

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**MEMORANDUM CONTRA REHEARING  
OF  
DUKE ENERGY COMMERCIAL ASSET MANAGEMENT  
AND  
DUKE ENERGY RETAIL SALES**

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Come now Duke Energy Retail Sales, LLC, (DER) and Duke Energy Commercial Asset Management, Inc., (DECAM) and, pursuant to O.A.C. 4901-1-35(B), hereby submit this memorandum in opposition to the Applications for Rehearing of Ohio Power Company (AEP Ohio), Ohio Energy Group (OEG), Industrial Energy Users-Ohio (IEU-Ohio), and, jointly, the Office of the Ohio Consumers' Counsel (OCC) and the Appalachian Peace and Justice Network (APJN). Although this memorandum focuses only on certain aspects of the Applications for Rehearing of the referenced parties, such limited scope should not be read as agreement with the remainder of the arguments made therein.

**I. Recovery of Deferred Amounts Created by Implementation of Ohio's State Compensation Mechanism.**

OEG, IEU-Ohio, the OCC, and the APJN all claim that the Public Utilities Commission of Ohio (Commission) unreasonably and unlawfully authorized AEP Ohio to recover from retail customers in its territory the deferred amounts created by the implementation of Ohio's state compensation mechanism. These entities instead contend that AEP Ohio should seek recovery of the amounts authorized under the state compensation mechanism only from competitive retail electric service (CRES) providers.<sup>1</sup> This argument is improperly included in these proceedings, which do not address the creation and implementation of the state compensation mechanism.

The Commission has established a state compensation mechanism in Case No. 10-2929-EL-UNC (hereinafter the Capacity Case). And in its Opinion and Order issued on July 2, 2012 (Capacity Order), the Commission determined that it would implement the state compensation mechanism through a combination of market-based charges for capacity to CRES providers and the creation of a regulatory asset to defer, for future recovery from customers, the difference between AEP Ohio's costs under the state compensation mechanism and market. This issue of the CRES providers' obligation is subject to rehearing in the Capacity Case, having been fully briefed. And it is now improper for OEG, IEU-Ohio, the OCC, and the APJN – all parties in the Capacity Case – to attempt additional argument of that same issue here. Whether the Commission's decision to impose upon CRES providers market-based charges for capacity under the state compensation mechanism is lawful, just, and reasonable will, and should, be decided only in the Capacity Case. These proceedings should not be unduly complicated with or confused by issues that are clearly outside of the pleadings.

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<sup>1</sup> OEG Application for Rehearing (September 7, 2012), at 8-9; IEU-Ohio Application for Rehearing (September 7, 2012), at 67-69; OCC and APJN Application for Rehearing (September 7, 2012), at 68-70.

In a related argument, AEP Ohio suggests that the Commission create a “backstop” plan in the event its decision to properly impose market-based charges upon CRES providers is possibly reversed or vacated on appeal. But this issue should have been timely raised by AEP Ohio in an application for rehearing in the Capacity Case. The manner in which the Commission structured the charges under the state compensation mechanism is not at issue in these proceedings. Rather, these proceedings concern *only* the recovery of deferred amounts previously authorized by the Commission under R.C. 4905.13.

Furthermore, AEP Ohio’s contention should be rejected as inconsistent with established regulatory practice. Indeed, the Commission is charged with the responsibility of establishing rates that are fair, just, and reasonable.<sup>2</sup> As such, and focusing on the discreet deferral mechanism as approved in these proceedings, it should be presumed that such mechanism is fair, just, and reasonable such that the Commission should not qualify its decision to accommodate AEP Ohio’s request.

