, 2011).

²⁶ *Id.*, Entry on Rehearing (July 15, 2011).

customers in AEP Ohio's service territory.²⁷ AEPSC sought an increase from the RAA's default RPM based pricing to cost-based pricing, using AEP Ohio's fully embedded cost of capacity. Duke in fact moved, two and a half weeks later, to intervene in AEPSC's FERC case.²⁸

The PUCO, on December 8, 2010, in response to AEPSC's FERC application, opened up an investigation to review the impact that changes to AEP Ohio's capacity charges will have.²⁹ A little over a month later, Duke Energy Retail Sales, L.L.C., filed a motion to intervene in that case before the Commission.³⁰

FERC rejected AEPSC's rate application on January 20, 2011.³¹ However, AEPSC sought rehearing of the FERC's order.³² On April 4, 2011, AEPSC filed a Section 206 Complaint with FERC to amend the state compensation mechanism provisions of the RAA to clarify the circumstances under which AEPSC may request a cost-based capacity rate from FERC that would be charged to CRES providers in its service territory.³³ A week later, Duke Energy Corporation moved to intervene in that complaint docket. Those cases remain pending at the FERC.

Despite the clearly unsettled issues pertaining to Ohio's state compensation mechanism for pricing wholesale capacity supplied to CRES providers, Duke chose its

²⁷ *American Electric Power Service Corporation*, Docket No. ER11-2183, Application (Nov. 24, 2010).

²⁸ *Id.*, Duke Motion to Intervene (Dec. 10, 2010).

²⁹ *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Entry (Dec. 8, 2010).

³⁰ *Id.*, Duke Motion to Intervene (Jan.11, 2011).

³¹ *American Electric Power Service Corporation*, Docket No. ER11-2183, Order Rejecting Formula Rate Proposal, 134 FERC ¶61,039 (2011).

³² *Id.*, Request for Rehearing of AEPSC (Feb. 22, 2011).

³³ *American Electric Power Service Corporation v. PJM Interconnection*, Docket No. EL-32, Complaint (Apr. 4, 2011).

own path on this issue. Instead of continuing to pursue its claim for cost-based pricing for capacity as the state compensation mechanism, Duke settled its ESP case and agreed to RPM pricing plus the \$330 million for the ESSC rider. And instead of litigating state issues related to the MISO/PJM transfer case,³⁴ Duke settled and agreed not to seek FERC approval of cost-based pricing for its FRR obligations under the PJM RAA.³⁵

But now Duke seeks to cherry-pick the result of AEP Ohio's efforts in litigation. Unlike AEP Ohio who continued to take the risk of litigation, Duke opted for regulatory certainty. That regulatory certainty for Duke came in the form of two separate stipulations in separate PUCO proceedings. Those stipulations were reached in April 2011 and October 2011, well after AEP Ohio filed numerous proceedings at the state and federal levels contesting the application of market-based RPM pricing to the provisions of wholesale capacity by AEP Ohio to CRES providers serving shopping load in its territory. At the same time, Duke, that was a FRR entity, undertook the responsibility to self-supply the capacity for all of its customers. In those stipulations Duke chose to resolve the wholesale capacity pricing issue by accepting RPM priced capacity plus the \$330 million ESSC, foregoing any challenges to the wholesale capacity pricing at the state and federal level.

³⁴ See *Duke Energy Ohio, Inc.*, Docket Nos. ER10-1562-000, ER10-2254-000.

³⁵ *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of the Establishment of Rider BTR and Rider RTO and Associated Tariffs*, Case No. 11-2641 et al..

E. AEP Ohio Receives Treatment From The PUCO On Capacity Charges Based On A Cost-Based Methodology, And Not on RPM. AEP Ohio Also Receives Approval Of A Retail Stability Rider In Its ESP Proceeding.

On July 2, 2012, the PUCO issued an Order in AEP Ohio's Capacity Charge case.³⁶ That Order is currently being reconsidered on the basis of applications for rehearing made by numerous parties, including Signatory Parties to this pleading.³⁷

In that Order the Commission determined that AEP Ohio should be compensated for its FRR obligation to supply capacity to CRES providers based on its determination of AEP Ohio's embedded cost of capacity, rather than RPM-based pricing.³⁸ The PUCO determined that AEP Ohio's embedded cost of capacity is \$188.88/MW-day, a cost much higher than the prevailing RPM based capacity price.³⁹ Further, the PUCO ruled that AEP Ohio will nonetheless provide capacity to CRES providers at RPM, in order to stimulate competition among competitive suppliers in AEP Ohio's service territory.⁴⁰ It permitted AEP Ohio to defer the difference between \$188.88/MW-day and the RPM-based cost of capacity for subsequent collection, and indicated that the recovery mechanism for the deferrals would be established in AEP Ohio's ESP proceeding.⁴¹

³⁶ *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Opinion and Order (July 2, 2012).

³⁷ In filing this pleading, the Signatory Parties by not specifically readdressing arguments made on rehearing, do not waive any arguments made therein, with respect to the propriety of the Commission's decisions in the AEP Ohio Capacity Charge Case.

³⁸ Id. at 33.

³⁹ Id. at 35.

