

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**INDUSTRIAL ENERGY USERS-OHIO'S MEMORANDUM CONTRA OHIO POWER
COMPANY'S FEBRUARY 27, 2012 MOTION FOR RELIEF AND REQUEST FOR
EXPEDITED RULING**

Samuel C. Randazzo (Counsel of Record)
Frank P. Darr
Joseph Olikier
NCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com

March 2, 2012

Attorneys for Industrial Energy Users-Ohio

TABLE OF CONTENTS

INDUSTRIAL ENERGY USERS-OHIO'S MEMORANDUM CONTRA OHIO POWER COMPANY'S FEBRUARY 27, 2012 MOTION FOR RELIEF AND REQUEST FOR EXPEDITED RULING	1
I. INTRODUCTION.....	1
II. BACKGROUND	1
III. ARGUMENT.....	8
1. RPM Pricing Applies as a Matter of Law	8
2. OP Proposes an Illegal Rate Structure	9
3. OP Fails to Provide Any Basis for Staying the Commission's Orders Regarding Capacity Charges.....	11
A. A Claim of Irreparable Harm Does Not Permit OP to Secure Approval, Interim or Otherwise, of a New Capacity Pricing Scheme in this Proceeding.....	12
B. OP Has Created Additional Uncertainty with this Unwarranted Motion to Stay the Commission's Order	16
C. OP's Requested Relief Is Illegal and Unreasonable	19
D. The Commission's Order to Reset Capacity Charges Is Clear and Certain	21
IV. CONCLUSION	23
CERTIFICATE OF SERVICE	24

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**INDUSTRIAL ENERGY USERS-OHIO’S MEMORANDUM CONTRA OHIO POWER
COMPANY’S FEBRUARY 27, 2012 MOTION FOR RELIEF AND REQUEST FOR
EXPEDITED RULING**

I. INTRODUCTION

For the benefit of the sole shareholder of the Ohio Power Company (“OP”), American Electric Power (“AEP”), OP filed a Motion for Relief (“Motion” or “OP Motion”) that proposes to reintroduce its scheme to block customer choice on February 27, 2012. If the Motion is granted, the Public Utilities Commission of Ohio (“Commission”) will authorize arbitrary, illegal, and unreasonable barriers to customer shopping and preclude consumers from reducing electric bills through contracts with Competitive Retail Electric Supply (“CRES”) providers. Because the Motion seeks relief that is illegal and unreasonable, the Commission should deny the Motion and approve a capacity charge mechanism that is in accordance with the applicable law.

II. BACKGROUND

The capacity charges that OP seeks to impose through this Motion are governed by the rules of PJM Interconnection, LLC (“PJM”). The rules create an organized

{C36829:3 }

capacity market generally referred to as the Reliability Pricing Model (“RPM”) and are embodied in PJM’s open access transmission tariff. The RPM rules require load-serving entities (“LSE”) to obtain or arrange for adequate capacity (in the form of qualifying generation or demand response resources) to meet PJM’s forecasted peak demand, including a reserve margin. To price capacity resources, RPM also features a centralized capacity auction in which generation and demand response resources are cleared or matched to forecasted load based upon prices offered by qualifying resources three years prior to a delivery year, which is a twelve-month period from June through May.

RPM provides for an alternative method for LSEs to satisfy their capacity or resource adequacy obligation, known as the Fixed Resource Requirement (“FRR”) Alternative. The FRR Alternative allows an LSE, the FRR Entity, to submit an FRR capacity plan with a fixed capacity resource requirement in lieu of satisfying the capacity resource obligation through PJM’s RPM capacity auction process. The Reliability Assurance Agreement (“RAA”) includes the rules that an LSE must satisfy under an FRR Alternative. To establish the compensation paid by CRES providers to the FRR Entity, Section D.8 of the RAA provides, in relevant part:

In a state regulatory jurisdiction that has implemented retail choice, the FRR Entity must include in its FRR Capacity Plan all load, including expected load growth, in the FRR Service Area, notwithstanding the loss of any such load to or among alternative retail LSEs. In the case of load reflected in the FRR Capacity Plan that switches to an alternative retail LSE, where the state regulatory jurisdiction requires switching customers or the LSE to compensate the FRR Entity for its FRR capacity obligations, such state compensation mechanism will prevail. In the absence of a state compensation mechanism, the applicable alternative retail LSE shall compensate the FRR Entity at the capacity price in the unconstrained

portions of the PJM Region, as determined in accordance with Attachment DD to the PJM Tariff, provided that the FRR Entity may, at any time, make a filing with FERC under Sections 205 of the Federal Power Act proposing to change the basis for compensation to a method based on the FRR Entity's cost or such other basis shown to be just and reasonable, and a retail LSE may at any time exercise its rights under Section 206 of the FPA.¹

OP operated under an FRR Alternative and was doing so prior to the time that Columbus Southern Power Company ("CSP") and OP filed an application for approval of the first electric security plan ("ESP") which the Commission ultimately modified and approved in 2009.² In its Application, AEP alleged that Ohio had not established a compensation mechanism for capacity sales,³ but the Commission has recognized that CSP and OP were using the RPM pricing mechanism to set capacity charges.⁴

In late 2010, American Electric Power Service Corp. ("AEPSC"), on behalf of OP,⁵ requested that the Federal Energy Regulatory Commission ("FERC") approve formula rates as the basis for establishing the capacity charges that CSP and OP would levy upon CRES suppliers in Ohio. The proposed move to a formula rate approach

¹ PJM Open Access Transmission Tariff, Attachment D, Schedule 8.1 ("Fixed Resource Requirement Alternative") (emphasis added).

² *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case Nos. 08-917-EL-SSO *et al.*, Opinion and Order (Mar. 18, 2009) ("ESP I").

³ Transmittal Letter at 3.

⁴ Entry at 2 (Dec. 8, 2010).

