

**BEFORE THE  
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.	)	

---

**FIRSTENERGY SOLUTIONS CORP. AND INDUSTRIAL ENERGY USERS-OHIO'S  
MEMORANDUM CONTRA THE MOTION FOR EXTENSION OF OHIO POWER  
COMPANY**

---

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	ARGUMENT .....	4
A.	AEP Ohio Has Not Justified Altering The Interim Mechanism Established By The Commission's March 7, 2012 Entry.....	4
1.	The Commission Already Has Determined That Two- Tiered Capacity Pricing Ends May 31, 2012, And There Is No Reason To Change This Determination. ....	4
2.	AEP Ohio's Motion Is An Untimely Application For Rehearing. ....	5
B.	AEP Ohio's Purported Harm From RPM-Based Pricing Is Overstated And Unsupported.....	7
1.	AEP Ohio Has Not Established That It Is Entitled To Emergency Rate Relief. ....	7
2.	AEP Ohio Has Not Established Any Reason To Continue Above-Market Capacity Pricing. ....	8
3.	Because AEP Ohio's Return On Equity Will Be In Excess Of 7.6% in 2012, There Is No Reason To Provide Above- Market Revenue To AEP Ohio. ....	10
4.	AEP Ohio Will Not Be Harmed By Receiving The Same Rate For Its Capacity As Is Received By Every Other Generator In Ohio and PJM. ....	11
C.	If The Commission Extends The Interim Pricing Mechanism, There Is No Reason To Change From RPM Pricing For Tier One Customers. ....	12
III.	CONCLUSION.....	14

## I. INTRODUCTION

The Commission should deny the Motion for Extension (“Motion”) filed by Ohio Power Company (“AEP Ohio”) because it is legally and procedurally deficient. The Commission already has considered and approved AEP Ohio’s request for an “interim” pricing structure. The Commission expressly held that this structure would remain in place “until May 31, 2012, at which point the rate for capacity under the state compensation mechanism shall revert to the current RPM in effect pursuant to the PJM base residual auction for the 2012/2013 year.”<sup>1</sup> There is no reason to change this determination now. If AEP Ohio objected to the Commission’s interim pricing structure – which included RPM-based pricing starting June 1, 2012 – AEP Ohio’s remedy was to file an application for rehearing. Because AEP Ohio did not file an application for rehearing, and the time for any such application for rehearing is now long past, its Motion should be rejected.

Even ignoring that the instant motion is an improper and belated attempt to revisit a standing order, AEP Ohio’s motion fails for another reason. To change rates at this juncture, AEP must show that it is entitled to emergency rate relief under R.C. § 4909.16. Under that section a utility must show that, absent emergency relief, it will be financially imperiled or its ability to render service will be impaired.<sup>2</sup> AEP Ohio has not even attempted to meet this standard. The Motion is merely based on its concern that a Commission decision in this case may not be issued in May, as AEP Ohio would like, but may come in June or July. AEP Ohio has provided no evidence that a one or two month delay from its preferred schedule will cause it to suffer financial peril. Any such delay can only be placed at the door of AEP Ohio, which has failed to offer a reasonable ESP to its customers after more than fifteen months of trying. AEP

---

<sup>1</sup> March 7, 2012 Entry, p. 17.

<sup>2</sup> *In re Akron Thermal, Ltd. Partnership*, Case No. 00-2260-HT-AEM, Opinion and Order at p. 3 (Jan. 25, 2001).

Ohio's only "evidence" of harm is an unsupported and unverifiable estimate of the revenue it may not receive if RPM pricing goes into effect for the short period prior to the Commission's decision. This does not state grounds for emergency relief.