⁴⁰ Id. at 23.

⁴¹ Id. at 23-24.

A little over a month later, the PUCO issued its decision in AEP Ohio's electric security plan proceeding.⁴² In that decision, the PUCO approved a Retail Stability Rider which, under the Commission's assumptions, will generate \$508 million over three years for AEP Ohio.⁴³ Additionally, the PUCO included a mechanism, as a component of the RSR, for AEP Ohio to amortize the deferrals created in AEP Ohio's Capacity Charge Case, along with carrying charges, during the ESP period. Any remaining deferred balance would be collected from customers, thereafter, based on the actual revenues deferred. That Order is currently being reconsidered on the basis of applications for rehearing made by numerous parties, including Signatory Parties to this pleading.⁴⁴

F. Duke's "Me Too" Filing Seeks To Abrogate, Nullify And Void Two Stipulations By Increasing Rates An Additional \$776 Million (Plus Interest).

On August 29, 2012, Duke filed an Application with the PUCO to initiate a process under which it wants ultimately to collect from customers an additional \$776 million⁴⁵ of capacity revenues. In order to assure collection of the entire \$776 million from customers, Duke seeks: 1) a Commission Order establishing a cost-based charge⁴⁶ for its capacity; 2) authorization from the PUCO to permit it to defer the difference

⁴² *In the Matter of the Application of Columbus Southern Power Company and Ohio Power 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. 11-346-EL-SSO, et al., Opinion and Order (Aug. 8, 2012).

⁴³ *Id.* at 36.

⁴⁴ In filing this pleading, the Signatory Parties by not specifically readdressing arguments made on rehearing, do not waive any arguments made therein, with respect to the propriety of the Commission's decisions in the AEP Ohio ESP proceeding.

⁴⁵ It is not clear from the application whether or not the \$776 million includes any carrying charges. If carrying charges are proposed but not yet quantified, the cost to customers will be even greater.

⁴⁶ Duke claims its cost of capacity is \$224.15/Mw-day. Duke Application at ¶8.

between the revenues currently being charged and its cost of capacity; and 3) an Order approving a new placeholder tariff to allow “future recovery of the deferred amounts.”⁴⁷

Duke indicates that it will request approval to begin collecting the deferred amounts, plus carrying charges, in a subsequent proceeding, with the application being filed no later than March 1, 2013.⁴⁸ Duke alleges that its application is not unjust or unreasonable and should be approved without a hearing.⁴⁹

II. ARGUMENT

A. The PUCO Should Enforce The Entire Duke ESP Stipulation Which, Inter Alia, Priced Capacity At RPM, Not Embedded Cost, And Awarded Duke An ESSC Of \$330 Million.

Under the terms of the Stipulation and Recommendation, “[a]t any hearing and in any documents or briefs filed with the commission in respect of the Stipulation, each Signatory Party agrees to support the Stipulation and do nothing, directly or indirectly, to undermine the Stipulation***.”⁵⁰ The Stipulation also requires that each Signatory Party agrees to support the reasonableness of the Stipulation, and “take no position contrary to the support for the reasonableness of the ESP and this Stipulation in any appeal from the Commission’s adoption and/or enforcement of this ESP and this Stipulation.”⁵¹

Yet, here Duke is directly violating this term of the Stipulation. It has asked the Commission to set aside the capacity pricing portion of the Stipulation, in favor of a cost-based capacity charge. This will directly undermine the Stipulation bargained for.

⁴⁷ Application at ¶2.

⁴⁸ Id. at ¶17.

⁴⁹ Id. at ¶12.

⁵⁰ Duke ESP Stipulation at Section AA, page 41.

⁵¹ Id.

Duke's filing seeking cost-based pricing of capacity is contrary to the Stipulation, and seeks to undo, not enforce, the Stipulation.

The Stipulation should be enforced, not violated. This Commission has on numerous occasions enforced Stipulations when parties, including Duke, have disregarded the terms of a stipulation and instead sought remedies or relief that is contrary to a stipulation.⁵² The Commission values stipulations and has acted to preserve the integrity of the stipulations on many occasions.⁵³

Preserving the integrity of stipulations means that parties should be able to rely upon the terms of a stipulation, such as the Duke ESP Stipulation, and should be able to enforce its terms.⁵⁴ The Signatory Parties to the Duke ESP Stipulation seek to enforce the entire Stipulation, including the term providing for RPM based capacity pricing. The Stipulation is to be viewed not as individual provisions, but as a settlement 'package.'⁵⁵ The Stipulation specifically states that it represents "an agreement by all Parties **to a package** of provisions rather than an agreement to each of the individual provisions within the Stipulation."⁵⁶ Simply put, Duke cannot separate the capacity price provision

⁵² *In the Matter of the Report of Duke Energy Ohio, Inc. Concerning its Energy Efficiency and Peak-Demand Reduction Programs and Portfolio Plan*, Case No. 09-1999-EL-FOR, Opinion and Order at 15 (Dec. 15, 2010); *Id.*, Entry on Rehearing at ¶9 (Feb. 9, 2011).