⁵ Since the initiation of this proceeding, OP and CSP have merged. For purposes of this pleading, references are to the surviving legal entity, OP, unless the context requires a designation of the individual company.

from an auction-based clearing price approach would have significantly increased capacity charges to CRES suppliers.⁶

In response to OP's FERC filing, the Commission initiated this proceeding in December 2010.⁷ In the initiating entry, the Commission noted that it had approved retail rates including the recovery of capacity costs in *ESP 1* based on the continuation of capacity charges established by the three-year capacity auction conducted by PJM ("RPM-priced capacity") under the current fixed resource requirement mechanism.⁸ The Commission then "expressly adopt[ed] as the state compensation mechanism for the companies the current capacity charges established by the three-year capacity auction by PJM, Inc. during the pendency of this review."⁹

Thus, since June 2007 when RPM was implemented, Ohio CRES providers were charged for capacity based upon the prevailing RPM auction price for capacity in the unconstrained portion of the PJM region.¹⁰ That approach remained in effect until the Commission approved a Stipulation and Recommendation ("Stipulation")¹¹ in this case and related cases that sought to establish a new ESP, as discussed below.¹²

⁶ Comments of Industrial Energy Users-Ohio at 4 (Jan. 7, 2011).

⁷ Entry at 1 (Dec. 8, 2010).

⁸ *Id.* at 1-2.

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ Stipulation and Recommendation (Sept. 7, 2011) ("Stipulation").

¹² See *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 54-55 (Dec. 14, 2011) ("Opinion and Order").

As part of the Stipulation filed on September 7, 2011, OP proposed to substitute a two-tiered generation capacity service pricing scheme ("Pricing Scheme"). As proposed, OP would have been permitted to charge CRES providers \$255/megawatt-day ("MW-day") for all capacity provided for shopping customers that were outside pre-determined shopping caps.¹³ CRES providers serving customers within the shopping caps would be charged the RPM price for capacity.¹⁴ Following an extended hearing, the Commission initially approved the Pricing Scheme with two modifications.¹⁵ First, the Commission determined that governmental aggregation programs should have access to RPM-priced capacity outside the shopping caps.¹⁶ Second, the Commission rejected a provision of the Stipulation that permitted a reallocation of a customer class's unused allotments to other customer classes.¹⁷

In a December 29, 2011 filing containing a revised Detailed Implementation Plan ("DIP") that OP represented reflected the modifications the Commission had ordered, OP made clear that it had no intention of complying with the Commission's Opinion and Order.¹⁸ First, OP sought to reduce the reallocation of capacity to industrial and residential customers by imposing an artificial reading on the Commission's decision to

¹³ Stipulation at 20-22 (Sept. 7, 2011).

¹⁴ *Id.* at 21.

¹⁵ Opinion and Order at 54-55 (Dec. 14, 2011).

¹⁶ *Id.* at 54.

¹⁷ *Id.* at 55. The Stipulation established a priority list, or queue, that was based on when the customer shopped. Stipulation, Appendix C. The shopping caps limited access to RPM priced capacity based on a percentage of total megawatt hours sold. *Id.* Appendix C was further "operationalized" through a document filed with the Commission called the Detailed Implementation Plan ("DIP") which OP filed on October 5, 2011, one day after hearings on the Stipulation commenced.

¹⁸ RPM Set-Aside Allotment Rules; Detailed Implementation Plan (Dec. 29, 2011).

afford all customer classes their full percentage of access to capacity.¹⁹ Second, it sought to treat governmental aggregation programs as subject to the shopping caps.²⁰ Third, it included a provision that would have excluded mercantile customers from securing access to RPM-priced capacity by participating in governmental aggregation programs.²¹ Fourth, it would have limited the governmental aggregation programs that could have access to RPM-priced capacity to only those communities that approved governmental aggregation in the November 2011 elections.²² Industrial Energy Users-Ohio (“IEU-Ohio”)²³ and FirstEnergy Solutions Corp. (“FES”)²⁴ immediately protested OP’s filing. In response to the objections raised by IEU-Ohio and FES, the Commission determined that the Revised DIP was not in compliance with the Commission’s Opinion and Order on January 23, 2012.²⁵

Subsequently, the Commission rejected the Stipulation, finding in an Entry on Rehearing on February 23, 2012 that the Stipulation did not benefit ratepayers and the public interest.²⁶ As a result of its decision to reject the Stipulation, the Commission ordered OP “to file, no later than February 28, 2012, new proposed tariffs to continue

¹⁹ *Id.*, § 4(a).

²⁰ *Id.*, § 4(g).

²¹ *Id.*

²² *Id.*

²³ Motion of Industrial Energy User-Ohio for Orders Modifying the Ohio Power Company’s and Columbus Southern Power Company’s Revised Implementation Plan and Request for Expedited Ruling (Dec. 30, 2011).

²⁴ FirstEnergy Solutions Corp.’s Objections to AEP Ohio’s Proposed Compliance Filing and Request for Expedited Commission Action (Dec. 30, 2011).

²⁵ Entry (Jan. 23, 2012).

²⁶ Entry on Rehearing at 12 (Feb. 23, 2012).

the provisions, terms, and conditions of its previous electric security plan ... and an appropriate application of capacity charges under the approved state compensation mechanism established in the Capacity Charge Case.”²⁷

OP, however, has failed repeatedly to bring its treatment of capacity pricing into compliance with Commission orders. In response to the Commission’s determination that the Revised DIP filed on December 29, 2011 was not in compliance with the Opinion and Order, OP filed a motion to stay the Commission’s orders²⁸ which the Commission granted, ruling that its January 23, 2012 Entry would be stayed until the Commission issued an Entry on Rehearing.²⁹ Then, in response to the Commission’s rejection of the Stipulation in the Entry on Rehearing, OP filed the currently pending Motion seeking Commission approval to continue the Pricing Scheme as implemented under the December 29, 2011 version of the DIP or some modification of it.³⁰ While this Motion is pending, moreover, OP has stated that it will continue to operate as if the Commission had not rejected OP’s attempts to restrict customer choice on several occasions.³¹

²⁷ *Id.*

²⁸ Ohio Power Company’s Motion and Request for Expedited Ruling (Jan. 25, 2012).