Additionally, AEP Ohio has not established any legally relevant harm if the Commission enforces the plain language of the March 7, 2012 Entry. Indeed, AEP Ohio's prior filings suggest that AEP Ohio's complaints are exaggerated. AEP Ohio's most recent estimates show that its return on equity ("ROE") would have approximated 7.6% in 2012 *with RPM pricing commencing in February 2012 and continuing thereafter*. Given the interim relief provided by the March 7, 2012 Entry, AEP Ohio's ROE should now exceed 7.6% in 2012. While AEP Ohio is projecting a lower ROE in 2013, that is irrelevant to the Motion here, which only concerns a few months in 2012. In truth, AEP Ohio simply wants to earn a greater benefit from its generating facilities than any other generation owner in PJM will earn. This is not an issue of whether AEP Ohio will be harmed, but a question of how much special treatment AEP Ohio receives from the Commission compared to the rest of the market.

The timing of the Commission's decision in this docket is important, but not for the reasons put forward by AEP Ohio. Some urgency exists in that AEP Ohio is positioning the Commission's decision in this proceeding to provide a foundation for the Modified ESP that is before the Commission in Case No. 11-346-EL-SSO. Allowing an unreasonably high capacity price to be maintained through or to emerge from this proceeding will provide AEP Ohio cover for unnecessarily high retail rates in the Modified ESP. Conversely, a capacity price based on the RPM market price mechanism (the same pricing mechanism that was used from 2007 through 2011) is "just and reasonable" and is the lawfully proper pricing mechanism to test the Modified ESP as required by R.C. § 4928.143 to determine if, in the aggregate, it is better than the alternative Market Rate Offer ("MRO"). Thus, it is essential that the Commission proceed

expeditiously in this proceeding to restore the RPM-based capacity pricing mechanism so that AEP Ohio's ratepayers can thereafter receive the benefits of a just and reasonable Standard Service Offer ("SSO"). However, given that the Modified ESP proceeding will not be decided at the earliest until July (after arguments to the Commission scheduled for July 3), there is no reason to alter the March 7, 2012 Entry while these proceedings progress on parallel tracks to their conclusion.

Leaving aside the procedural and factual irregularities, AEP Ohio has failed to provide any justification for continuing the discriminatory two-tiered pricing structure, which forces some percentage of shopping customers to pay more than the PJM-wide market price for capacity. Indeed, FERC recently questioned AEP's similar request for "cost-based" capacity pricing formula to be paid by competitive suppliers in Michigan, which request was filed using the same ginned-up formula rates offered here by AEP Ohio. On April 30, 2012, based in part on objections by FES and RESA, FERC held that AEP Indiana Michigan's proposed "cost-based" capacity pricing structure did not pass the smell test:

"Preliminary analysis indicates that I&M's filing has not been shown to be just and reasonable and **may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful**. In *West Texas*, the Commission explained that when the Commission's preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission will generally impose a five-month suspension. **The Commission's preliminary analysis in this proceeding indicates that the proposed rate may be substantially excessive.**"<sup>3</sup>

Based on its finding that AEP's cost-based capacity proposal may be "unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful," the FERC imposed the maximum

---

<sup>3</sup> FERC Docket No. ER12-1173-000, Order Accepting Formula Rate Proposal And Establishing Hearing And Settlement Judge Procedures, April 30, 2012, ¶ 21 (internal citations to *West Texas* omitted) (emphasis added).

five-month suspension of AEP's request. RPM market-based pricing is the only reasonable method of capacity pricing. RPM pricing fully compensates generators for their appropriate costs. AEP Ohio's proposed above-market pricing simply creates a windfall for AEP Ohio.

AEP Ohio has not shown a basis for relief. Therefore, the Commission should reject AEP Ohio's request to extend the two-tiered pricing scheme approved in the March 7, 2012 Entry.