⁵³ *In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in Its Rates for Gas Service to All Jurisdictional Customers*, Case No. 95-656-GA-AIR, Opinion and Order at 33-38 (Dec. 12, 1996); *In the Matter of the Application of The Toledo Company for Authority to Amend and Increase Certain of Its Rates and Charges for Electric Service*, Case No. 95-299-EL-AIR et al., Opinion and Order at 244-246 (Apr. 11, 1996); *In the Matter of the Regulation of the Electric Fuel Component Contained Within the Rate Schedule of Ohio Power Company and Related Matters*, Case No. 93-101-EL-EFC, Opinion and Order at 91-96 (May 25, 1994); *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Cincinnati Gas & Electric Company and Related Matters*, Case No. 83-17-GA-GCR, Opinion and Order at 16-19 (July 3, 1984).

⁵⁴ Duke ESP Stipulation at BB, page 42.

⁵⁵ *Id.* at 3.

⁵⁶ Duke ESP Stipulation at 2.

of the Stipulation from the rest of the settlement **package**. To alter one provision of the Stipulation undermines and destroys the entire agreement bargained for.

The Commission should affirm the integrity of the settlement process as it has done in the past. Parties are entitled to rely on the Commission to enforce the provisions of the ESP Stipulation that it approved less than a year ago. Parties should also understand that the Commission will hold them responsible for their obligations under a Stipulation.⁵⁷ As the Commission has acknowledged on numerous occasions, parties must keep their commitments made in stipulations.⁵⁸ To do otherwise is to invite every settled case to be reopened at the first sign of discontent by any party.

Moreover, there are strong public policy reasons to support upholding the Stipulation reached in Duke's ESP Proceeding. First, Duke's Application, if granted, would require customers to pay an additional \$776 million (plus interest) despite the fact that they negotiated a settlement in which all sides agreed to pay a much lesser amount related to the same issues—the FRR rate for capacity. This settlement took account of the increase customers could bear based on the economic conditions of southwestern Ohio.⁵⁹ With the revenues now requested by Duke, the average residential customer will have to pay an additional \$150-\$200 per year for three years, depending on the

⁵⁷ See, e.g., *In the Matter of the Application of Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation*, Case No. 93-487-TP-ALT et al., Entry at ¶4 (Feb. 8, 1995) (granting motion to enforce the provisions of the stipulation whereby appeals by the utility were to be dismissed upon approval of the stipulation); *In the Matter of the Applications of Columbia Gas of Ohio, Inc. to Establish a Uniform Rate for Natural Gas Service within the Company's Lake Erie Region, et al.*, Case No. 88-716-GA-AIR, Entry (June 6, 1989) (rejecting a later stipulation to stay proceedings which violated an earlier stipulation that called for the filing of rate cases).

⁵⁸ See, e.g., *In the Matter of the 1995 Electric Long Term Forecast Report of the Cincinnati Gas & Electric Company*, Case No. 95-203-EL-FOR et al., Opinion and Order at 49-50 (Dec. 19, 1996).

⁵⁹ According to data from the 2010 U.S. Census, the poverty rate reported for the City of Cincinnati is 30.6%.

allocation.⁶⁰ The increase to business customers of southwestern Ohio would be approximately \$500 million collectively over the three year term. Thus, approving Duke's modifications to its ESP would impede or hinder the Commission's ability under R.C. 4928.02(A) to ensure reasonably priced electric service is made available to all consumers in this State.

Second, the PUCO should respect the precedential value of all its decisions, including its decision to adopt the Stipulation in the Duke ESP case. Doing so would provide regulatory certainty which benefits not only customers, but investors and shareholders as well. It is essential that the Commission respect its previous decisions and not depart from them without a clear need. In *Ohio Consumers' Counsel v. Public Util. Comm.* (1984), 10 Ohio St.3d 49, 51, the Ohio Supreme Court stated:

Although the Commission should be willing to change its position when the need therefore is clear and it is shown that prior decisions are in error, it should also respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law.

Sound regulation should not discourage dispute-resolution through settlement. Litigation can be expensive. Settlement may also bring about regulatory certainty that may otherwise be delayed until the termination of all litigation. Thus, because there is the potential for cost savings and regulatory certainty, the PUCO should not discourage settlements.

⁶⁰ \$258,747,429/20,500,000 MWh retail sales = \$12.6/MWh. Average residential sales 1,000 kwh/month. Average residential increase based on energy allocation of \$12.6, or \$151.2 per year.

B. Duke Failed To Timely Apply For Rehearing Of The Commission Order Approving The Stipulation And Failed To Timely File an Appeal. The Commission Has No Jurisdiction To Entertain Duke’s Belated Request for Rehearing.

Under R.C. 4903.10, after any order has been issued by the PUCO, any party may apply for rehearing with respect to any of the matters determined in the proceeding.⁶¹ This provision of the code requires that the application for rehearing shall be filed within thirty days after the Order has been entered on the journal of the Commission. Further, the statute specifies that “[n]o cause of action arising out of any order of the commission, other than in support of the order, shall accrue in any court to any person, firm, or corporation unless such person, firm, or corporation has made a proper application to the commission for rehearing.” A “proper application” is one that meets, *inter alia*, the thirty-day deadline for rehearing.