²⁹ Entry (Feb. 3, 2012).

³⁰ Motion for Relief and Request for Expedited Ruling (Feb. 27, 2012) (“OP Motion”).

³¹ In its cover letter accompanying the tariffs filed on February 28, 2012, OP continued to maintain that it needed “clarification” of the Commission’s Entry on Rehearing and would “await further direction based on the disposition of its Motion for Relief filed yesterday (February 27, 2012) in Case No. 10-2929-EL-UNC.” Letter from Steven T. Nourse to Betty McCauley (Feb. 28, 2012).

OP's Motion is one more example of OP's long-evident desire to block customer choice by limiting access to RPM-priced capacity.³² Though long an advocate of the PJM market-based pricing mechanisms until customers actually started to shop,³³ OP now seeks to raise the cost of shopping by imposing the arbitrary \$255/MW-day capacity price on all customers that have not found their way under the shopping caps³⁴ and impose additional restrictions on access to RPM-priced capacity as if the Commission had not rejected the Stipulation.³⁵ The Commission, however, has rejected the Stipulation, and with it the Pricing Scheme, by pressing the "reset button."³⁶ Despite clear orders to bring its capacity pricing into compliance with prior Commission orders in this case, OP's behavior indicates that it believes that it controls the size and shape of what happens next by repeatedly attempting to stymie the Commission's efforts to eliminate rate shock and reopen the door to shopping.

III. ARGUMENT

1. RPM Pricing Applies as a Matter of Law

As a result of the Commission's decisions in this case, the "approved" state compensation mechanism for capacity to be paid by CRES providers is based on the RPM pricing mechanism that relies on periodic three-year forward capacity auctions to

³² As OP has made clear since September 7, 2011, the point of the Pricing Scheme is to prevent customer migration. FES Ex. 1, TCB Ex. 7-9.

³³ Tr. Vol. V at 796-97.

³⁴ OP Motion at 3 & 7.

³⁵ *Id.* at 7, 9, & 15.

³⁶ Press Release (Feb. 23, 2012) (viewed at <http://www.puco.ohio.gov/puco/index.cfm/media-room/media-releases/puco-revokes-aep-ohio-electric-security-plan-settlement-agreement/>).

establish the price for capacity. As this Commission made clear in December 2010, it based the *ESP* / rates on the assumption that the capacity price would be set by the RPM pricing mechanism. Based on the Commission's determination, the FERC dismissed the AEPSC FERC proceeding seeking to establish a formula rate.³⁷ Instead of prosecuting the proceeding before the Commission,³⁸ OP filed the Stipulation and therein sought approval of the Pricing Scheme. In response, however, the Commission has rejected the Stipulation, and with it, the Pricing Scheme. Thus, the "*status quo*" price for capacity is dictated by the RPM pricing mechanism.

2. OP Proposes an Illegal Rate Structure

Not only does OP seek to upset the *status quo* through this Motion, it also seeks to have the Commission approve a capacity pricing scheme that violates Ohio law. Section 4928.02, Revised Code, various other sections in Chapter 4928, including Sections 4928.06, and 4928.15, Revised Code, and Commission rules require the Commission to ensure that rates, services, and practices associated with competitive and non-competitive retail electric service rates are comparable and non-discriminatory. For example, Section 4928.02(A), Revised Code, provides that it is the State's policy to "[e]nsure the availability to consumers of ... nondiscriminatory ... retail electric service." Similarly, Section 4928.40(D), Revised Code, states that "no electric utility in this state shall prohibit the resale of electric generation service or impose unreasonable or discriminatory conditions or limitations on the resale of electric generation service."

³⁷ *American Electric Power Serv. Corp.*, 134 FERC ¶ 61,039 (2011).

³⁸ In its Application for Rehearing, IEU-Ohio has raised its concerns about the federal-state jurisdictional problems raised in this proceeding. See Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio at 25-29 (Jan. 13, 2012.) Those arguments are incorporated by reference.

Likewise, the definition of “standard service offer” in Rule 4901:1-35-01(L), Ohio Administrative Code (“OAC”), highlights the importance of the role of the nondiscriminatory and comparable requirements that are imposed by Chapter 4928, Revised Code: “‘Standard service offer’ means an electric utility offer to provide consumers, on a comparable and nondiscriminatory basis within its certified territory, all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.” Moreover, statutory requirements for nondiscriminatory and comparable rates extend to both customers and suppliers.³⁹

In violation of these requirements, however, OP proposes three alternatives that would result in some capacity being charged at the lower RPM price with the balance priced at a significantly higher \$255/MW-day price.⁴⁰ The difference, however, is not based on cost,⁴¹ and it clearly is not based on market. In fact, whether a CRES supplier is charged the RPM price or the \$255/MW-day price depends only on where and when its customer stands in the line created by the Stipulation, Appendix C, and the DIP.⁴² In all other respects, the capacity generation service supplied by OP is identical.⁴³

Neither OP nor any party supporting the Stipulation offered any evidence to demonstrate that the bifurcated generation service capacity charge structure and the

³⁹ For example, Sections 4928.15 and 4928.35(C), Revised Code, require electric distribution service to be available to all consumers and suppliers on a non-discriminatory and comparable basis.

⁴⁰ OP Motion at 7, 9, & 15.

⁴¹ Tr. Vol. II at 191 (Cross-examination of Kelly Pearce); Tr. Vol. V at 737 (Cross-examination of Philip Nelson); Tr. Vol. V at 810, 845 (Cross-examination of Joseph Hamrock).

⁴² Tr. Vol. VI at 973 (Cross-examination of David Fein).

⁴³ *Id.* at 972 (Cross-examination of David Fein).

significantly increased, discriminatory, and non-comparable capacity charge is lawful.

As Mr. Fein offered during cross-examination:

Q. You also believe that the Commission should avoid discriminatory pricing policies; do you not?

A. I do.

Q. So similarly situated customers receiving the same service shouldn't be required to pay different prices for that service, correct?