DER and DECAM further submit that the Commission should not accept AEP Ohio’s invitation to deviate from precedent and commence a practice of approving alternative standard service offers (SSO). The Commission historically has not approved rates for any utility, subject to a proviso that an alternative would take effect in the event of an unfavorable outcome on appeal. Any certainty in the regulatory process would be greatly undermined by AEP Ohio’s proposal. Similarly, the certainty in the competitive market that resulted from the Commission’s decision in the Capacity Case would be unnecessarily disrupted if the Commission were to approve a “backstop” plan. Indeed, under such a “backstop” plan, customers participating in

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<sup>2</sup> See, generally, R.C. 4905.22 (“All charges...for any service rendered...shall be just, reasonable, and not more than the charges authorized by law or by order of the public utilities commission...”).

choice would be unfairly exposed to changes in the contractual pricing of their generation service, which would not encourage competition.

## **II. Consolidation**

AEP Ohio requests, in its Application for Rehearing, that the Commission consolidate these proceedings with the Capacity Case. Such a request is not properly included in an application for rehearing. Rather, consistent with R.C. 4903.10, an application for rehearing is limited to “any matters determined in said proceeding.” The Commission did not address the procedural issue of consolidation in its Opinion and Order of August 8, 2012 (ESP Order). Consequently, AEP Ohio’s request is misplaced. And it must be conceded that even AEP Ohio recognizes its procedural misstep, given that it has separately filed a motion for consolidation. DER and DECAM expressly reserve the right to respond to that separate motion, consistent with the deadlines applicable thereto. For purposes of this filing, DER and DECAM respectfully request that the Commission deny AEP Ohio’s request as procedurally deficient.

## **III. Auction Structure**

In its Application for Rehearing, AEP Ohio requests clarification and/or reconsideration of the SSO auction features. As AEP Ohio contends, “[t]he auction-related issues are too significant to be left ambiguous and unaddressed until later.” DECAM agrees with the proposition that auction-related issues should be addressed here. And in that regard, DECAM requests that the Commission further clarify that the auctions to be conducted during the term of this ESP pertain to full requirements service (*i.e.*, energy, capacity, ancillary services, and non-market based transmission services). Under such a structure, capacity in the SSO auction would be priced at market, consistent with the charges applicable to CRES providers under the state compensation mechanism. And any difference between market-based charges and the cost-based

charge of \$188.88/MW-Day, as established via the state compensation mechanism, could be included in the deferral to be subsequently recovered from all customers. Such an outcome will allow for an efficient migration to auctions for all of the supply needed for AEP Ohio's SSO load, effective June 1, 2015. Moreover, such an outcome mitigates the concern raised by IEU-Ohio, the OCC, and the APJN in respect of alleged duplicative payments for capacity. As a component of non-shopping customers' rates would reflect market-based prices for full requirements service, such rates would be reduced as compared to rates that are fully derived from AEP Ohio's base generation, which includes a cost for capacity that is nearly twice that approved under the state compensation mechanism.

#### **IV. Conclusion**

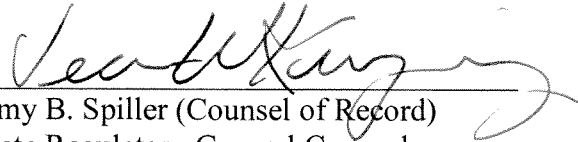
For the reasons stated herein, Duke Energy Commercial Asset Management, Inc., and Duke Energy Retail Sales, LLC, respectfully request that the Commission deny the claimed errors of Ohio Power Company, Ohio Energy Group, Industrial Energy Users-Ohio, and, jointly, the Office of the Ohio Consumers' Counsel and the Appalachian Peace and Justice Network as set forth in their Applications for Rehearing and as discussed herein.

Respectfully submitted,

DUKE ENERGY COMMERCIAL ASSET  
MANAGEMENT, INC.

and

DUKE ENERGY RETAIL SALES, LLC



Amy B. Spiller (Counsel of Record)

State Regulatory General Counsel

Jeanne W. Kingery

Associate General Counsel

139 East Fourth Street

1303-Main

Cincinnati, Ohio 45202

(513) 287-4359 (telephone)

[Amy.Spiller@duke-energy.com](mailto:Amy.Spiller@duke-energy.com)

[Jeanne.Kingery@duke-energy.com](mailto:Jeanne.Kingery@duke-energy.com)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 7<sup>th</sup> day of September 2012, by electronic mail, upon the persons listed below.