In the Duke ESP proceeding, the Opinion and Order adopting the Stipulation was issued on November 22, 2011. Subsequently, on January 18, 2012, an Entry on Rehearing was issued affirming that Opinion and Order. Duke, however, did not apply for rehearing of the Order or the Entry on Rehearing within the thirty-day period of the statute. It failed to make a proper application for rehearing to the Commission.

But, in reality, Duke is now seeking rehearing of the Commission’s Order adopting the Stipulation, in its new Application presently filed at the Commission. Duke is asking the PUCO to rehear or reconsider one specific provision in the Stipulation—the pricing of capacity service to consumers. The Stipulation adopted a capacity pricing methodology based on RPM pricing. Duke seeks rehearing, in essence, on the basis that

⁶¹ See Ohio Admin. Code 4901-1-35(A), also requiring the filing of an application for rehearing within thirty days after issuance of a PUCO order.

the capacity should instead be priced on an embedded cost basis when it had negotiated a different result with full knowledge of the alternatives. It was no secret that AEP Ohio was contesting almost identical issues in its cases before this Commission and the FERC at the very same time that Duke entered into the Stipulation. Indeed, affiliates of Duke were intervenors in those cases.

But Duke cannot avoid the requirements of the law⁶² by calling its filing an “Application” to “establish a new service.”⁶³ The Commission should treat the application as a late-filed application for rehearing. “The logic of words should yield to the logic of realities.”⁶⁴ The reality is that this is an untimely application for rehearing. And, where no application for rehearing is filed within thirty days as required, the Commission has no power to entertain it.⁶⁵ Thus, the Commission fundamentally lacks jurisdiction on this matter. It must, under the law, dismiss Duke’s application.

C. Duke Is Precluded Under The Doctrines Of Res Judicata And Collateral Estoppel From Re-litigating Its Electric Security Plan Where It Agreed To RPM Based Capacity Pricing For Wholesale Capacity Provided To CRES Suppliers.

It is both routine and appropriate for the Commission as well as courts throughout Ohio (and the United States) to dismiss cases when parties try to re-litigate what has

⁶² See, e.g., *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Entry at ¶ 15 (Dec. 22, 2012)(ruling that utility could not avoid the requirements of the PUCO’s rules on interlocutory appeals by calling its filing an application for rehearing, rather than an interlocutory appeal)(citing *In re Cincinnati Gas & Electric Company*, Case No. 05-59-EL-AIR, Entry at 2 (Nov. 3, 2005)).

⁶³ See Application at 5 (where Duke characterizes its application as one which establishes a new service—the provision of capacity as provided for under Ohio’s state compensation mechanism finally adopted by the PUCO on July 2, 2012).

⁶⁴ U.S. Supreme Court Justice Brandeis, *DeSanto v. Pennsylvania* (1927), 273 U.S. 34, 43.

⁶⁵ *Greer v. Pub. Util. Comm.* (1961), 172 Ohio St. 361; *Dover v. Pub. Util. Comm.* (1933), 126 Ohio St. 438.

already been litigated to a final judgment. This judicial policy has been referred to as “res judicata” and “collateral estoppel.” The United States Supreme Court held that:

The doctrine of res judicata rests at bottom upon the ground that the party to be affected...has litigated or had an opportunity to litigate the same matter in a former action in a court of competent jurisdiction.⁶⁶

Under Ohio law, res judicata means that “a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.”⁶⁷ Res judicata not only precludes re-litigation of issues raised and decided in a prior action. The doctrine also “applies even to instances in which a party is prepared to present new evidence or new causes of action not presented in the first action, or to seek remedies or forms of relief not sought in the first action.”⁶⁸ The Supreme Court of Ohio has stated that:

A party can not re-litigate matters which he might have interposed, but failed to do in a prior action between the same parties or their privies, in reference to the same subject matter. And if one of the parties failed to introduce matters for the consideration of the court that he might have done, he will be presumed to have waived his right to do so.⁶⁹

While res judicata pertains to re-litigating a cause of action, collateral estoppel pertains to re-litigating *issues* in a later case involving a different cause of action. The Supreme Court of Ohio characterized “collateral estoppel” as precluding the re-litigation of an issue that has been “actually and necessarily litigated and determined in a prior

⁶⁶ *Postal Telegraph-Cable Company v. Newport* (1917), 247 U.S. 464, 476, 62 L. Ed. 1215, 1221.

⁶⁷ *Grava v. Parkman Tshp.* (1995), 73 Ohio St.3d 379, 653 N.E.2d 226, syllabus. In *Grava*, the Court defined a single transaction or occurrence as one “based on a claim arising from a nucleus of facts that was the subject matter of his first application.” *Id.* at 383.

⁶⁸ *American Home Products Corporation v. Roger W. Tracy* (2003), 152 Ohio App. 3d 267 (Ct. Apps., 10th Dist.); *Ron Thomas, Sr. v. Restaurant Developers Corp.* (1997), 1997 Ohio App. LEXIS 3062.