A. That's correct.⁴⁴

Yet, under OP's Motion, discrimination and non-comparability are guaranteed: similarly situated customers and suppliers will see two different prices for generation capacity service based on nothing more than whether customers took or signed up for competitive retail electric service soon enough.

3. OP Fails to Provide Any Basis for Staying the Commission's Orders Regarding Capacity Charges

Despite the Commission's order to bring capacity charges into compliance with the Commission's prior orders in this case, OP has sought to retain the rejected Pricing Scheme by suggesting it will be financially harmed and that customers are seeking certainty through the maintenance of the Pricing Scheme. Additionally, it proposes several "solutions" which would effectively impose either the terms of the rejected DIP or something nearly as restrictive. None of these arguments or proposals has any legal merit.

⁴⁴ *Id.* at 971 (Cross-examination of David Fein).

A. A Claim of Irreparable Harm Does Not Permit OP to Secure Approval, Interim or Otherwise, of a New Capacity Pricing Scheme in this Proceeding

OP initially argues that it will suffer “immediate and irreparable harm” if it is required to provide capacity to CRES providers at RPM prices which OP describes as confiscatory.⁴⁵ In support of its claim of confiscation, OP offers that its projected earnings will drop and that its stock price has declined.⁴⁶ It then argues that it had an expectation that it would be permitted to establish a cost-based capacity charge and threatens additional litigation if it does not have its way.⁴⁷

While claims of financial distress and confiscation can, in the proper circumstances, give rise to regulatory relief, none of those circumstances is present in this proceeding. Even if this proceeding could be used as a proper vehicle to advance claims for relief to avoid financial distress or confiscation, OP has not demonstrated anything approaching a constitutional claim. Thus, the first basis asserted in the OP Motion for permitting the unlawful and unreasonable Pricing Scheme should be rejected.

If there were a real emergency, OP could seek relief under Section 4909.16, Revised Code. That Section provides the Commission with authority to address, on an interim basis and subject to refund, financial emergencies. In addressing such emergencies, however, the Commission has long-standing precedent and criteria that must be applied, after a hearing, to determine if emergency relief is appropriate and, if

⁴⁵ OP Motion at 4.

⁴⁶ *Id.* at 5.

⁴⁷ *Id.* at 5-6.

so, to what extent.⁴⁸ OP, however, has not invoked that authority, and thus it has no basis for claiming any interim relief based on its alleged financial distress.

Even if the Commission could properly consider OP's concern that it may incur harm if the Commission does not provide interim financial relief, OP's claim that it will suffer confiscation also is without merit. To support a claim of confiscation, OP must demonstrate that the rate is "so 'unjust' as to be confiscatory,"⁴⁹ but a review of a rate, standing alone, is not a basis for determining if a confiscation has occurred. Before the Commission may find that rates are confiscatory, it must assess "all relevant costs and expenditures made by [the electric distribution utility]."⁵⁰ "It is not the theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unreasonable, judicial inquiry ... is at an end."⁵¹ Relying on this well-understood test for determining if rates are confiscatory, the Commission has held that it must "consider the total effect of the [EDU's] rates."⁵² Applying this comprehensive review standard, the Commission has found that an 8% return based on net operating income (along with other factors) was sufficient to support a determination that rates were not confiscatory.⁵³

⁴⁸ *In the Matter of the Application of Akron Thermal, Limited Partnership for an Emergency Increase in its Steam and Hot Water Rates and Charges*, Case No. 00-2260-HT-AEM, Opinion and Order at 3 (Jan. 25, 2001).

⁴⁹ *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989).

⁵⁰ *Monongahela Power Co. v. Schriber*, 322 F. Supp. 2d 902, 924 (S.D. Ohio 2004).

⁵¹ *Id.* at 921.

⁵² *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for Monongahela Power Company*, Case No. 04-880-EL-UNC, Opinion and Order at 16 (Dec. 8, 2004).

⁵³ *Id.* at 20.

In light of this high hurdle to establish a constitutional claim, OP's assertion that requiring it to provide RPM-priced capacity will result in confiscation is unsupported. OP rests its argument on a lower return on equity that has no basis in the current record and would still return, by OP's own analysis, a positive return in both 2012 and 2013.⁵⁴ Its additional claim that the stock value has declined likewise is outside the record available to the Commission and does not demonstrate anything other than that OP's value was overstated on the assumption that it could continue to extract excessive returns from customers.⁵⁵ Moreover, OP ignores recent Commission and Staff findings that its first ESP is producing significantly excessive returns. The Commission determined that the CSP ESP resulted in significantly excessive earnings in 2009,⁵⁶ and the Staff of the Commission has raised a similar concern with CSP's total-EDU earned return on common equity for 2010.⁵⁷ Given that their returns occurred while OP was charging the same SSO rates and under the same capacity mechanism the Commission has required OP to implement on February 23, 2012, OP has failed to demonstrate any basis to believe the Commission's Entry on Rehearing will result in confiscation.

⁵⁴ OP Motion at 5.

⁵⁵ The current price of AEP's stock is well within the twelve-month range of prices. See <http://finance.yahoo.com/echarts?s=AEP+Interactive#chart1:symbol=aep;range=20070305,20120229;indicator=volume;charttype=line;crosshair=on;ohlcvalues=0;logscale=on>.

⁵⁶ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 10-1261-EL-UNC, Opinion and Order (Jan. 11, 2011).

⁵⁷ *In the matter of the 2010 Annual Filing of Columbus Southern Power Company and Ohio Power Company Required by Rule 4901:1-35-10, Ohio Administrative Code*, Case Nos. 11-4571-EL-UNC, *et al.*, Post-Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (Jan. 31, 2012).

Furthermore, OP is seeking relief from the Commission for the alleged effects of a FERC-approved capacity pricing mechanism. If there is any legitimate confiscation claim (and there is none), it is FERC's actions, not the actions of the Commission, that should be getting OP's attention and OP's threats to sue, to not invest, and to reduce employment.

