

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Edison Company, The Cleveland)	
Electric Illuminating Company and The)	Case No. 12-2190-EL-POR
Toledo Edison Company for Approval of)	Case No. 12-2191-EL-POR
Their Energy Efficiency and Peak Demand)	Case No. 12-2192-EL-POR
Reduction Program Portfolio Plans for)	
2013 through 2015)	

APPLICATION FOR REHEARING OF INDUSTRIAL ENERGY USERS-OHIO

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Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code ("O.A.C."), Industrial Energy Users-Ohio ("IEU-Ohio") respectfully submits this Application for Rehearing of the Opinion and Order issued by the Public Utilities Commission of Ohio ("Commission") on March 20, 2013 for the following reasons:

- 1. The Opinion and Order is unlawful and unreasonable because the Commission lacks statutory authority to require a mercantile customer to cede PJM bidding rights to FirstEnergy;**
- 2. The Opinion and Order is unlawful and unreasonable because it imposes an economic penalty on mercantile customers. The economic penalty unlawfully and unreasonably discourages mercantile customers from committing their customer-sited capabilities to FirstEnergy;**
- 3. The Opinion and Order is unlawful and unreasonable because it violates cost causation regulatory practices and principles.**

As discussed in the Memorandum in Support attached hereto, IEU-Ohio respectfully requests that the Commission grant this Application for Rehearing.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. BACKGROUND

Under Section 4928.66, Revised Code, electric distribution utilities (“EDU”) must implement energy efficiency and peak demand reduction (“EE/PDR”) programs that achieve escalating EE/PDR savings. Section 4928.66, Revised Code, mandates compliance by EDUs with specified EE/PDR benchmarks. Since the inception of the EE/PDR compliance requirements, EDUs have sought to achieve compliance through two different methods.

First, EDUs have designed EE/PDR programs in which customers can affirmatively participate in return for either a rebate or point of purchase discount.¹ Second, mercantile customers have the option to self-fund their own EE/PDR accomplishments at their own risk and assist EDUs in achieving compliance.² In the case of such self-funded mercantile customer EE/PDR accomplishments, a mercantile

¹ Point of purchase programs have been used to underwrite the costs of programs that mass market the distribution of, for example, more efficient lighting such as compact fluorescent light bulbs through retail sales outlets.

² Section 4928.66(A)(2)(c), Revised Code.

customer has the right to request and may thereafter receive an exemption from paying the EDU's EE/PDR compliance cost recovery mechanism.³ When mercantile customers self-fund and implement their own EE/PDR projects and commit the associated savings to the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively "FirstEnergy"), rather than participating in rebate programs, FirstEnergy's EE/PDR total program costs are reduced. In the absence of mercantile customers self-funding and implementing their own EE/PDR projects, FirstEnergy would be required to entice other customers to participate in FirstEnergy's rebate programs, increasing overall program costs.

The right to request an exemption from the EE/PDR cost recovery mechanism is granted to mercantile customers by Ohio law. Under the rules adopted by the Commission, the process through which a mercantile customer may request an exemption requires submitting an application for approval of a reasonable arrangement pursuant to Section 4905.31, Revised Code. In 2010, the Commission streamlined the process for requesting and obtaining an exemption when it established the Mercantile Pilot Program. The Mercantile Pilot Program allows customers to apply, either jointly with an EDU or individually, for approval of a reasonable arrangement for commitment of self-funded EE/PDR capabilities.⁴ On May 25, 2011, the Commission further streamlined the process for obtaining an exemption when it extended the sixty-day automatic approval process in the Mercantile Pilot Program to applications for an

³ *Id.*

⁴ *In the Matter of a Mercantile Application Pilot Program Regarding Special Arrangements with Electric Utilities and Exemptions from Energy Efficiency and Peak Demand Reduction Riders*, Case No. 10-834-EL-EEC, Entry (Sep. 15, 2010) (hereinafter "Mercantile Pilot Program"). The Mercantile Pilot Program was recently extended. *Mercantile Pilot Program*, Finding and Order (Sep. 5, 2012).

