

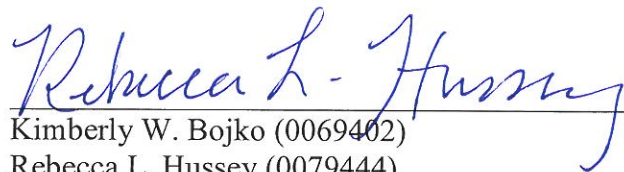
**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MOTION FOR LEAVE TO FILE APPLICATION FOR REHEARING OR, IN THE
ALTERNATIVE, MOTION FOR CLARIFICATION OF
EMC DEVELOPMENT COMPANY, INC.**

EMC Development Company, Inc. (EMC) hereby files this Motion for Leave to File an Application for Rehearing pursuant to Section 4903.10, Revised Code (R.C.), and Rule 4901-1-35, Ohio Administrative Code (O.A.C.), or, in the alternative, to file a Motion for Clarification in the above-captioned cases. The reasons supporting this motion are detailed in the Memorandum in Support attached hereto.

Respectfully submitted,



Kimberly W. Bojko (0069402)
Rebecca L. Hussey (0079444)
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Telephone: (614) 365-4100
Email: Bojko@carpenterlipps.com
Hussey@carpenterlipps.com

Memorandum in Support

EMC is a member of PJM and, as a member, has qualified approximately 6,000 energy efficiency projects completed by its customers as energy efficiency resources in the PJM capacity market. The ability to bid capacity in the market is generally only available to large-scale projects; however, working with local Ohio partners, EMC aggregates smaller projects in order to qualify them for participation in PJM capacity auctions. EMC has, over the past three years, bid attributes from these projects into PJM capacity auctions. EMC provides a significant portion of the proceeds from the auctions to participating customers who have implemented the energy efficiency projects. EMC provides a cost-effective means for Ohio ratepayers who have completed energy efficiency projects to derive value from those projects in PJM's market. A number of the projects EMC has, in the past, aggregated for purposes of PJM capacity auctions, and wishes to continue to aggregate in the future, are located in FirstEnergy's service territory in Ohio.

Section 4903.10, R.C., provides, in pertinent part,

After any order has been made by the public utilities commission, any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing in respect to any matters determined in the proceeding. * * * Notwithstanding the preceding paragraph, * * * any affected person, firm, or corporation may make an application for a rehearing within thirty days after the entry of any final order upon the journal of the commission. Leave to file an application for rehearing shall not be granted to any person, firm, or corporation who did not enter an appearance in the proceeding unless the commission first finds:

(A) The applicant's failure to enter an appearance prior to the entry upon the journal of the commission of the order complained of was due to just cause; and,

(B) The interests of the applicant were not adequately considered in the proceeding.

EMC did not enter an appearance in these cases prior to the Commission's July 17, 2013 Entry on Rehearing (Entry on Rehearing) in these matters because its interests were not affected until the issuance of the Entry on Rehearing. In the Entry on Rehearing, the Commission states, *inter alia*, that

[M]ercantile customers who participate in the other utility programs set forth in the program portfolio plans *may be required* to transfer ownership of the energy attributes to the Companies for bidding into the PJM auctions.

Entry on Rehearing at ¶ 13.

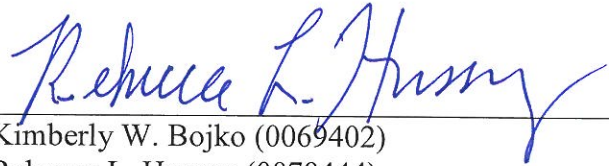
Many of EMC's customers are mercantile customers who participate in the other utility programs that make up FirstEnergy's program portfolio. The Commission's Entry on Rehearing may have significant implications for EMC's customers, and by extension, EMC, through the restriction imposed on such customers, in specific instances, to commit the capacity attributes from their energy efficiency projects to EMC for purposes of aggregating and bidding these resources into PJM auctions. Many of EMC's customers have committed these attributes to EMC since 2011, which was the first instance in which PJM permitted the bidding of energy efficiency resources into these auctions. The language above could eliminate the right of customers to assign these attributes to EMC, and by extension, may eradicate EMC's ability to serve these customers and aggregate their energy efficiency attributes for sale in PJM auctions. The Commission's Entry on Rehearing language may significantly diminish the opportunity for EMC to serve customers who participate in the utility programs referenced therein. Additionally, the statements preceding this provision are unclear as to which programs would be affected by the Commission's decision. Because the Commission's use of this language occurs only in its latest decision in the above-captioned cases, and may initiate the consequences

explained above, just cause exists to substantiate EMC's decision not to enter an appearance in these cases prior to the journaling of the Entry on Rehearing.