⁶⁹ *Covington and Cincinnati Bridge Co. v. Sargent* (1875), 27 Ohio St. 233, 237-38.

action.”⁷⁰ “When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.”⁷¹

Both of these doctrines apply to hearings before the PUCO.⁷² According to the Court, “where an administrative proceeding is of a judicial nature and where the parties have had an ample opportunity to litigate the issues involved in the proceeding, the doctrine of collateral estoppel may be used to bar litigation of issues in a second administrative proceeding.”⁷³ The Court has also held that the doctrine of res judicata may be used to bar litigation of issues in a second administrative proceeding. The doctrine can also be applied in cases concluded by settlement.⁷⁴

The Duke ESP Proceeding was clearly judicial in nature and provided parties the opportunity to litigate the issues. In the Duke ESP Proceeding, the PUCO provided notice, held an evidentiary hearing, and provided parties the opportunity to introduce evidence. Thus, the PUCO acted in its judicial capacity in resolving the ESP Proceeding. Consequently, collateral estoppel and res judicata may be used to bar litigation of these same issues in a second administrative proceeding.⁷⁵

⁷⁰ *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. Of Revision* (1997), 80 Ohio St.3d 36, 41, 684 N.E.2d 312.

⁷¹ Restatement of the Law, Second, Judgments, Section 27.

⁷² *Superior’s Brand Meats, Inc. v Lindle* (1980), 62 Ohio St.2d 133, 403 N.E.2d 996, syllabus; *Office of Consumers’ Counsel v. Pub. Util. Comm.* (1985), 16 Ohio St.3d 9, 10, 475 N.E.2d 782.

⁷³ *Superior’s Brand Meats, Inc. v. Lindley*, 62 Ohio St.2d 133 (syllabus).

⁷⁴ *Scott v. East Cleveland* (1984), 16 Ohio App. 3d 429, 476 (Ct. App.).

⁷⁵ *Superior’s Brand Meats, Inc. v. Lindley*, 62 Ohio St.2d at 135.

Historically, in order to apply the doctrine of res judicata and collateral estoppel, both the parties and issues in the two proceedings would have to be the same.⁷⁶ In this instance, each of these criterion is met. Duke, the applicant in this proceeding, is the very same party who, less than a year ago, agreed to a Stipulation to resolve its ESP. And the issues implicated in this case are also the same as those in the ESP proceeding. As part of the ESP Stipulation, Duke agreed to accept pricing for its FRR capacity based on the fixed zonal capacity price set under the PJM RPM process.⁷⁷ The PUCO adopted that Stipulation by Order dated November 22, 2011. Now, in the present proceeding, Duke is attempting to re-litigate the FRR capacity pricing portion of its ESP by asking the PUCO to set a cost based charge for capacity for an overlapping time period of Aug. 29, 2012 through May 31, 2015.⁷⁸ Therefore, the Commission should dismiss Duke's Application on res judicata and collateral estoppel grounds.

In *National Amusements, Inc. v. Springdale* (1990), 53 Ohio St. 2d 60, the Supreme Court of Ohio recognized the importance of having doctrines such as res judicata and collateral estoppel:

It has long been the law of Ohio that 'an existing final judgment or decree between the parties to litigation is conclusive as to all claims which were or might have been litigated in a first lawsuit.' * * * '[W]here a party is called upon to make good his cause of action * * *, he must do so by all the proper means within his control, and if he fails in that respect * * *, he will not afterward be permitted to deny the correctness of the determination, nor to relitigate the same matters between the same parties.' * * * The doctrine of res judicata 'encourages reliance on judicial decisions, bars vexatious litigation, and frees the court to resolve other disputes.' * * * 'Its enforcement is essential to the maintenance of

⁷⁶ *Whitehead v. Gen. Tel. Co.* (1969), 20 Ohio St.2d 108, 112.

⁷⁷ See Duke ESP Stipulation at Section I.B, II.B.

⁷⁸ Under the ESP Stipulation, the RPM pricing is in effect from January 2012 to May 31, 2015.

social order; for, the aid of judicial tribunals would not be invoked
for the vindication of rights of person and property, if * * *
conclusiveness did not attend the judgments of such tribunals
***.⁷⁹

The PUCO, in applying these doctrines, has primarily emphasized whether parties have been afforded one fair opportunity to litigate a claim or issue. The PUCO has noted that it is guided by the following general policy considerations: (1) fairness to the prevailing party requires that it not be subjected to the expense and potential harassment associated with re-litigating matters which were, or should have been, litigated in an earlier action, and (2) judicial economy requires that litigation arising from a particular controversy not be continued indefinitely.⁸⁰

Duke was afforded one fair opportunity to litigate how its capacity should be priced when it filed its ESP application. In fact, the very same legal authority that it relies on here—Section 8.1 of the PJM RAA which authorizes the Commission to establish a state compensation mechanism—was part of the legal authority Duke relied on to seek a cost-based rate for capacity as part of its filed ESP. The facts are the same, the law is the same and the parties are the same. The issues pertaining to the capacity rate were well known because AEP Ohio was litigating them at the same time at both the federal and state levels. The only thing that is different is Duke’s attempt to get a second bite at the regulatory process by seeking the “higher of” the result reached in its two Stipulations or the litigated result in AEP’s Capacity Case.