Moreover, OP's suggestion that it has some expectation to recover transition revenues from customers through an arbitrary and excessive capacity charge once again highlights the illegal nature of OP's claim.⁵⁸ As OP explains, it believes it has some "expected ability to establish costs-based rates," but now complains that it will be forced to move to RPM-priced capacity "without a reasonable transition mechanism" for "a transition period."⁵⁹ OP's claim that it has some expectation to additional transition revenues, however, flies in the face of Ohio's controlling statutory provisions governing the opportunity for a utility to seek and obtain transition revenue recovery. These controlling statutory provisions, very much part of the *status quo*, went into effect in 2001, more than a decade ago.

As provided by Section 4928.38, Revised Code, "[t]he utility's receipt of transition revenues shall terminate at the end of the market development period. With the

⁵⁸ Throughout these proceedings, OP has argued that it has some entitlement to transition costs to support its move to an SSO based on a competitive bidding process ("CBP"). In a press release issued on February 27, 2012, the parent company of OP once again indicated that the purpose of OP's request for arbitrary capacity charge was to provide recovery of generation-related assets. 'AEP Ohio has committed significant capital investment in its Ohio generation fleet under what was a regulated environment to serve our customers' generation needs,' said Nicholas K. Akins, AEP president and chief executive officer. 'The settlement agreement allowed AEP Ohio a reasonable transition to market over a period of time. Without that transition, we will basically be giving the capacity we built to competitive suppliers for the taking.'" Press Release (Feb. 27, 2012) (viewed at <https://www.aepohio.com/info/news/viewRelease.aspx?releaseID=1203>)

⁵⁹ OP Motion at 5.

termination of that approved revenue source, the utility shall be fully on its own in the competitive market. The commission shall not authorize the receipt of transition revenues or any equivalent revenues by an electric utility except as expressly authorized in sections 4928.31 to 4928.40 of the Revised Code.” Section 4928.141, Revised Code, further prohibits the continued receipt of transition revenues: “A standard service offer under section 4928.142 or 4928.143 of the Revised Code shall exclude any previously authorized allowances for transition costs, with such exclusion being effective on and after the date that the allowance is scheduled to end under the utility’s rate plan.” In short, OP bases its “expectation” that it should receive a cost-based rate for capacity on an assumption that it is entitled to another opportunity to recover transition costs that the Commission cannot legally authorize.⁶⁰

B. OP Has Created Additional Uncertainty with this Unwarranted Motion to Stay the Commission’s Order

OP further states that reverting to the previously authorized RPM price will create uncertainty and instability for customers. In rejecting the Stipulation, however, the Commission recognized that the state compensation mechanism reverted to the level authorized prior to the Stipulation, *i.e.* the state compensation mechanism was again the RPM price.⁶¹ Nothing about the RPM price is confusing to customers or CRES

⁶⁰ See *Dayton Power and Light Co. v. Pub. Util. Comm’n of Ohio*, 4 Ohio St. 3d 91 (1983). OP also threatens protracted litigation if it does not have its way. OP Motion at 5-6. These sorts of threats do not constitute a legitimate basis for the Commission to engage in the illegal and unreasonable rate setting that OP has demanded the Commission to undertake.

⁶¹ The Commission directed OP to file the appropriate application regarding the state compensation mechanism as approved in this case. Entry on Rehearing at 12 (Feb. 23, 2012). Previously, the Commission adopted the RPM price as the state compensation mechanism. Entry at 2 (Dec. 8, 2010).

providers; the only confusion concerning capacity charges has resulted from OP's continued efforts to block shopping in Ohio.

OP also incorrectly alleges that reverting to RPM-priced capacity will prejudice and prejudice the outcome and resolution of this proceeding.⁶² While the Commission has held that the state compensation mechanism is based on the RPM pricing mechanism on an interim basis, it also established a review process to address OP's and other parties' concerns with a change in capacity pricing.⁶³ OP's speculation that the Commission has prejudged its request to reset the capacity rate is simply that: self-serving speculation. That speculation does not warrant restrictions on customer choice while the Commission follows the law.

Not even willing to abide with the Commission's now-rejected modification of the Stipulation, OP further argues that the need for stability justifies even further restrictions on customer choice than those the Commission approved in the Opinion and Order. In a mislabeled attempt to maintain the "*status quo*," OP requests that the Commission allow it to operate under the terms of the January 23, 2012 Entry (which rejected the various limitations OP sought to impose when it filed the Revised DIP), but only if it can continue to refuse to allow mercantile customers access to RPM-priced capacity.⁶⁴ On January 23, 2012, however, the Commission rejected OP's attempt to exclude mercantile customers from accessing RPM-priced capacity through participation in

⁶² OP Motion at 8.

⁶³ Entry at 2 (Dec. 8, 2010).

⁶⁴ OP Motion at 7.

governmental aggregation programs.⁶⁵ The Commission correctly found that it could not approve this illegal and unreasonable restriction on access to capacity.

As part of its attempt to convince the Commission that it should be permitted to reinstate the Pricing Scheme, OP also misstates its relationship to CRES providers in a way that demonstrates that its primary goal is to protect its position providing default service. According to OP, “[r]equiring AEP Ohio to provide below-cost capacity to its competitors upon rejecting the Stipulation is unreasonable and unlawful.”⁶⁶ OP, however, can only supply generation service within its service area as the default supplier. OP is not authorized under Ohio law to compete with the CRES providers to provide service to retail customers.⁶⁷ Yet, OP’s management made evident that the Pricing Scheme is designed to prevent customers from shopping for retail electric generation service. As Richard Munczinski explained to investment analysts on September 7, 2011, the day the Stipulation was filed:

What happens is those customers that get the discount as Brian [Tierny] mentioned are allowed—are priced out at the RPM prices. So the \$100, the \$16, and I think the \$26 going forward. Over those percentages, if you want to shop, you pay the full cost of \$255 per megawatt day. So the thought and the theory is that the shopping will be constrained to the RPM price.⁶⁸

⁶⁵ Entry at 6 (Jan. 23, 2012).