  
Jeanne W. Kingery

Steven T. Nourse  
Matthew J. Satterwhite  
American Electric Power Service Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, Ohio 43215  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)

Daniel R. Conway  
Porter Wright Morris & Arthur  
Huntington Center  
41 S. High Street  
Columbus, Ohio 43215  
[dconway@porterwright.com](mailto:dconway@porterwright.com)

Counsel for Ohio Power Company

Mark S. Yurick  
[myurick@taftlaw.com](mailto:myurick@taftlaw.com)

Zachary D. Kravitz  
[zkravitz@taftlaw.com](mailto:zkravitz@taftlaw.com)

Taft Stettinius & Hollister LLP  
65 East State Street, Suite 1000  
Columbus, Ohio 43215

Counsel for The Kroger Co.

Roger P. Sugarman  
Kegler, Brown, Hill & Ritter  
A Legal Professional Association  
65 East State Street, Suite 1800  
Columbus, Ohio 43215  
[rsugarman@keglerbrown.com](mailto:rsugarman@keglerbrown.com)

Counsel for NFIB/Ohio

Chad E. Endsley  
Chief Legal Counsel  
Ohio Farm Bureau Federation  
280 North High Street, P.O. Box 182383  
Columbus, OH 43218-2383  
[cendsley@ofbf.org](mailto:cendsley@ofbf.org)

Counsel for the Ohio Farm Bureau Federation

M. Howard Petricoff  
Lija Kaleps-Clark  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[lkalepsclark@vorys.com](mailto:lkalepsclark@vorys.com)

Counsel for the Retail Energy Supply Association

Barth E. Royer  
Bell &, Royer CO., LPA  
33 South Grant Avenue  
Columbus, Ohio 43215-3927  
[BarthRoyer@aol.com](mailto:BarthRoyer@aol.com)

Gary A. Jeffries  
Assistant General Counsel  
Dominion Resources Services, Inc.  
501 Martindale Street, Suite 400  
Pittsburgh, PA 15212-5817  
[Garv.A.Jeffries@dom.com](mailto:Garv.A.Jeffries@dom.com)

Counsel for Dominion Retail, Inc.

Colleen L Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Findlay, OH 45839-1793  
[cmoonev2@columbus.rr.com](mailto:cmoonev2@columbus.rr.com)

Counsel for Ohio Partners for Affordable Energy

Mark A. Whitt  
Whitt Sturtevant LLP  
PNC Plaza, Suite 2020  
155 East Broad Street  
Columbus, Ohio 43215  
[whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com)

Vincent Parisi  
Matthew White  
Interstate Gas Supply, Inc.  
6100 Emerald Parkway  
Dublin, Ohio 43016  
[vparisi@igsenergy.com](mailto:vparisi@igsenergy.com)  
[mwhite@igsenergy.com](mailto:mwhite@igsenergy.com)

Counsel for Interstate Gas  
Supply, INC.

David F. Boehm, Esq.  
Michael L. Kurtz, Esq.  
BOEHM, KURTZ & LOWRY  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
[dboehm@BKLlawfirm.com](mailto:dboehm@BKLlawfirm.com)  
[mkurtz@BKLlawfirm.com](mailto:m Kurtz@BKLlawfirm.com)

Counsel for The Ohio Energy Group

Lisa G. McCallister  
Matthew W. Warnock  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[lmcalister@bricker.com](mailto:lmcalister@bricker.com)  
[mwarnock@bricker.com](mailto:mwarnock@bricker.com)

Counsel for OMA Energy Group



Randy J. Hart  
[rjhart@hahnlaw.com](mailto:rjhart@hahnlaw.com)

Rob Remington  
[rrremington@hahnlaw.com](mailto:rrremington@hahnlaw.com)