## **II. ARGUMENT**

### **A. AEP Ohio Has Not Justified Altering The Interim Mechanism Established By The Commission's March 7, 2012 Entry.**

The Commission rejected the September 7, 2011 Stipulation and Recommendation (the "Stipulation") in its February 23, 2012 Entry on Rehearing (the "Feb. 23, 2012 Entry"). Despite this Entry, on March 7, 2012, the Commission approved AEP Ohio's request to charge above-market and anti-competitive capacity pricing for shopping customers. AEP Ohio has received this above-market capacity revenue since that date and now seeks to continue this windfall by artificially extending the time during which this inappropriate mechanism will apply. It has not provided the Commission with a lawful or sound basis for doing so.

#### **1. The Commission Already Has Determined That Two-Tiered Capacity Pricing Ends May 31, 2012, And There Is No Reason To Change This Determination.**

AEP Ohio's Motion seeks to continue discriminatory two-tiered capacity pricing "so that the Commission can complete its work without prejudice to the Company and its customers."<sup>4</sup> Yet AEP Ohio relegates to a footnote the simple fact that the Commission has already expressly considered what capacity price shall be in effect after May 31, 2012. The Commission held that the two-tiered pricing would remain in effect "for the interim period only," through May 31,

---

<sup>4</sup> Motion, p. 4.

2012.<sup>5</sup> The Commission then directed that the capacity pricing mechanism, effective June 1, 2012, “shall revert to the current RPM in effect pursuant to the PJM base residual auction for the 2012/2013 year.”<sup>6</sup> Thus, AEP Ohio’s Motion inaccurately suggests that a “fix” is necessary starting June 1, 2012, when the Commission already has established that the previously used and Commission-approved RPM pricing mechanism shall be restored on a bills rendered basis effective June 1, 2012.

Contrary to AEP Ohio’s assertion, the Commission did not intend to artificially limit shopping by imposing two-tiered capacity pricing indefinitely. The Commission specifically held that the interim pricing mechanism would remain in place for a limited period only, and that RPM-based pricing would be restored to its proper place effective June 1, 2012. Customers and CRES providers have relied on this express Commission direction to make decisions about shopping. There is no reason for the Commission to change course now when this case has proceeded exactly in accordance with the Commission’s expectations.

The Commission already has held that two-tier capacity pricing remains in place only until May 31, 2012, and that RPM pricing applies after that date. Customers and CRES providers are presumed to have relied on this Commission mandate when making their shopping decisions (as they relied upon RPM-based pricing being in place through May 31, 2015, prior to AEP Ohio’s bait and switch), and there is no reason for the Commission to reverse course in a manner that overturns those reasonable expectations. AEP Ohio’s Motion should be denied.

## **2. AEP Ohio’s Motion Is An Untimely Application For Rehearing.**

The Commission’s March 7, 2012 Entry unambiguously states that, after May 31, 2012, “the rate for capacity under the state compensation mechanism shall revert to the current RPM in

---

<sup>5</sup> March 7, 2012 Entry, ¶ 26.

<sup>6</sup> March 7, 2012 Entry, ¶ 26.

effect pursuant to the PJM base residual auction for the 2012/2013 year.”<sup>7</sup> If AEP Ohio believed this Commission mandate was unreasonable or unlawful, AEP Ohio had only one option under Ohio law – an application for rehearing.

The Commission’s Entry was issued on March 7, 2012. R.C. § 4903.10 requires that an application for rehearing be filed within thirty days of any Commission order. If a party fails to timely file an application for rehearing, it is barred from later raising these issues in a collateral attack on the Commission’s decision.<sup>8</sup> Several intervenors to this proceeding, including FES, filed applications for rehearing of this decision.<sup>9</sup> AEP Ohio did not file an application for rehearing, and actually opposed the applications for rehearing filed by FES, IEU-Ohio, and RESA. The Commission granted the intervenors’ applications for rehearing on April 11, 2012 for the purpose of giving additional consideration to these applications, but has not issued a substantive decision addressing these applications.<sup>10</sup>

AEP Ohio’s Motion specifically requests that the Commission change an essential provision of its March 7, 2012 Entry, namely, the state compensation mechanism price in effect after May 31, 2012. This change is significant for several reasons. CRES providers and customers relied on this Entry when entering into (and continuing) contracts. CRES providers relied upon this Entry when evaluating their expenses for capacity in the 2012/13 planning year,

---

<sup>7</sup> March 7, 2012 Entry, ¶ 26.