⁶⁶ OP Motion at 4.

⁶⁷ Section 4928.17(A), Revised Code: “Except as otherwise provided ... no electric utility shall engage in this state, either directly or through an affiliate, in the businesses of supplying a noncompetitive retail electric service and supplying a competitive retail electric service” *Id.*

⁶⁸ FES Ex. 1, TCB-8.

Based on OP's understanding of the Pricing Scheme, one thing will be certain if the Commission grants OP's request to maintain the Pricing Scheme or some variation of it: customers will lose.

C. OP's Requested Relief Is Illegal and Unreasonable

In its third and fourth arguments supporting the continuation of the Pricing Scheme, OP asserts that it would be reasonable for the Commission to authorize one of three alternatives that would maintain a two-tiered pricing scheme: (1) the DIP, which the Commission found did not comply with the Opinion and Order on January 23, 2012, (2) an "interim mechanism that conforms to the January 23, 2012 Entry's new and enhanced obligations (without including the mercantile customer load in the RPM-priced capacity set aside)," ⁶⁹ or (3) an alternative that would apply the \$255/MW-day rate to any customer that shopped after February 23, 2012. ⁷⁰ To support these restrictions, OP relies on the prefiled testimony in this case, ⁷¹ testimony supporting the Stipulation, ⁷² and the now reversed Opinion and Order. ⁷³ Because these interim solutions are not based on any proper record and would unreasonably restrict customer choice, a Commission order granting OP the requested relief would be illegal and unreasonable.

Initially, OP seeks to rely on the pre-filed testimony in this case. That testimony, however, has not been subjected to any process of discovery or cross-examination.

⁶⁹ OP Motion at 9.

⁷⁰ *Id.* at 15.

⁷¹ OP Motion at 9-13.

⁷² *Id.* at 10-13.

⁷³ *Id.* at 13-14.

Thus, there is no “record” on which the Commission can act to impose rate increases on CRES providers and ultimately retail customers in a contested case.⁷⁴

Reliance on the record supporting the Stipulation and the Opinion and Order is also unreasonable.⁷⁵ The Commission has determined that the parties failed to demonstrate that the Stipulation provides benefits to customers and is in the public interest and rejected the Stipulation.⁷⁶ It has further determined to restart proceedings in this case.⁷⁷ If this proceeding is truly “reset” to the point in time when the Stipulation was filed, then the evidence cannot support continuing the Pricing Scheme the Commission has now rejected.⁷⁸

Second, the interim solutions OP proposes are themselves unreasonable. The first proposal, maintaining a Revised DIP, would result in significant restrictions on customer access to RPM-priced capacity beyond what the Commission required in the

⁷⁴ Section 4903.09, Revised Code.

⁷⁵ As a separate matter, the appropriateness of setting the rates at anything other than RPM levels was heavily debated in the hearing on the Stipulation. Setting the rate at some arbitrary level raised serious questions regarding whether the rate was consistent with proper costing principles and the requirements for setting cost-based rates set by PJM under limited circumstances. FES Ex. 14 at 9-11. As argued elsewhere, the legal validity of the arbitrarily set \$255/MW-day rate was also disputed. Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio at 25-45 (Jan. 13, 2012).

⁷⁶ Entry on Rehearing at 12.

⁷⁷ *Id.* at 13.

⁷⁸ Although a provision of the Stipulation concerning the withdrawal of a party did not contemplate the exact circumstances that have occurred here, i.e. the Commission’s rejection of the Stipulation through an Entry on Rehearing, the Signatory Parties also understood that the record would not bind further proceedings if the Commission rejected the Stipulation. The Signatory Parties including OP agreed that “this proceeding shall go forward at the procedural point at which the Stipulation was filed, and the parties will be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to brief all issues which shall be decided based upon the record and briefs, as if the Stipulation had never been executed.” Stipulation at 30.

Opinion and Order.⁷⁹ OP's second proposal, that it be permitted to implement the Revised DIP in compliance with the January 23, 2012 Entry, comes with a caveat. In the caveat, OP proposes to exclude mercantile customers from accessing RPM-priced capacity through governmental aggregation programs. As noted previously, the Commission rejected this limitation because it is inconsistent with Ohio law regarding the treatment of mercantile customers that elect to participate in governmental aggregation programs.⁸⁰ The third proposal which would set an arbitrary cut-off date to determine which customers have access to RPM-priced capacity is impossible to assess in terms of its effect on shopping because OP offers nothing to support its claim that it would result in substantial shopping.⁸¹ Nonetheless, the proposal verges on silliness because it arbitrarily back-dates access to RPM-priced capacity to February 23, 2012. Though that date was meaningless to customers until the Commission issued its Entry on Rehearing directing that the capacity charge be set by the RPM-pricing mechanism, OP would use it to discriminate between customers that wish to shop. Nothing good will emerge from approving such an unreasonable and arbitrarily applied restriction. Thus, none of OP's proposed "solutions" merits Commission approval.

D. The Commission's Order to Reset Capacity Charges Is Clear and Certain

In its final argument, OP spends three and a half pages dissecting the Commission's punctuation and sentence structure in an attempt to demonstrate that the

⁷⁹ Entry (Jan. 23, 2012).

⁸⁰ *Id.* at 6, citing Section 4928.20, Revised Code.

⁸¹ Without any explanation, OP states that the alternative will provide "substantial shopping." OP Motion at 15.

Entry on Rehearing is unclear.⁸² This extended grammar discussion should be rejected as a basis for delaying the restoration of RPM-priced capacity for all customers.

There is nothing unclear about the Commission's Entry on Rehearing in regard to capacity pricing. The Commission directed OP "to file new proposed tariffs" based on the rates approved in *ESP I* and "an appropriate application of capacity charges under the approved state compensation mechanism established in the Capacity Charge Case."⁸³ Under this order, it is clear that Commission ordered OP to implement the RPM pricing mechanism to set capacity prices.⁸⁴ OP's grammatical games do not change this result.