David J. Michalski  
[djmichalski@hahnlaw.com](mailto:djmichalski@hahnlaw.com)

200 Public Square, Suite 2800  
Cleveland, Ohio 44114-2316

Counsel for Summit Ethanol, LLC and  
Fostoria Ethanol, LLC

Stephen S. Smith  
Law Director, The City of Grove City, Ohio  
Christopher L. Miller  
Gregory H. Dunn  
Asim Z. Haque  
Ice Miller  
250 West Street  
Columbus, Ohio 43215  
[cmiller@szd.com](mailto:cmiller@szd.com)  
[gdunn@szd.com](mailto:gdunn@szd.com)  
[ahaque@szd.com](mailto:ahaque@szd.com)

Counsel for the City of Grove City, Ohio

Samuel C. Randazzo  
Joseph E. Olikier  
Frank P. Darr  
MCNEES WALLACE & NURICK LLC  
21 East State Street, 17th Floor  
Columbus, OH 43215  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[joliker@mwncmh.com](mailto:joliker@mwncmh.com)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)

Counsel for Industrial Energy Users-Ohio

Thomas J. O'Brien  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[tobrien@bricker.com](mailto:tobrien@bricker.com)

Counsel for Ohio Hospital Association

Brian P. Barger  
[bpbarger@bcslawyers.com](mailto:bpbarger@bcslawyers.com)

4052 Holland-Sylvania Road  
Toledo, Ohio 43623

Counsel for the Ohio Construction Materials  
Coalition

C. Todd Jones  
General Counsel, AICUO  
Christopher L. Miller  
Gregory H. Dunn  
Asim Z. Haque  
Ice Miller  
250 West Street  
Columbus, Ohio 43215  
[cmiller@szd.com](mailto:cmiller@szd.com)  
[gdunn@szd.com](mailto:gdunn@szd.com)  
[ahaque@szd.com](mailto:ahaque@szd.com)

Counsel for the AICUO

Terry L Etter  
Maureen R. Grady  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
[etter@occ.state.oh.us](mailto:etter@occ.state.oh.us)  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)

Ohio Consumers' Counsel

Richard L. Sites  
OHIO HOSPITAL ASSOCIATION  
155 East Broad Street, 15th Floor  
Columbus, OH 43215-3620  
[ricks@ohanet.org](mailto:ricks@ohanet.org)

Counsel for Ohio Hospital Association

David A. Kutik  
Allison E. Haedt  
Jones Day  
901 Lakeside Ave  
Cleveland OH 44114  
[dakutik@jonesday.com](mailto:dakutik@jonesday.com)  
[aehaedt@jonesday.com](mailto:aehaedt@jonesday.com)

Counsel for FirstEnergy Solutions Corp.

Mark A. Hayden  
FIRSTENERGY SERVICE COMPANY  
76 South Main Street  
Akron, OH 44308  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)

Counsel for FirstEnergy Solutions Corp.

Michael R. Smalz  
Joseph V Maskovyak  
Ohio Poverty Law Center  
555 Buttles Avenue  
Columbus, OH 43215  
[msmalz@ohiopoveritylaw.org](mailto:msmalz@ohiopoveritylaw.org)  
[jmaskovyak@ohiopoveritylaw.org](mailto:jmaskovyak@ohiopoveritylaw.org)

Counsel for the Appalachian Peace and Justice Network

Jay E. Jadwin  
American Electric Power Service Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, Ohio 43215  
[jejadwin@aep.com](mailto:jejadwin@aep.com)

Counsel for AEP Retail Energy  
Partners LLC

Laura Chappelle  
4218 Jacob Meadows  
Okemos, Michigan 48864  
[laurac@chappelleconsulting.com](mailto:laurac@chappelleconsulting.com)

James F. Lang  
Laura C. McBride  
N. Trevor Alexander  
CALFEE, HALTER & GRISWOLD LLP  
1400 KeyBank Center  
800 Superior Ave,  
Cleveland, OH 44114  
[jlang@calfee.com](mailto:jlang@calfee.com)  
[lmcbride@calfee.com](mailto:lmcbride@calfee.com)  
[talexander@calfee.com](mailto:talexander@calfee.com)

Counsel for FirstEnergy Solutions Corp.