Duke fully exercised its rights in crafting and agreeing to a Settlement. It supplied testimony in support of the Settlement and submitted briefs urging the

⁷⁹ Id. at 62. (Citations omitted and emphasis supplied).

⁸⁰ See, e.g., *In the Matter of the Regulation of the Electric Fuel Component Contained Within the Rate Schedules of The Toledo Edison Company and Related Matters*, Case No. 86-05-EL-EFC, Entry at ¶5 (Nov. 10, 1986).

Commission to adopt the Settlement. That Settlement established RPM pricing for capacity, in lieu of cost-based pricing. It also gave Duke \$330 million in revenues for the ESSC. Duke's customers have been paying this ESSC rider since the Stipulation was enacted. It is only fair to the thirty-one signatory parties that they not be subjected to the expense and striking inefficiency associated with re-litigating matters which were litigated and settled previously. Judicial economy requires that litigation arising from Duke's ESP not be continued indefinitely. All these factors argue for the application of res judicata and collateral estoppel to bar Duke's present claim to collect \$776 million more in rate increases from its customers when they agreed with Duke that it should be less.

D. Even If Duke Was Not Barred Under The Terms Of The ESP Stipulation From Seeking The Relief It Has Requested, The Commission Has No Authority To Grant Duke The Relief Requested.

Duke has requested an Order from the Commission, under R.C. 4905.13, to modify its accounting practices. Duke requests that it be able to establish a deferral, as of the date of the filing of its Application, to account for the difference between the revenues being recovered by it for providing capacity and its cost of providing capacity, as the cost is established under "Ohio's newly adopted state compensation mechanism."⁸¹ If Duke receives such accounting authority it will create a regulatory asset equal to the difference between RPM revenues and the Duke-specific version of the state compensation mechanism. Duke will then implement a non-bypassable charge to amortize the regulatory asset in the future. Duke has asked the PUCO to approve a new tariff, under R.C. 4909.18, to allow for it to collect the non-bypassable charges from

⁸¹ Duke Application at ¶2.

customers in the future. This means that in Duke's service territory all customers, shoppers and non-shoppers alike, will pay an additional \$776 million (plus interest) to Duke.

This portion of Duke's filing attempts to mimic the "phase in" structure the PUCO implemented for AEP Ohio in the PUCO's decision in AEP Ohio's Capacity Charge Case⁸² and AEP Ohio's ESP 2 Case.⁸³ But, as previously argued by a number of the Signatory parties to this pleading, the Commission has no authority to grant such accounting relief and to establish a phase-in.⁸⁴

This is because the Commission's ability to phase-in capacity charges emanates solely from its explicit authority under R.C. 4928.144. That provision of the Code allows a just and reasonable phase-in of any EDU rate or price *established under R.C. 4928.141 to R.C. 4928.143*. Yet the state compensation mechanism rate being requested by Duke has not been established under the Commission's authority pertaining to Duke's electric security plan. Nor has the non-bypassable charge being requested been established under the PUCO's authority to approve an ESP.

As explained earlier, the relief that Duke seeks, in the form of additional compensation above the RPM-base pricing it agreed to, is barred by the Duke ESP

⁸² *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC.

⁸³ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power 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. 11-346-EL-SSO, et al.

⁸⁴ See *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Applications for Rehearing filed by IEU-Ohio, OCC, OEG (Aug. 1, 2012). See also *In the Matter of the Application of Columbus Southern Power Company and Ohio Power 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. 11-346-EL-SSO, et al., Applications for Rehearing filed by IEU-Ohio, OCC, OEG (Sept. 7, 2012). These issues remain pending on rehearing.

Settlement. As such there is no basis for creating a regulatory asset based on the difference between the RPM-based price and a Duke version of the state compensation mechanism. But even if Duke were not barred by the specific terms of the ESP settlement, the Commission has no authority to grant the accounting and non-bypassable charge related relief. This is another reason that the Commission should summarily dismiss Duke's application.

III. CONCLUSION

Duke's Application filed in this proceeding seeks to undo one specific provision of the Duke ESP Stipulation. Undoing that one provision will cost Ohio customers \$776 million dollars when their representatives had negotiated a lower amount be paid for the same capacity that is the subject of Duke's Application. The Commission should reject Duke's Application and instead preserve for Ohioans the integrity of the Stipulation that was reached a little less than a year ago.

Respectfully submitted,

**BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL**

/s/ Maureen R. Grady

Maureen R. Grady, Counsel of Record
Kyle L. Kern
Assistant Consumers' Counsel

**Office of the Ohio Consumers'
Counsel**

10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (Grady) (614) 466-9567
Telephone: (Kern) (614) 466-9585
grady@occ.state.oh.us
kern@occ.state.oh.us

On Behalf of Ohio Energy Group

/s/ Michael L. Kurtz

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

**On Behalf of Ohio Manufacturers'
Association**

/s/ J. Thomas Siwo

J. Thomas Siwo
Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215
tsiwo@bricker.com
MWarnock@bricker.com

On Behalf of the City of Cincinnati

/s/ Thomas J. O'Brien

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

**On Behalf of Ohio Partners for
Affordable Energy**

/s/ Colleen L. Mooney

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839
Cmooney2@aol.com

**On Behalf of the Greater Cincinnati
Health Council**

/s/ Douglas E. Hart

Douglas E. Hart
441 Vine Street, Ste. 4192
Cincinnati, OH 45202
dhart@douglasshart.com