Not only is the Commission's order clear, OP's claim that the Entry on Rehearing needs clarification is inconsistent with representations made by OP and AEPSC regarding the effect that an order rejecting the Stipulation would have on capacity pricing. In response to cross-examination during the hearing on the Stipulation, the president of OP stated that the existing RPM-based pricing would remain in effect if the Stipulation were rejected.⁸⁵ In its February 29, 2012 FERC filing, AEPSC stated, "By rejecting the Stipulation, the Ohio Commission has reverted to capacity prices established through the RPM auction that were (and still are) dramatically below Ohio Power's capacity costs under any reasonable ratemaking assumptions, thereby obligating Ohio Power to make FRR capacity available to CRES Providers at a

⁸² OP Motion at 16-19 (Feb.27, 2012).

⁸³ Entry on Rehearing at 12 (Feb. 23, 2012).

⁸⁴ Entry at 2 (Dec. 8, 2010.).

⁸⁵ Tr. Vol. V at 811.

substantial subsidy."⁸⁶ Despite these statements, OP has represented in this Motion that it needs clarification of the Entry on Rehearing.⁸⁷ OP's position is not credible.

IV. CONCLUSION

In this Motion, OP once again seeks approval to continue its unlawful and unreasonable Pricing Scheme; it is part of OP's wish list that will keep customers in its service area captive while OP and its affiliates reap the benefits of "competition" in other service areas. Nothing in OP's Motion, however, requires the Commission to allow OP to continue to defy the Commission's directives and make a mockery of the Commission's effort to restore law and order.

Respectfully submitted,

/s/ Frank P. Darr

Samuel C. Randazzo

Frank P. Darr

Joseph Olikier

MCNEES WALLACE & NURICK LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

sam@mwncmh.com

fdarr@mwncmh.com

joliker@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

⁸⁶ American Electric Power Service Corporation, Docket No. ER11-2183-001, Motion of American Electric Power Service Corporation for Expedited Rulings at 7 (Feb. 29, 2012) (viewed at: http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20120229-5250).

⁸⁷ OP Motion at 16.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Memorandum Contra Ohio Power Company's February 27, 2012 Motion for Relief and Request for Expedited Ruling* was served upon the following parties of record this 2nd day of March 2012, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

/s/ Frank P. Darr

Frank P. Darr

Matthew J. Satterwhite
Steven T. Nourse
Anne M. Vogel
American Electric Power Service
Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
mjsatterwhite@aep.com
stnourse@aep.com
amvogel@aep.com

Daniel R. Conway
Porter Wright Morris & Arthur
Huntington Center
41 S. High Street
Columbus, OH 43215
dconway@porterwright.com

**ON BEHALF OF COLUMBUS SOUTHERN
POWER COMPANY AND OHIO POWER
COMPANY**

Jeanne W. Kingery
Associated General Counsel
155 East Broad Street, 21st Floor
Columbus, OH 43215
Jeanne.Kingery@duke-energy.com

Dorothy K. Corbett
Amy Spiller
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
Dorothy.Corbett@duke-energy.com
Amy.spiller@duke-energy.com

Philip B. Sineneng
Terrance A. Mebane
THOMPSON HINE LLP
41 S. High St., Suite 1700
Columbus, OH 43215
Philip.Sineneng@ThompsonHine.com
Terrance.Mebane@ThompsonHine.com

**ON BEHALF OF DUKE ENERGY RETAIL SALES,
LLC**

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

ON BEHALF OF THE OHIO ENERGY GROUP

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

ON BEHALF OF ENERNOC, INC.

Terry L. Etter
Maureen R. Grady
Office of the Ohio Consumers' Counsel
10 W. Broad Street, 18th Floor
Columbus, OH 43215-3485
etter@occ.state.oh.us
grady@occ.state.oh.us
small@occ.state.oh.us

**ON BEHALF OF THE OFFICE OF THE OHIO
CONSUMERS' COUNSEL**

Richard L. Sites
General Counsel & Senior Director of
Health Policy
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
ricks@ohanet.org

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

OH BEHALF OF OHIO HOSPITAL ASSOCIATION

John W. Bentine
Mark S. Yurick
Zachary D. Kravitz
Chester Willcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus, OH 43215
jbentine@cswlaw.com
myurick@cswlaw.com
zkravitz@cswlaw.com

ON BEHALF OF THE KROGER CO.

Terrence O'Donnell
Christopher Montgomery
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
todonnell@bricker.com
cmontgomery@bricker.com

ON BEHALF OF PAULDING WIND FARM II LLC

Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.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
lmcbride@calfee.com
talexander@calfee.com

David A. Kutik
Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114
dakutik@jonesday.com

Allison E. Haedt
Jones Day
P.O. Box 165017
Columbus, OH 43216-5017
aehaedt@jonesday.com

John N. Estes III
Paul F. Wight
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Ave., N.W.
Washington, DC 20005
jestes@skadden.com
paul.wight@skadden.com

**ON BEHALF OF FIRSTENERGY SOLUTIONS
CORP.**

Michael R. Smalz

Joseph V. Maskovyak
Ohio Poverty Law Center
555 Buttlers Avenue
Columbus, OH 43215
msmalz@ohiopoveritylaw.org
jmaskovyak@ohiopoveritylaw.org

**ON BEHALF OF THE APPALACHIAN PEACE
AND JUSTICE NETWORK**

Lisa G. McAlister
Matthew W. Warnock
Thomas O'Brien
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
lmcaster@bricker.com
mwarnock@bricker.com
tobrien@bricker.com

ON BEHALF OF OMA ENERGY GROUP

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

**ON BEHALF OF AEP RETAIL ENERGY
PARTNERS LLC**

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
P.O. Box 1008
Columbus, OH 43215-1008
mhpeticoff@vorys.com
smhoward@vorys.com