Terrence O'Donnell  
Christopher Montgomery  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[todonnell@bricker.com](mailto:todonnell@bricker.com)  
[cmontgomcry@bricker.com](mailto:cmontgomcry@bricker.com)

Counsel for Paulding Wind Farm II LLC  
Glen Thomas  
1060 First Ave, Suite 400  
King of Prussia, PA 19406  
[gthomas@gtpowergroup.com](mailto:gthomas@gtpowergroup.com)

Robert Korandovich  
KOREnergy  
PO Box 148  
Sunbury, OH 43074  
[korenergy@insight.rr.com](mailto:korenergy@insight.rr.com)

Jay L Kooper  
Katherine Guerry  
Hess Corporation  
One Hess Plaza  
Woodbridge, NJ 07095  
[jkooper@hess.com](mailto:jkooper@hess.com)  
[kguerry@hess.com](mailto:kguerry@hess.com)

Cynthia Fonner Brady  
David Fein  
Constellation Energy Group  
550 West Washington Blvd, Suite 300  
Chicago IL 60661  
[Cynthia.a.fonner@constellation.com](mailto:Cynthia.a.fonner@constellation.com)  
[David.fein@constellation.com](mailto:David.fein@constellation.com)

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

Joel Malina  
COMPETE Coalition  
1317 F Street, NW, Suite 600  
Washington, DC 20004  
[malina@wexlerwalker.com](mailto:malina@wexlerwalker.com)

Pamela A. Fox  
Christopher L. Miller  
Gregory H. Dunn  
Asim Z. Haque  
Ice Miller  
250 West Street  
Columbus, Ohio 43215

[christopher.miller@icemiller.com](mailto:christopher.miller@icemiller.com)  
[gregory.dunn@icemiller.com](mailto:gregory.dunn@icemiller.com)  
[asim.haque@icemiller.com](mailto:asim.haque@icemiller.com)

Counsel for the city of Grove City, Ohio; and, AICUO

Jesse A. Rodriguez,  
Exelon Generation Company, LLC  
300 Exelon Way  
Kennett Square, PA 19348  
[Jesse.rodriquez@exeloncorp.com](mailto:Jesse.rodriquez@exeloncorp.com)

Counsel for Exelon Generation Company, LLC

Kenneth P. Kreider  
David A. Meyer  
Keating Muething & Klekamp PLL  
One East Fourth Street  
Suite 1400  
Cincinnati, Ohio 45202  
[kpkreider@kmklaw.com](mailto:kpkreider@kmklaw.com)  
[dmeyer@kmklaw.com](mailto:dmeyer@kmklaw.com)

Counsel for Wal-Mart Stores East, LP and Sam's East,  
Inc.

William L. Massey  
Covington & Burling, LLP  
1201 Pennsylvania Ave., NW  
Washington, DC. 20004  
[wmassey@cov.com](mailto:wmassey@cov.com)

Counsel for the COMPETE Coalition

Henry W. Eckhart  
2100 Chambers Road, Suite 106  
Columbus, Ohio 43212  
[henryeckhart@aol.com](mailto:henryeckhart@aol.com)

Counsel for Natural Resources Defense Council and  
Sierra Club

Sandy I-ru Grace  
Exelon Business Services Company  
101 Constitution Avenue N.W.  
Suite 400 East  
Washington, DC 20001  
[Sandy.grace@exeloncorp.com](mailto:Sandy.grace@exeloncorp.com)

Counsel for Exelon Generation Company, LLC

Gregory M Poulos  
EnerNOC  
101 Federal St Suite 1100  
Boston, MA 02110  
[gpoulos@enernoc.com](mailto:gpoulos@enernoc.com)

Counsel for ENERNOC, Inc.