<sup>8</sup> *Greer v. Pub. Util. Comm.*, 172 Ohio St. 361, 361 (1961).

<sup>9</sup> See FES Application for Rehearing filed March 21, 2012; IEU Application for Rehearing filed March 27, 2012; RESA Application for Rehearing filed March 14, 2012.

<sup>10</sup> As the Commission knows, AEP Ohio has contested the Commission’s jurisdiction to establish a capacity price paid by CRES suppliers. AEP Ohio has advanced this claim numerous times including in its an application for rehearing regarding the Commission’s December 8, 2010 ruling in this proceeding. On February 2, 2011, the Commission granted rehearing to provide it with more time to consider AEP Ohio’s rehearing request. In other words, AEP Ohio’s motion to delay the restoration of RPM-based pricing is a motion urging the Commission to do what AEP Ohio claims the Commission has no authority to do.



which goes into effect on June 1, 2012. The parties to this proceeding relied on this Entry when conducting the extremely accelerated hearing in this case. Now AEP Ohio attempts to change this essential term of the Commission's Entry through its Motion rather than an application for rehearing.

Because AEP Ohio seeks a substantive revision of the March 7, 2012 Entry, its appropriate remedy was an application for rehearing. It chose not to file such an application, and instead opposed the intervenors' applications for rehearing. Ohio law bars the Commission from considering these sorts of collateral attacks more than thirty days after a decision is issued. As AEP Ohio's Motion is simply an application for rehearing in disguise, it should be rejected by the Commission as untimely.

**B. AEP Ohio's Purported Harm From RPM-Based Pricing Is Overstated And Unsupported.**

AEP Ohio claims that the Commission should extend the two-tiered pricing of the March 7, 2012 Entry to avoid significant financial harm to AEP Ohio. This argument fails to satisfy the requirements for emergency rate relief, and should be rejected on that basis alone. More troublingly, this claim is completely unsupported. AEP Ohio failed to present this "evidence" during the hearing, and it has provided no evidence in the Motion which would allow the Commission or other parties to evaluate AEP Ohio's claims. AEP Ohio may produce yet another set of questionable estimates on May 11 in rebuttal testimony it requested to file in order to plug holes in its direct case. Regardless, the evidence presented to date shows that AEP Ohio's return on equity will be more than sufficient to avoid an unjust result in this case.

**1. AEP Ohio Has Not Established That It Is Entitled To Emergency Rate Relief.**

If AEP Ohio's Motion is construed as an application for emergency relief authorized by R.C. § 4909.16, it is sorely lacking in the substance required to obtain such relief. The

Commission's "power to grant emergency relief is extraordinary in nature" and may only be granted after a utility sustains its burden of proving that, absent emergency relief, it will be financially imperiled or its ability to render service will be impaired.<sup>11</sup> A utility's evidence of financial impairment must "clearly and convincingly demonstrate the presence of extraordinary circumstances which constitute a genuine emergency situation."<sup>12</sup> If an emergency is shown, the Commission is limited to granting temporary relief "only at the minimum level necessary to avert or relieve the emergency."<sup>13</sup> The Commission in the past has directed the utility seeking emergency relief to provide expert testimony supporting its application and has conducted hearings on the application.<sup>14</sup>

None of the criteria for obtaining emergency relief is satisfied by AEP Ohio's Motion. Rather than providing information showing a "genuine emergency situation," AEP Ohio simply claims that it will receive less revenue than it would like. As AEP Ohio provided no relevant information establishing a "genuine emergency situation," its claims of financial impairment should be accorded no weight.