exemption.⁵ The Commission further extended the Mercantile Pilot Program on March 6, 2013.⁶

Peak demand reduction capabilities associated with energy efficiency measures may qualify as capacity resources under PJM Interconnection LLC's ("PJM") rules.⁷ An energy efficiency resource "may participate in Reliability Pricing Model ("RPM") auctions for a maximum of up to four consecutive Delivery Years."⁸ But this may only occur if the energy efficiency resource achieves a permanent, continuous reduction in electric energy consumption at the end use customer's retail site during the defined EE performance hours.⁹ The energy efficiency performance hours are between the hour ending 15:00 Eastern Prevailing Time ("EPT") and the hour ending 18:00 EPT during all days from June 1 through August 31, inclusive of a PJM delivery year, that is not a weekend or federal holiday.¹⁰

The organized PJM capacity market (which includes the reliability pricing model or "RPM") is unrelated to and very different from the EE/PDR mandates contained in Section 4928.66, Revised Code. The PJM capacity market is designed to ensure the adequate availability of necessary capacity resources that can be called upon to ensure the reliability of the grid within the PJM region which includes Ohio.¹¹ Energy efficiency

⁵ Mercantile Pilot Program, Entry at 5 (May 25, 2011).

⁶ Mercantile Pilot Program, Entry (Mar. 6, 2013).

⁷ IEU-Ohio Ex. 2 at numbered page 4 (PJM Manual 18).

⁸ *Id.* at numbered page 39 (PJM Manual 18).

⁹ *Id.* at numbered page 38 (PJM Manual 18).

¹⁰ *Id.*

¹¹ Numbered page 3 of PJM Manual 18 states that the purpose of the PJM capacity market is to ensure reliability and availability of capacity resources:

measures are only relevant in the PJM-reliability oriented market structure if they are, according to PJM's rules and requirements, eligible to be classified as a capacity resource. The EE/PDR mandates in Ohio law have no necessary connection to PJM's capacity-related requirements.

As between Ohio's EE/PDR mandates and PJM's regional reliability-related reliance on eligible energy efficiency capabilities, the methods of measurement and use are also very different. Ohio law requires that **all** reductions in energy savings that may result from an energy efficiency project be counted toward compliance with Section 4928.66, Revised Code. PJM measures the value of unforced capacity that may be bid as a supply-side resource into PJM auctions based upon the measurement and verification criteria contained in PJM Manual 18B. See IEU-Ohio Ex. 3. As testified by FirstEnergy witness Demery, Ohio law has no bearing on the amount of EE/PDR capacity resources that may be bid into PJM auctions. Tr. Vol. III at 499-502; *id.* at 505-506. Thus, the determination of what counts for the purpose of measuring compliance with Ohio's EE/PDR portfolio requirements is much different than the determination of what energy efficiency resources may be eligible to be classified as a PJM capacity resource and bid into PJM's capacity-related auction process.

The PJM capacity market is designed to ensure the adequate availability of necessary resources that can be called upon to ensure the reliability of the grid. In PJM, the capacity market structure provides transparent information to enable forward capacity market signals to support infrastructure investment. The capacity market design provides a forward mechanism to evaluate the ongoing reliability requirements in a transparent way to provide opportunity for generation, demand response, energy efficiency, and transmission solutions.

In the PJM Region, the basis for the capacity market design is the Reliability Pricing Model (RPM). The goal of RPM is to align capacity pricing with system reliability requirements and to provide transparent information to all market participants far enough in advance for actionable response to the information.

IEU-Ohio Ex. 2 at 3.

In addition to having a very different purpose relative to PJM's organized capacity market, Section 4928.66, Revised Code, does not cite or contain any reference to participation in the PJM capacity markets.¹² Also, Section 4928.66, Revised Code, does not require or authorize the Commission to require a mercantile customer to convey to an EDU the ownership of PJM-related EE/PDR attributes (permanent peak demand reductions) when the customer seeks an exemption from the EE/PDR cost recovery mechanism.