Steve W. Chriss  
Wal-Mart Stores, Inc  
2001 SE 10<sup>th</sup> St  
Bentonville, AR 72716  
[Stephen.chriss@wal-mart.com](mailto:Stephen.chriss@wal-mart.com)

Holly Rachel Smith  
Hitt Business Center  
3803 Rectortown Rd  
Marshall, VA 20115  
[holly@raysmithlaw.com](mailto:holly@raysmithlaw.com)

Counsel for Wal-Mart Stores East, LP and Sam's East,  
Inc.

Trent A. Dougherty  
Cathryn N. Loucas  
Nolan Moser  
Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, Ohio 43212-3449  
[cathy@theoec.org](mailto:cathy@theoec.org)  
[nolan@theoec.org](mailto:nolan@theoec.org)  
[trent@theoec.org](mailto:trent@theoec.org)

Counsel for OEC

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

Counsel for Exelon Generation Company, LLC

Diem N. Kaelber  
Robert Walter  
10 West Broad St, Suite 1300  
Columbus OH 43215  
[kaelber@buckleyking.com](mailto:kaelber@buckleyking.com)  
[walter@buckleyking.com](mailto:walter@buckleyking.com)

Counsel for Ohio Restaurant Association

Tara C. Santarelli  
Environmental Law & Policy Center  
1207 Grandview Ave.  
Suite 201  
Columbus, Ohio 43212  
[tsantarelli@elpc.org](mailto:tsantarelli@elpc.org)

Counsel for the Environmental Law &  
Policy Center

Emma F Hand  
Douglas G. Bonner  
SNR Denton  
1301 K Street NW  
Suite 600, East Tower  
Washington, DC 20005  
[emma.hand@snrdenton.com](mailto:emma.hand@snrdenton.com)  
[doug.bonner@snrdenton.com](mailto:doug.bonner@snrdenton.com)

Counsel for Ormet Primary Aluminum  
Corporation

Shannon Fisk

2 North Riverside Plaza, Suite 2250  
Chicago, IL 60606  
[sfisk@nrhc.org](mailto:sfisk@nrhc.org)

Dane Stinson  
BAILEY CAVALIERI LLC  
10 West Broad Street, Suite 2100  
Columbus, Ohio 43215  
[Dane.stinson@baileycavalieri.com](mailto:Dane.stinson@baileycavalieri.com)

Counsel for The Ohio Association of School Business  
Officials, The Ohio School Boards Association, The  
Buckeye Association of School Administrators and The  
Ohio Schools Council

Matthew R. Cox  
Matthew Cox Law, Ltd.  
4145 St. Theresa Blvd.  
Avon, OH 44011  
[matt@matthewcoxlaw.com](mailto:matt@matthewcoxlaw.com)

Counsel for the Council of Smaller  
Enterprises (COSE)

Arthur Beeman  
SNR Denton US LLP  
525 Market Street, 26th Floor  
San Francisco, CA 94105-2708  
[arthur.beeman@snrdenton.com](mailto:arthur.beeman@snrdenton.com)

Counsel for Ormet Primary Aluminum Corporation

Jeanine Amid Hummer  
Thomas K. Lindsey  
[jhummer@uaoh.net](mailto:jhummer@uaoh.net)  
[tlindsey@uaoh.net](mailto:tlindsey@uaoh.net)

Law Director; and, First Assistant City Attorney for the  
City of Upper Arlington

Christopher L. Miller  
Gregory J. Dunn  
Asim Z. Haque [Christopher.Miller@icemiller.com](mailto:Christopher.Miller@icemiller.com)  
[Gregory.Dunn@icemiller.com](mailto:Gregory.Dunn@icemiller.com)  
[Asim.Haque@icemiller.com](mailto:Asim.Haque@icemiller.com)