On Behalf of The Kroger Company

/s/ Kimberly W. Bojko

Kimberly W. Bojko
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 N. High Street
Columbus, OH 43215
Bojko@carpenterlipps.com

**On Behalf of Industrial Energy Users-
Ohio**

/s/ Samuel C. Randazzo

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

**On Behalf of Wal-Mart Stores East, LP
and Sam's East, Inc.**

/s/ Rick D. Chamberlain

Rick D. Chamberlain
6 Northeast 63rd St., Ste. 400
Oklahoma City, OK 73105
Rdc_law@swbell.net

On Behalf of Cincinnati Bell, Inc.

/s/ Douglas E. Hart

Douglas E. Hart
441 Vine Street, Ste. 4192
Cincinnati, OH 45202
dhart@douglasshart.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Dismiss* was served on the persons stated below via electronic transmission this 4th day of October 2012.

/s/ Maureen R. Grady

Maureen R. Grady
Assistant Consumers' Counsel

SERVICE LIST

John.jones@puc.state.oh.us
Steven.beeler@puc.state.oh.us
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com
mpritchard@mwncmh.com
cmooney2@columbus.rr.com
dhart@douglasshart.com
haydenm@firstenergycorp.com
jang@calfee.com
lmcbride@calfee.com
talexander@calfee.com
bojko@carpenterlipps.com
mohler@carpenterlipps.com

Amy.spiller@duke-energy.com
Jeanne.kingery@duke-energy.com
Elizabeth.watts@duke-energy.com
Rocco.DAscenzo@duke-energy.com
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkyler@BKLawfirm.com
tobrien@bricker.com
tsiwo@bricker.com
mwarnock@bricker.com
Rdc_law@swbell.net
jejadwin@aep.com
yalami@aep.com

Devin.parram@puc.state.oh.us
dakutik@jonesday.com
aehaedt@jonesday.com
jbentine@amppartners.org
smorrison@taftlaw.com
myurick@taftlaw.com
zkravitz@taftlaw.com
jouett.brenzel@cinbell.com
mjsatterwhite@aep.com
kosterkamp@ralaw.com
asonderman@keglerbrown.com
mkimbrough@keglerbrown.com
wmassey@cov.com
asonderman@keglerbrown.com
mkimbrough@keglerbrown.com
wmassey@cov.com
BarthRoyer@aol.com

Gary.A.Jeffries@dom.com
aaragona@eimerstahl.com
dstahl@eimerstahl.com
ssolberg@eimerstahl.com

AEs: Christine.pirik@puc.state.oh.us
Katie.stenman@puc.state.oh.us

TIMELINE

DATE	CASE	EVENT
June 25, 2010	FERC ER10-1562 (Duke ISO filing)	<ul style="list-style-type: none"> Duke Energy Ohio, Inc. submits filing in Docket No. ER10-1562-000 to initiate move from Midwest Independent Transmission System Operator, Inc. (Midwest ISO) to PJM Interconnection.
August 16, 2010	FERC ER10-2254 (Duke ISO filing II)	<ul style="list-style-type: none"> Duke submits filing as the second step of its proposed move from Midwest ISO to PJM. Duke submits a Fixed Resource Requirement Integration Plan (FRR Integration Plan), which details how it will meet PJM resource adequacy requirements from January 1, 2012, up to the date of full participation in PJM's capacity market, June 1, 2014.
October 21, 2010	FERC ER10-1562 & ER10-225	<ul style="list-style-type: none"> FERC authorizes Duke to terminate its existing obligations to the Midwest ISO, subject to several conditions. FERC also accepts Duke's proposed FRR Integration Plan, subject to conditions.
November 24, 2010	FERC ER11-2183 (AEP Federal Capacity Case)	<ul style="list-style-type: none"> AEPSC files application at FERC seeking to increase the compensation it receives from CRES providers for capacity provided to serve retail customers in AEP-Ohio's service territory. Seeks change from RPM-Based pricing to AEP-Ohio cost based ratemaking, using AEP Ohio fully embedded cost of capacity.
December 8, 2010	PUCO 10-2929-EL-UNC (AEP Capacity Case)	<ul style="list-style-type: none"> Commission opens investigation to review the impact of the proposed change to AEP-Ohio's capacity charges. PUCO expressly adopts current capacity charges established through AEP's ESP I (Case No. 08-917-EL-SSO) as the state compensation mechanism for the Companies during the pendency of this review.
December 10, 2010	FERC ER 11-2183	<ul style="list-style-type: none"> PUCO files comments in FERC Docket No. ER 11-2183 explaining that AEP Ohio's capacity compensation is PJM RPM based. Asks FERC to dismiss. Duke Energy Ohio, Inc. files Motion to Intervene in FERC Docket No. ER 11-2183.
January 7, 2011	PUCO 10-2929-EL-UNC	<ul style="list-style-type: none"> AEP Ohio files application for rehearing in Case No. 10-2929-EL-UNC, claiming PUCO has no jurisdiction to set wholesale price for capacity.
January 11, 2011	PUCO 10-2929-EL-UNC	<ul style="list-style-type: none"> Duke Energy Retail Sales LLC Intervenes in the PUCO AEP Capacity Charge Case.
January 20, 2011	FERC ER11-2183	<ul style="list-style-type: none"> FERC issues an order rejecting AEPSC application to increase capacity compensation.
February 2, 2011	PUCO 10-2929-EL-UNC	<ul style="list-style-type: none"> PUCO grants AEP Ohio's January 7, 2011 application for rehearing for further consideration. No substantive ruling.
February 22, 2011	FERC ER11-2183	<ul style="list-style-type: none"> AEPSC files a request for rehearing of FERC's January 20, 2011 Order.