Further, due to its unique situation in the energy efficiency marketplace and the lack of participation by any similarly-situated parties in these cases, EMC's interests in these cases have not been adequately considered by the Commission. This stems in part from a lack of recognition by many parties, and possibly the Commission, that companies which provide the type of services that EMC performs currently serve this need in the marketplace. Supporting the idea that many active entities in the energy markets are unaware that third party aggregation services for attributes arising from smaller-scale energy efficiency projects exist is the fact that the identity of aggregators, or any bidders of these resources in the PJM auctions, is not disclosed. This fact has delayed the recognition by many parties that a competitive market, outside of the provision of these services by utilities, readily exists and is in many cases thriving, resulting in the bidding of more capacity resources into PJM auctions and driving down the price of such resources. The Entry on Rehearing does not consider the interests of companies like EMC, who are performing an important service in the market, before impeding their ability to perform these services in many instances. Unfortunately, and contrary to Ohio laws such as Section 4928.02, R.C., which encourages the use by Ohio entities of energy efficiency programs and alternative energy resources in their businesses, the Commission's Entry on Rehearing may preclude the opportunity of competitive providers of services connected with energy efficiency resources to operate successfully in the Ohio marketplace. This result works against the policies and regulations promoting competition in the electric marketplace in Ohio that have been in place since the advent of deregulation.

Given that EMC's decision not to enter an appearance prior to the filing of the Entry on Rehearing is supported by just cause, as outlined above, and EMC's interests, including the effect the Commission's decision may have on its business model and the choices of its existing customers, were not considered in rendering the decision, the Commission should grant EMC's Motion for Leave to File an Application for Rehearing or, in the alternative, a Motion for Clarification in these matters. Accordingly, EMC respectfully requests that the Commission grant its motion.

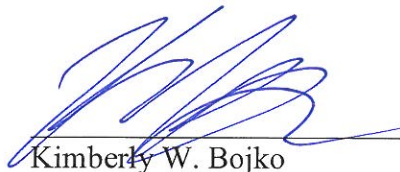
Respectfully submitted,



Kimberly W. Bojko (0069402)
Rebecca L. Hussey (0079444)
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Telephone: (614) 365-4100
Email: Bojko@carpenterlipps.com
Hussey@carpenterlipps.com

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on August 16, 2013.



Kimberly W. Bojko

Kathy J. Kolich
Carrie M. Dunn
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
kjkolich@firstenergycorp.com
cdunn@firstenergycorp.com

Cathryn N. Loucas
Trent Dougherty
The Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
Cathy@theOEC.org
Trent@theOEC.org

Kyle L. Kern
Assistant Consumers' Counsel
Office of the Ohio Consumers'
Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43216
kern@occ.state.oh.us

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

Devin Parram
Attorney General's Office
Public Utilities Commission of Ohio
180 East Broad St., 6th Fl.
Columbus, OH 43215
Devin.parram@puc.state.oh.us

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

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

Michael K. Lavanga
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, D.C. 20007
mkl@bbrslaw.com

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

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

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

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

Theodore Robinson
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
robinson@citizenpower.org

Gregory Price
Mandy Willey
Attorney Examiners
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215
gregory.price@puc.state.oh.us
mandy.willey@puc.state.oh.us

Samuel C. Randazzo
Frank P. Darr
Joseph E. Olikier
Matthew R. Pritchard
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com
mpritichard@mwncmh.com

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

J. Thomas Siwo
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tsiwo@bricker.com

Christopher J. Allwein
Williams, Allwein and Moser, LLC
1373 Grandview Ave., Suite 212
Columbus, Ohio 43212
callwein@wamenergylaw.com

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

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/16/2013 4:43:04 PM

in

Case No(s). 12-2190-EL-POR, 12-2191-EL-POR, 12-2192-EL-POR

Summary: Motion Motion For Leave To File Application For Rehearing Or, In The Alternative, Motion For Clarification Of EMC Development Company, Inc. electronically filed by Mrs. Kimberly W. Bojko on behalf of EMC Development Company, Inc