Mercantile customers have traditionally retained the right to bid the eligible EE/PDR-related capacity resources associated with their self-funded projects into PJM's capacity auctions.¹³

On July 31, 2012, FirstEnergy filed an Application for Approval of their EE/PDR Program Portfolio Plans for 2013 to 2015 ("Application" or "Portfolio Plan"). The Application proposed to modify the Mercantile Customer Commitment Agreement ("Commitment Agreement") through which mercantile customers commit their customer-sited capabilities in return for obtaining an exemption from the demand-side management energy efficiency rider ("DSEII Rider").¹⁴ Particularly, FirstEnergy proposed that mercantile customers that request an exemption from the DSEII Rider transfer to FirstEnergy the ownership rights to bid capacity resources associated with

¹² FirstEnergy Ex. 23 at 5.

¹³ FirstEnergy Ex. 1 at 15-18.

¹⁴ FirstEnergy Ex.1 at 5-16 (citing *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order at 38 (Jul. 18, 2012) (hereinafter "ESP III Order").

their self-funded projects into future PJM capacity auctions.¹⁵ FirstEnergy made this proposal because it interpreted the ESP III Order as requiring customers that participate in FirstEnergy energy efficiency programs as requiring this commitment.¹⁶ Notwithstanding its proposal, FirstEnergy observed that this forced-transfer requirement would be counterproductive and would result in fewer mercantile customer commitments and thereby increase the difficulty of FirstEnergy's compliance with Ohio's portfolio mandates.¹⁷ FirstEnergy's testimony on this issue was uncontested.¹⁸

Despite the uncontested evidence in the record and FirstEnergy's preference that mercantile customers requesting an exemption from the DSEII Rider continue to retain the rights to bid their capacity attributes into the PJM auctions, the Commission approved FirstEnergy's Commitment Agreement as proposed in the Application, stating:

The Commission notes that the plain language of Section 4928.66(A)(2)(c), Revised Code, states that the Commission "may exempt" mercantile customers from the cost recovery rider for EE/PDR programs; therefore, there is no statutory prohibition against conditioning such exemption on the transfer of the energy savings

¹⁵ FirstEnergy Ex. 1 at 15-16. The specific language FirstEnergy has added to the Commitment Agreement is as follows:

By committing the Customer Energy Project(s), Customer further acknowledges and agrees that the Company shall take ownership of the energy efficiency capacity rights associated with said Project(s) and shall, at its sole discretion, aggregate said capacity into the PJM market through an auction. Any proceeds from any such bids accepted by PJM will be used to offset the costs charged to the Customer and other of the Company's customers for compliance with state mandated energy efficiency and/or peak demand requirements.

[https://www.firstenergycorp.com/content/dam/customer/Saving%20Energy/Files/OH/Mercantile%20Customer%20Project%20Commitment%20Agreement%20\(Exemption\).doc](https://www.firstenergycorp.com/content/dam/customer/Saving%20Energy/Files/OH/Mercantile%20Customer%20Project%20Commitment%20Agreement%20(Exemption).doc) (last viewed Nov. 15, 2012).

¹⁶ FirstEnergy Ex. 1 at 16.

¹⁷ FirstEnergy Ex. 1 at 18.

¹⁸ FirstEnergy's Reply Brief indicated that FirstEnergy would not object to mercantile customers requesting an exemption from the DSEII Rider retaining ownership of PJM bidding rights. FirstEnergy Reply Brief at 69 (Nov. 30, 2012).

attributes. Further, as noted above, bidding the energy efficiency attributes into the base residual auctions will provide funds to offset the cost of the EE/PDR programs, lowering the costs for all customers, and will help reduce the cost of capacity in the Companies service territories.¹⁹

As discussed below, the Opinion and Order is unlawful and unreasonable in several respects.

II. LAW AND ARGUMENT

1. The Opinion and Order is unlawful and unreasonable because the Commission lacks statutory authority to require a mercantile customer to cede PJM bidding rights to FirstEnergy

The Opinion and Order requires a mercantile customer requesting an exemption from the DSEII Rider to cede to FirstEnergy the right to bid the capacity attributes²⁰ associated with its self-funded energy efficiency projects into PJM auctions. Section 4928.66(A)(2)(c), Revised Code, provides that a mercantile customer may be exempt from any cost recovery mechanism if the customer commits their customer-sited capabilities, whether existing or new, for integration into an EDU's compliance programs. The Opinion and Order has misapplied the statute and unlawfully required mercantile customers to transfer property rights to FirstEnergy that are not related to FirstEnergy's compliance obligation.