March 24, 2011	FERC ER11-2183	<ul style="list-style-type: none"> • FERC grants AEPSC's application for rehearing for further consideration. No substantive ruling.
April 4, 2011	FERC EL11-32	<ul style="list-style-type: none"> • AEPSC files Section 206 Complaint with FERC to unilaterally amend the RAA to displace state compensation mechanism. No FERC action taken on this.
April 11, 2011	FERC EL11-32	<ul style="list-style-type: none"> • Duke Energy Corp. files Motion to Intervene
April 26, 2011	PUCO 11-2641-EL-RDR & 11-2642-EL-RDR (Duke FRR filing)	<ul style="list-style-type: none"> • Duke files Application for Approval of the Establishment of Rider BTR (base transmission rider) and a regional transmission organization (RTO) rider. • Stipulation filed. Duke Energy Ohio agrees that it will not request FERC approval of a wholesale capacity charge based upon Duke's costs as a FRR entity in PJM between January 1, 2012, and May 31, 2016.
May 25, 2011	PUCO 11-2641-EL-RDR & 11-2642-EL-RDR	<ul style="list-style-type: none"> • PUCO Opinion and Order adopts Stipulation between whereby Duke receives permission to move from MISO to PJM.
June 20, 2011	PUCO 11-3549-EL-SSO (Duke ESP filing)	<ul style="list-style-type: none"> • Duke files application for a Standard Service Offer in the form of an Electric Security Plan. Proposes to collect cost of its capacity based on embedded cost basis plus reasonable rate of return.
September 7, 2011	PUCO 11-346-EL-SSO (AEP ESP filing)	<ul style="list-style-type: none"> • AEP Ohio enters into a Stipulation and Recommendation to settle capacity case and pending ESP case. Duke Energy Retail Sales, Inc. is signatory party.
October 24, 2011	PUCO 11-3549-EL-SSO	<ul style="list-style-type: none"> • Duke Stipulation filed. Thirty one Signatory parties. • Signatory parties stipulate that capacity should be priced at RPM not at Duke's embedded cost over the term of the ESP, January 1, 2012 through May 31, 2015. • Parties agree to pay Duke an addition \$110 million per year for three years for Electric Security Stability Charge Rider (ESSC) to provide stability and certainty regarding Dukes' providing retail electric service as an FRR entity.
November 2, 2011	PUCO 11-3549-EL-SSO	<ul style="list-style-type: none"> • Evidentiary hearing commences on November 3, 2011. At hearing, Duke presents four witnesses supporting the stipulation, including Witness Janson. No opposing testimony filed.
November 22, 2011	PUCO 11-3549-EL-SSO	<ul style="list-style-type: none"> • Opinion and Order issued adopting Duke stipulation, with minor revisions.
December 14, 2011	PUCO 11-346-EL-SSO	<ul style="list-style-type: none"> • PUCO approves the AEP Stipulation and Recommendation with modifications.
February 23, 2012	PUCO 11-346-EL-SSO	<ul style="list-style-type: none"> • PUCO rejects AEP Stipulation and Recommendation. AEP Ohio ordered to return to RPM based pricing of capacity; Sets Capacity Case for hearing.
March 28, 2012	PUCO 10-2929-EL-UNC	<ul style="list-style-type: none"> • Duke Energy Commercial Asset Management files Motion to Intervene in AEP Capacity Charge Case.
April 17, 2012	PUCO 10-2929-EL-UNC	<ul style="list-style-type: none"> • Evidentiary hearing commences for AEP Capacity Charge Case.
July 2, 2012	PUCO 10-2929-EL-UNC	<ul style="list-style-type: none"> • Opinion and Order issued in Capacity Case declaring cost-based state compensation mechanism for AEP Ohio.

July 20, 2012	FERC ER11-2183	<ul style="list-style-type: none">• AEPSC files renewed motion with FERC seeking Rehearing.
August 8, 2012	PUCO 11-346-EL-SSO	<ul style="list-style-type: none">• Opinion and Order issued in ESP II case, 11-346-El-SSO.
August 29, 2012	PUCO 12-2400-EL-UNC et. al.	<ul style="list-style-type: none">• Duke applies for PUCO authority to undertake steps that will ultimately establish a cost based capacity charge in lieu of the RPM capacity pricing agreed to under the Stipulation and Recommendation in Case No. 11-3549-EL-SSO.

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Summary: Motion Joint Motion to Dismiss by Signatory Parties electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.