**ON BEHALF OF PJM POWER PROVIDERS
GROUP AND THE RETAIL ENERGY SUPPLY
ASSOCIATION**

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

Laura Chappelle
4218 Jacob Meadows
Okemos, MI 48864
laurac@chappelleconsulting.net

**ON BEHALF OF PJM POWER PROVIDERS
GROUP**

M. Howard Petricoff
Michael Settineri
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
P.O. Box 1008
Columbus, OH 43215-1008
mhpeticoff@vorys.com
mjsettineri@vorys.com

William L. Massey
Covington & Burling, LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004
wmassey@cov.com

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

ON BEHALF OF THE COMPLETE COALITION

Henry W. Eckhart
1200 Chambers Road, Suite 106
Columbus, OH 43212
henryeckhart@aol.com

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

**ON BEHALF OF THE NATURAL RESOURCES
DEFENSE COUNCIL AND THE SIERRA CLUB**

M. Howard Petricoff
Michael J. Settineri
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
mhpetricoff@vorys.com
mjsettineri@vorys.com
smhoward@vorys.com

**ON BEHALF OF CONSTELLATION
NEWENERGY, INC., CONSTELLATION ENERGY
COMMODITIES GROUP, INC. , DIRECT ENERGY
SERVICES, LLC**

David I. Fein
Vice President, Energy Policy – Midwest
Constellation Energy Group, Inc.
Cynthia Fonner Brady
Senior Counsel
Constellation Energy Resources LLC
550 West Washington Blvd., Suite 300
Chicago, IL 60661
david.fein@constellation.com
cynthia.brady@constellation.com

**ON BEHALF OF CONSTELLATION
NEWENERGY, INC. AND CONSTELLATION
ENERGY COMMODITIES GROUP, INC.**

Pamela A. Fox
C. Todd Jones,
Christopher L. Miller,
Gregory H. Dunn
Asim Z. Haque
Schottenstein Zox and Dunn Co., LPA
250 West Street
Columbus, OH 43215
pfox@hillardohio.gov
cmiller@szd.com
gdunn@szd.com
ahaque@szd.com

**ON BEHALF OF THE CITY OF HILLIARD, OHIO,
THE CITY OF GROVE CITY, OHIO AND THE
ASSOCIATION OF INDEPENDENT COLLEGES
AND UNIVERSITIES OF OHIO**

Sandy I-ru Grace
Assistant General Counsel
Exelon Business Services Company
101 Constitution Ave., NW
Suite 400 East
Washington, DC 20001
sandy.grace@exeloncorp.com

M. Howard Petricoff
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
mhpetricoff@vorys.com

David M. Stahl
Eimer Stahl Klevorn & Solberg LLP
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
dstahl@eimerstahl.com

**ON BEHALF OF EXELON GENERATION
COMPANY, LLC**

Gary A Jeffries
Assistant General Counsel
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817
Gary.A.Jeffries@aol.com

ON BEHALF OF DOMINION RETAIL, INC.

Kenneth P. Kreider
David A. Meyer
Keating Muething & Klekamp PLL
One East Fourth Street
Suite 1400
Cincinnati, OH 45202
kpkreider@kmlaw.com
dmeyer@kmlaw.com

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

Steve W. Chriss
Manager, State Rate Proceedings
Wal-Mart Stores, Inc.
Bentonville, AR 72716-0550
Stephen.Chriss@wal-mart.com

**ON BEHALF OF WAL-MART STORES EAST, LP
AND SAM'S EAST, INC.**

Barth E. Royer (Counsel of Record)
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215-3927
BarthRoyer@aol.com

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

**ON BEHALF OF THE ENVIRONMENTAL LAW &
POLICY CENTER**

Nolan Moser
Trent A. Dougherty
Camille Yancy
Cathryn Loucas
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
nolan@theoec.org
trent@theoec.org
camille@theoec.org
cathy@theoec.org.

**ON BEHALF OF THE OHIO ENVIRONMENTAL
COUNCIL**

Douglas G. Bonner
Emma F. Hand
Keith C. Nusbaum
Clinton A. Vince
Daniel D. Barnowski
SNR Denton US LLP
1301 K Street NW
Suite 600, East Tower
Washington, DC 20005
doug.bonner@snrdenton.com
emma.hand@snrdenton.com
keith.nusbaum@snrdenton.com
clinton.vince@snrdenton.com
daniel.barnowski@snrdenton.com

**ON BEHALF OF ORMET PRIMARY ALUMINUM
CORPORATION**

Jay L. Kooper
Katherine Guerry
Hess Corporation
One Hess Plaza
Woodbridge, NJ 07095
jkooper@hess.com
kguerry@hess.com

ON BEHALF OF HESS CORPORATION

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

Jacqueline Lake Roberts,
Counsel of Record
101 Federal Street, Suite 1100
Boston, MA 02110
jroberts@enernoc.com

**ON BEHALF OF CPOWER, INC., VIRIDITY
ENERGY, INC., ENERGYCONNECT INC.,
COMVERGE INC., ENERWISE GLOBAL
TECHNOLOGIES, INC., AND ENERGY
CURTAILMENT SPECIALISTS, INC.**

Robert Korandovich
KOREnergy
P.O. Box 148
Sunbury, OH 43074
korenergy@insight.rr.com

ON BEHALF OF KOREENERGY

Benita Kahn
Lija Kaleps-Clark
Vorys Sater, Seymour and Pease LLC
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008
bakahn@vorys.com
lkalepsclark@vorys.com

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

**ON BEHALF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO**

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

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

**ON BEHALF OF INTERSTATE GAS SUPPLY,
INC.**

Greta See
Jon Tauber
Attorney Examiner
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, OH 43215

ATTORNEY EXAMINERS

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/2/2012 1:27:25 PM

in

Case No(s). 10-2929-EL-UNC

Summary: Memorandum Contra Ohio Power Company's February 27, 2012 Motion For Relief and Request For Expedited Ruling electronically filed by Mr. Frank P Darr on behalf of Industrial Energy Users-Ohio