Courts have held that “[t]he legal definition of ‘property’ most often refers not to a particular physical object, but rather to the legal bundle of rights recognized in that object.” *Brotherton v. Cleveland*, 923 F.2d 477, 482 (6th Cir. 1991). Thus, property is often referred to as a “bundle of rights.” The “bundle of rights” associated with property

¹⁹ Opinion and Order at 42 (Mar. 20, 2013).

²⁰ As used herein capacity attributes means the permanent peak demand reduction associated with a mercantile customer's customer-sited project that is eligible to be bid as capacity resource into PJM's capacity auctions.

includes the rights to possess, to use, to exclude, to profit, and to dispose. *Id.* The attributes of self-funded energy efficiency projects are the property of mercantile customers. And there is more than one stick to the bundle of rights associated with mercantile self-direct energy efficiency projects. Energy efficiency projects produce energy efficiency savings that may qualify to be counted toward FirstEnergy's statutory compliance obligation. These customer-sited capabilities entitle a customer to request an exemption from the DSEII Rider. But these energy efficiency projects may also produce capacity attributes that may be bid into PJM auctions.

As Staff witness Scheck testified, the ownership of these capacity attributes initially remains with the customer:

If the customer requests an exemption and it's approved by the Commission, my view is that the customer would have ownership rights of that capacity, bid into the PJM market, and, therefore, the company could not claim those. If the customer wanted to commit such resources to the company, they could do so, but that would be up to the customer.²¹

Ownership of such capacity-related attributes can only be transferred to the EDU through a bilateral contract through which the customer agrees to convey ownership to the EDU or if the customer consents to transfer the rights in exchange for participation in a rebate program.²² Moreover, the Commission's recently proposed changes to its net metering rules also supports the principle that an EDU must enter into a contract with a customer to take ownership of the attributes associated with a customer-sited resource:

Renewable energy credits associated with a customer-generator's net metering facility shall be the property of the customer-generator, unless

²¹ Tr. Vol. IV at 769-770. See also *id.* at 771. See also *id.* at 827-830.

²² *Id.* at 827.

otherwise contracted through a separate transaction, independent of the net metering tariff or the customer-generator's net metering agreement with the electric utility.²³

It is clear that the right to bid capacity attributes associated with energy efficiency projects initially lies with the customer and that this right is separate and apart from the right to obtain an exemption from the DSEII Rider under Section 4928.66, Revised Code.

FirstEnergy's Portfolio Plan is designed to allow FirstEnergy to comply with the benchmark requirements contained in Section 4928.66(A)(1)(a) and (b), Revised Code. The annual savings targets are related to energy savings and peak demand reduction as measured against a three year average.²⁴ No part of Section 4928.66(A)(1)(a) or (b), Revised Code, contains a requirement that an EDU bid the capacity attributes associated with customer-sited energy efficiency projects into PJM's organized capacity market. The mercantile exemption option contained in Section 4928.66(A)(2)(c), Revised Code, is available when a mercantile customer commits customer-sited capabilities for purposes of assisting the EDU in meeting its statutory compliance obligations. The EDU's Ohio statutory compliance obligations are completely unrelated to bidding capacity-related resources into PJM auctions.

As a creature of statute, the Commission can only act within the authority granted by the General Assembly. *Monongahela Power Co. v. Pub. Util. Comm.*, 104 Ohio St.3d 571, 2004-Ohio-6896 at ¶26 (2004). Because the compliance requirements contained in Section 4928.66, Revised Code, have no linkage to PJM's wholesale

²³ *In the Matter of the Commission's Review of Chapter 4901:1-10, Ohio Administrative Code, Regarding Electric Companies*, Case No. 12-2050-EL-ORD, Entry, Attachment A at 73 (Nov. 7, 2012).