Ice Miller LLP  
250 West Street  
Columbus, Ohio 43215

Counsel for the City of Upper Arlington, Ohio; and,  
Counsel for the City of Hillsboro, Ohio

Randy J. Hart  
Rob Remington  
David J. Michalski  
200 Public Square, Suite 2800  
Cleveland, Ohio 44114-2316

[rjhart@hahnlaw.com](mailto:rjhart@hahnlaw.com)  
[djmichalski@hahnlaw.com](mailto:djmichalski@hahnlaw.com)  
[rrremington@hahnlaw.com](mailto:rrremington@hahnlaw.com)

Counsel for Summit Ethanol, LLC and  
Fostoria Ethanol, LLC

Jack D' Aurora  
The Behal Law Group LLC  
501 S. High Street  
Columbus, OH 43215  
[jdaurora@behallaw.com](mailto:jdaurora@behallaw.com)

Counsel for the University of Toledo Innovation  
Enterprises Corporation

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

Counsel for The Dayton Power and Light Company

John Jones  
Werner Margard  
Steven Beeler  
Assistant Attorney Generals  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215  
[John.jones@puc.state.oh.us](mailto:John.jones@puc.state.oh.us)  
[Werner.margard@puc.state.oh.us](mailto:Werner.margard@puc.state.oh.us)  
[Steven.beeler@puc.state.oh.us](mailto:Steven.beeler@puc.state.oh.us)

Counsel for Staff, Public Utilities Commission of Ohio

Stephanie M. Chmiel  
Michael L. Dillard, Jr.  
THOMPSON HINE LLP  
41 S. High Street, Suite 1700  
Columbus, OH 43215  
[Stephanie.Chmiel@ThompsonHine.com](mailto:Stephanie.Chmiel@ThompsonHine.com)  
[Michael.Dillard@ThompsonHine.com](mailto:Michael.Dillard@ThompsonHine.com)

Counsel for Border Energy Electric Services, Inc.

Todd M. Williams  
Counsel of Record  
Williams Allwein and Moser, LLC  
Two Maritime Plaza, 3rd Fl.  
Toledo, Ohio 43604  
[toddm@wamenergylaw.com](mailto:toddm@wamenergylaw.com)  
[callwein@wamenergylaw.com](mailto:callwein@wamenergylaw.com)  
Counsel for the Ohio Business Council for a Clean  
Economy

Robert Burke  
Braith Kelly  
Competitive Power Ventures, Inc.  
8403 Colesville Road, Ste. 915  
Silver Spring, MD 20910  
[rburke@cpv.com](mailto:rburke@cpv.com)  
[bkelly@cpv.com](mailto:bkelly@cpv.com)

Larry F. Eisenstat  
Counsel of Record  
Richard Lehfeltd  
Robert L. Kinder, Jr.  
Dickstein Shapiro LLP  
1825 Eye St. NW  
Washington, DC 20006  
[eisenstat@dicksteinshapiro.com](mailto:eisenstat@dicksteinshapiro.com)  
[lehfeldtr@dicksteinshapiro.com](mailto:lehfeldtr@dicksteinshapiro.com)  
[kinderr@dicksteinshapiro.com](mailto:kinderr@dicksteinshapiro.com)

Counsel for CPV Power Development, Inc.

Sue A. Salamido  
Kristin Watson  
Cloppert, Latanick, Sauter & Washburn  
225 E. Broad Street, 4<sup>th</sup> Floor  
Columbus, OH 43215  
[ssalamido@cloppertlaw.com](mailto:ssalamido@cloppertlaw.com)  
[kwatson@cloppertlaw.com](mailto:kwatson@cloppertlaw.com)

Counsel for IBEW Local 1466

Sara Reich Bruce  
Staff Counsel  
Ohio Automobile Dealers Association  
655 Metro Place South, Suite 270  
Dublin, OH 43017  
[sbruce@oada.com](mailto:sbruce@oada.com)

Counsel for The Ohio Automobile Dealers  
Association