## **2. AEP Ohio Has Not Established Any Reason To Continue Above-Market Capacity Pricing.**

AEP Ohio claims that a "flash cut to RPM priced capacity would cause highly a [sic] detrimental financial impact on AEP Ohio."<sup>15</sup> In support of this position, AEP Ohio makes the conclusory and completely unsupported allegation that it will suffer a net financial harm of \$10

---

<sup>11</sup> *In re Akron Thermal, Ltd. Partnership*, Case No. 00-2260-HT-AEM, Opinion and Order at p. 3 (Jan. 25, 2001).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, p. 2.

<sup>15</sup> Motion, p. 4. The lost-revenue allegation of AEP Ohio also makes it clear that AEP Ohio is, in reality, pressing another unlawful and untimely claim for "transition revenue" after having agreed that it would forego any such claim.

million per month if the Commission adopts RPM pricing.<sup>16</sup> However, AEP Ohio offers no support for this allegation and no explanation for how this figure was calculated. This is significant, because AEP Ohio witness Allen recently testified in this proceeding and did not offer any testimony supporting this calculation. As a result, the intervenors and the Commission have not had the opportunity to conduct any discovery regarding this claim or to conduct cross examination to explore the claim. The Commission should not credit this unsupported claim of “harm” in any way.

More importantly, there is a material difference between testimony showing an isolated revenue impact to AEP Ohio and testimony establishing a “genuine emergency situation” justifying rate relief. AEP Ohio has offered no testimony showing that its rate of return will be inadequate or that the value of its generating assets will be impaired thereby placing AEP Ohio in financial peril. AEP Ohio has offered no testimony showing that this is an extraordinary situation, which would likely be difficult since every other generator in Ohio receives RPM prices for capacity. AEP Ohio has offered no testimony establishing that two-tiered pricing is temporary relief “only at the minimum level necessary to avert or relieve the emergency.”<sup>17</sup> In light of the complete lack of evidence supporting AEP Ohio’s request, there are no grounds justifying AEP Ohio’s request for emergency rate relief presented in the form of a request for further delay in the restoration of the previously–approved RPM pricing mechanism.

---

<sup>16</sup> Motion, p. 6. The evidence in this proceeding shows that AEP Ohio paid a cash dividend to its one shareholder, AEP, of \$650,000,000 in 2011 while its net income was for 2011 was substantially less than the dividend payout (\$464,992,339). See Tr. Vol. V, pp 1046-47. This dividend payout behavior is not consistent with the behavior that one would expect to see from a utility facing financial peril.

<sup>17</sup> *In re Akron Thermal, Ltd. Partnership*, Case No. 00-2260-HT-AEM, Opinion and Order at p. 3 (Jan. 25, 2001).

**3. Because AEP Ohio's Return On Equity Will Be In Excess Of 7.6% in 2012, There Is No Reason To Provide Above-Market Revenue To AEP Ohio.**

AEP Ohio's Motion also incorporates its previous discussion of the purported "financial harm" if RPM pricing is adopted.<sup>18</sup> This argument is completely unsupported. In fact, the evidence shows that AEP Ohio's return on equity will be more than enough to avoid significant financial harm to AEP Ohio.

In the December 8, 2010 Entry, the Commission ordered AEP Ohio to continue to base its capacity pricing on RPM auction results as it had always done. AEP Ohio sought rehearing of the December 8, 2010 Entry, but it did not claim at that time that RPM market-based capacity pricing would cause it immediate and irreparable harm.<sup>19</sup> At the time, Columbus Southern Power Company's earnings were approximately 18-20%, and Ohio Power Company's earnings were approximately 10-11%, even without counting the hundreds of millions of dollars received from off-system sales.<sup>20</sup> In fact, while charging RPM-based pricing for capacity, AEP Ohio was able to earn amounts that were so significantly excessive that the Commission ordered the company to refund amounts to customers.<sup>21</sup>

Importantly, AEP Ohio witness Allen forecast an ROE for AEP Ohio of 7.71% in 2012 with all provisions of the Stipulation in place, including, presumably, the two-tier capacity

---

<sup>18</sup> Motion, p. 6.