²⁴ Section 4928.66(A)(2)(a), Revised Code.

capacity market, it is unlawful and unreasonable for the Opinion and Order to require mercantile customers to cede the right to bid their capacity attributes into PJM's capacity market in order to obtain an exemption from FirstEnergy's DSEI Rider.

2. The Opinion and Order is unlawful and unreasonable because it imposes an economic penalty on mercantile customers. The economic penalty unreasonably and unlawfully discourages mercantile customers from committing their customer-sited capabilities to FirstEnergy

The Opinion and Order found that the Commission may require customers to cede their PJM capacity bidding rights to FirstEnergy in order to seek and obtain an exemption from the DSEI Rider because Section 4928.66, Revised Code, does not prohibit the Commission from imposing such a condition:

The Commission notes that the plain language of Section 4928.66(A)(2)(c), Revised Code, states that the Commission "may exempt" mercantile customers from the cost recovery rider for EE/PDR programs; therefore, there is no statutory prohibition against conditioning such exemption on the transfer of the energy savings attributes. Further, as noted above, bidding the energy efficiency attributes into the base residual auctions will provide funds to offset the cost of the EE/DR programs, lowering the costs for all customers, and will help reduce the cost of capacity in the Companies service territories.²⁵

But, Section 4928.66(A)(2)(c), Revised Code, states that the Commission may grant the requested exemption from the cost recovery mechanism if it encourages mercantile customers to commit their customer-sited capabilities to an EDU:

Any mechanism designed to recover the cost of energy efficiency, including waste energy recovery and combined heat and power, and peak demand reduction programs under divisions (A)(1)(a) and (b) of this section **may exempt** mercantile customers that commit their demand-response or other customer-sited capabilities . . . **if the commission determines that that exemption reasonably encourages such customers to commit those capabilities to those programs.**²⁶

²⁵ Opinion and Order at 42.

²⁶ Section 4928.66(A)(2)(c), Revised Code (emphasis added).

The Opinion and Order works to subject mercantile customers seeking an exemption from the cost recovery mechanism to an extra obligation to commit the PJM-related attributes of their customer-sited capabilities to an EDU as a condition for seeking an exemption. The forced conveyance of these PJM-related attributes does not encourage mercantile customers to commit their customer-sited capabilities to FirstEnergy. Rather, the Opinion and Order imposes an economic penalty on mercantile customers requesting an exemption and discourages such customers from committing their capabilities to FirstEnergy.

The Opinion and Order is unreasonable and unlawful because it effectively requires the capacity resource value that is produced by mercantile customers' efforts to be transferred to benefit other customers some of which have or will receive incentives or point of purchase discounts rather than an exemption from the DSEII Rider. By confiscating this value in cases where the mercantile customers seek an exemption and then using the value to reduce compliance costs payable by non-exempt customers, the Opinion and Order imposes an unreasonable burden and prejudice on the right of mercantile customers to seek an exemption from the rider.

In *Ohio Manufacturers' Association v. Pub. Util. Comm.*, 46 Ohio St.2d 214, 216-217 (1976), the Supreme Court of Ohio held that the Commission cannot impose an economic penalty on consumers because "the General Assembly has granted no such power to the commission for the regulation of *consumers*." *Id.* at 217. Section 4928.66, Revised Code, did not change this fact and empower the Commission with the statutory authority to impose economic penalties on consumers. Therefore, the Opinion and Order is unlawful and unreasonable.

Moreover, the economic penalty imposed by the Opinion and Order will discourage mercantile customers from seeking an exemption from the DSEII Rider. FirstEnergy witness Dargie testified that mercantile customers will be less likely to commit their EE/PDR capabilities to FirstEnergy if they do not retain PJM bidding rights. In fact, FirstEnergy witness Dargie testified that if “customers desire to retain ownership of these credits, and therefore are prohibited from participating in EE programs based upon the Commission’s directive, we believe that compliance with the statutory benchmarks may be jeopardized.” FirstEnergy Ex. 1 at 18. No party disputed or even disagreed with witness Dargie’s testimony; thus, the record in this proceeding contains no evidence that imposing a requirement that mercantile customers cede the rights to bid their capacity-related attributes into PJM’s capacity markets will “reasonably encourage” the customer to commit their energy efficiency capabilities to FirstEnergy. Therefore, the Opinion and Order is unlawful and unreasonable because it imposes, as a condition for seeking an exemption from the cost recovery mechanism, an economic penalty on customers. This penalty unlawfully and unreasonably discourages customers from committing their energy efficiency capabilities to FirstEnergy in exchange for receiving an exemption from the DSEII Rider.