<sup>19</sup> See Ohio Power Company's and Columbus Southern Power Company's Application for Rehearing filed Jan. 7, 2011.

<sup>20</sup> *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 at pp. 22, 35 (hereinafter, "2009 SEET Order"); *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 No. 11-4571-EL-UNC et al., Direct Testimony of Joseph Hamrock filed July 29, 2011, at p. 6.

<sup>21</sup> 2009 SEET Order, p. 35.

pricing.<sup>22</sup> Mr. Allen later estimated that AEP Ohio's 2012 ROE would be approximately 7.6% if the state compensation mechanism priced capacity based on RPM from February through December, 2012. This ROE estimate from February 27, 2011 is now outdated and underestimates AEP Ohio's ROE given that AEP Ohio has received above-market capacity pricing for several months in 2012. Because Mr. Allen's analysis assumes RPM pricing for all of 2012, AEP Ohio's actual estimated ROE should be in excess of 7.6%, even leaving aside millions of dollars in off-system sales. As AEP Ohio's ROE will be in excess of 7.6% and presumably closer to or in excess of the ROE Mr. Allen projected under the Stipulation, there is no reason to provide AEP Ohio with additional revenue through above-market interim capacity prices.

**4. AEP Ohio Will Not Be Harmed By Receiving The Same Rate For Its Capacity As Is Received By Every Other Generator In Ohio and PJM.**

AEP Ohio's case for an extension of its above-market pricing rests on its claim that RPM is "confiscatory."<sup>23</sup> AEP Ohio claims that the Commission already has determined that RPM pricing could lead to an unjust result, and that nothing has changed since that point.<sup>24</sup> This is incorrect. RPM pricing is not "confiscatory" in any sense; in fact it is the price received by every other generator in Ohio and the rest of PJM. There is nothing "confiscatory" about market pricing, and AEP Ohio will not be prejudiced by competing on a level-playing field.

AEP Ohio has significantly misstated the Commission's March 7, 2012 Entry. The Commission did not find that RPM pricing was "confiscatory" or inappropriate. Instead, the Commission (inappropriately) relied on AEP Ohio's affidavit submitted without any rebuttal

---

<sup>22</sup> Testimony of William A. Allen in Support of the Stipulation and Recommendation, AEP Exh. 4, p. 20 and Exh. WAA-5.

<sup>23</sup> Motion, p. 6.

<sup>24</sup> Motion, p. 4.

opportunity. AEP Ohio is attempting to pull this same trick a second time, but with even more unreliable and unsupported information. This behavior should not be permitted, let alone encouraged, given that AEP Ohio's past estimates have been now shown to be inaccurate.

By way of example, at hearing FES demonstrated that AEP Ohio's estate of financial harm previously submitted to the Commission was based on shopping assumptions that were wildly optimistic. AEP Ohio assumed that it would achieve levels of shopping seen in the FirstEnergy utilities' territories, even though AEP has the fewest registered CRES providers in the state and even though a large portion of the FirstEnergy utilities' residential shopping occurred through government aggregation organizations – NOPEC and NOAC – that do not operate in AEP Ohio's territory.<sup>25</sup>

With its previous claims of harm shown to be spurious, AEP Ohio now provides yet another set of calculations, also without any detail or any ability to be reviewed in discovery or under cross-examination. Indeed, given that Mr. Allen has already taken the stand, the fact that he did not present these calculations speaks volumes about the veracity (or lack thereof) of these calculations. AEP Ohio should not be rewarded for submitting unsupported numbers a second time, particularly when other generators in Ohio and PJM receive RPM pricing.

**C. If The Commission Extends The Interim Pricing Mechanism, There Is No Reason To Change From RPM Pricing For Tier One Customers.**

From 2009 through 2011 all customers in AEP Ohio's territory paid RPM prices for capacity. Indeed, this is the only pricing which was ever in effect in Ohio since 2007 until the Stipulation and interim pricing mechanisms went into effect in 2012.<sup>26</sup> The Commission specifically adopted RPM pricing as Ohio's state compensation mechanism on December 8,

---

<sup>25</sup> Tr. Vol. III, pp. 610-615.

<sup>26</sup> Tr. Vol. V, p. 735 (Stipulation proceedings, October 13, 2011).

2010.<sup>27</sup> AEP Ohio sought to change Ohio's state compensation mechanism to a cost-based system, which was universally opposed by all parties, including Staff. Staff found that AEP Ohio's approach was "not reasonable" and recommended the use of RPM prices.<sup>28</sup> Despite this procedural history, several parties entered into the Stipulation which would impose shopping caps in the form of \$255/MW-day capacity prices. The Commission approved this mechanism before later reversing its decision on February 23, 2012. The Commission then reverted back to two-tiered capacity pricing for the period from March 7, 2012 until May 31, 2012. Through all of these twists and turns, one thing has remained constant. Tier One customers were entitled to RPM-priced capacity. At no point were these Tier One customers ever forced to pay above-market "cost-based" prices for capacity.

Despite the fact that Tier One customers have always been entitled to RPM priced capacity, AEP Ohio's Motion asks that these customers be forced to pay \$146/MW-day for capacity in the 2012/13 planning year, which is significantly in excess of the applicable RPM based pricing for that time period. AEP Ohio offers nothing in support of this position other than the fact that it would like to receive more revenue. AEP Ohio claims that "flash cutting" to RPM pricing for the 2012/13 planning year would cause it significant prejudice, but no party has ever proposed charging Tier One customers non-RPM prices in the 2012/13 planning year absent a Commission determination on AEP Ohio's application to change Ohio's state compensation mechanism. Indeed, it is difficult to understand how AEP Ohio could be prejudiced by using RPM pricing for these customers, when AEP Ohio was the entity who requested that these customers receive RPM-based pricing as part of its proposed "interim" pricing mechanism. The

---

<sup>27</sup> See 10-2929 Entry dated December 8, 2010.

<sup>28</sup> See Direct Testimony of Hisham M. Choueiki on behalf of the Staff of the Public Utilities Commission of Ohio, Staff Ex. 2, pp. 4, 7-8.

Commission adopted this proposal, in its March 7, 2012 Entry, specifically finding that these customers would be entitled to RPM-based pricing at all times.<sup>29</sup>

There is no reason to suddenly deny Tier One customers the benefits of RPM pricing in the 2012/13 planning year. If the Commission chooses to extend the interim pricing structure (which it should not), at minimum AEP Ohio's request to modify the interim pricing for Tier One customers should be rejected.

### **III. CONCLUSION**

For the foregoing reasons, the Commission should deny AEP Ohio's Motion seeking to further delay the lawful restoration of RPM-based capacity pricing.

Respectfully submitted,

/s/ Mark A. Hayden

Mark A. Hayden (0081077)  
FIRSTENERGY SERVICE COMPANY  
76 South Main Street  
Akron, OH 44308  
(330) 761-7735  
(330) 384-3875 (fax)  
haydenm@firstenergycorp.com

James F. Lang (0059668)  
Laura C. McBride (0080059)  
N. Trevor Alexander (0080713)  
CALFEE, HALTER & GRISWOLD LLP  
The Calfee Building  
1405 East Sixth Street  
Cleveland, OH 44114  
(216) 622-8200  
(216) 241-0816 (fax)  
jlang@calfee.com  
lmcbride@calfee.com  
talexander@calfee.com

David A. Kutik (0006418)

---

<sup>29</sup> March 7, 2012 Entry, ¶ 26.