3. The Opinion and Order is unlawful and unreasonable because it violates cost causation regulatory practices and principles

The Opinion and Order imposes two conditions on mercantile customers that must be satisfied to obtain an exemption from the DSEII Rider: a customer must commit to FirstEnergy its customer-sited energy efficiency capabilities that result from a customer’s self-funded project, and the customer must cede to FirstEnergy the right to bid any associated PJM-related capacity attributes into PJM’s periodic capacity

auctions. The Opinion and Order is unlawful and unreasonable because it violates cost causation regulatory practices and principles. More specifically, the Opinion and Order is unreasonable and unlawful because it effectively requires the capacity resource value that is produced by mercantile customers' efforts to be transferred to benefit other customers some of which have received or will receive incentives or point of purchase discounts rather than an exemption from the DSEII Rider. By confiscating this value in cases where the mercantile customers seek an exemption and then using the value to reduce compliance costs payable by non-exempt customers, the Opinion and Order imposes an unreasonable burden and prejudice on the right of mercantile customers to seek an exemption from the rider.

Principles of cost causation require that costs be assigned to the cost causer. See *generally* Tr. Vol. II at 265. The DSEII Rider is a charge to recover compliance costs—it is a cost-based charge to which principles of cost causation apply. A legion of Commission and Supreme Court of Ohio cases hold that charges that are established based on costs must be designed and collected consistent with principles of cost causation. *Meyers v. Pub. Util. Comm.*, 64 Ohio St. 2d 299, 302 (1992); *Canton v. Pub. Util. Comm.*, 63 Ohio St. 2d 76, 81 (1980); *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 Nos. 11-346-EL-SSO, *et al.*, Opinion and Order at 55 (Aug. 8, 2012) (holding that “[t]he PIRR balance was incurred primarily by OP customers, and according to cost causation principles, the recovery of the balance should be from OP customers.”); *In the Matter of the Application of Columbus Southern Power Company*

and Ohio Power Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates, Case Nos. 11-351-EL-AIR, et al., Entry On Rehearing at ¶14 (Feb. 14, 2012); In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices and for Tariff Approvals, Case Nos. 07-551-EL-AIR, et al., Entry on Rehearing at ¶17 (Feb. 2, 2011).

The Opinion and Order requires mercantile customers to cede their PJM bidding rights to FirstEnergy and forfeit value the mercantile customer could otherwise receive by directly bidding their capacity resources into PJM's capacity markets. The Opinion and Order directs FirstEnergy to flow any revenue it receives from PJM associated with bidding a mercantile customer's capacity attributes into PJM's capacity market to reduce the compliance cost that is otherwise recoverable from customers—including customers that receive rebates and participate in point of purchase programs—subject to the DSEII Rider.²⁷ This result is inconsistent with the principles of cost causation and is otherwise unreasonable and unlawful.

III. CONCLUSION

For the reasons stated herein, IEU-Ohio respectfully requests that the Commission grant this Application for Rehearing and reverse its determination that in order to obtain an exemption from the DSEII Rider mercantile customers must cede to FirstEnergy the right to bid capacity attributes associated with their self-direct projects.

²⁷ “[f]urther, as noted above, bidding the energy efficiency attributes into the base residual auctions will provide funds to offset the cost of the EE/DR programs, lowering the costs for all customers.” Opinion and Order at 42.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the *foregoing Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio*, was served upon the following parties of record this 19th day of April, 2013 *via* hand-delivery, electronic transmission, or first class mail, U.S. postage prepaid.

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