JONES DAY  
901 Lakeside Avenue  
Cleveland, OH 44114  
(216) 586-3939  
(216) 579-0212 (fax)  
dakutik@jonesday.com

Allison E. Haedt (0082243)  
JONES DAY  
P.O. Box 165017  
Columbus, OH 43216-5017  
(614) 469-3939  
(614) 461-4198 (fax)  
aehaedt@jonesday.com

*Attorneys for FirstEnergy Solutions Corp.*

s/ Samuel C. Randazzo  
Samuel C. Randazzo  
Frank P. Darr  
Joseph E. Olikier  
MCNEES WALLACE & NURICK LLC  
21 East State Street, Suite 1700  
Columbus, OH 43215-4228  
Telephone: 614-469-8000  
Telecopier: 614-469-4653  
sam@mwncmh.com  
fdarr@mwncmh.com  
joliker@mwncmh.com

*Attorneys for Industrial Energy Users-Ohio*

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *FIRSTENERGY SOLUTIONS CORP. AND INDUSTRIAL ENERGY USERS-OHIO'S MEMORANDUM CONTRA THE MOTION FOR EXTENSION OF OHIO POWER COMPANY* was served this 3rd day of May, 2012, via e-mail upon the parties below.

/s/ Mark A. Hayden

One of the Attorneys for FirstEnergy Solutions Corp.

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

Daniel R. Conway  
Porter Wright Morris & Arthur  
41 South High Street  
Columbus, Ohio 43215  
dconway@porterwright.com

Cynthia Fonner Brady  
David I. Fein  
550 W. Washington Street, Suite 300  
Chicago, IL 60661  
cynthia.a.fonner@constellation.com  
david.fein@constellation.com

Richard L. Sites  
Ohio Hospital Association  
155 East Broad Street, 15th Floor

Dorothy K. Corbett  
Amy Spiller  
Duke Energy Retail Sales  
139 East Fourth Street  
1303-Main  
Cincinnati, Ohio 45202  
dorothy.corbett@duke-energy.com  
amy.spiller@duke-energy.com

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

Terry L. Etter  
Maureen R. Grady  
Jeffrey L. Small  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
etter@occ.state.oh.us  
grady@occ.state.oh.us  
small@occ.state.oh.us

Thomas J. O'Brien  
Bricker & Eckler  
100 South Third Street

Columbus, Ohio 43215-3620  
ricks@ohanet.org  
Shannon Fisk  
2 North Riverside Plaza, Suite 2250  
Chicago, IL 60606  
sfisk@nrdc.org

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

Terrence O'Donnell  
Christopher Montgomery  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215-4291  
todonnell@bricker.com  
cmontgomery@bricker.com

Jesse A. Rodriguez  
Exelon Generation Company, LLC  
300 Exelon Way  
Kennett Square, Pennsylvania 19348  
jesse.rodriguez@exeloncorp.com

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

Henry W. Eckhart  
2100 Chambers Road, Suite 106  
Columbus, Ohio 43212  
henryeckhart@aol.com

Columbus, Ohio 43215-4291  
tobrien@bricker.com  
Jay E. Jadwin  
American Electric Power Service Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, Ohio 43215  
jejadwin@aep.com

Michael R. Smalz  
Joseph V. Maskovyak  
Ohio Poverty Law Center  
555 Buttles Avenue  
Columbus, Ohio 43215  
msmalz@ohiopoveritylaw.org  
jmaskovyak@ohiopoveritylaw.org

Lisa G. McAlister  
Matthew W. Warnock  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215-4291  
lmcaster@bricker.com  
mwarnock@bricker.com

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

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

Pamela A. Fox  
Law Director  
The City of Hilliard, Ohio  
pfox@hilliardohio.gov

Christopher L. Miller  
Gregory H. Dunn  
Asim Z. Haque  
Stephen J. Smith  
Schottenstein Zox & Dunn Co., LPA  
250 West Street  
Columbus, Ohio 43215  
cmiller@szd.com  
ahaque@szd.com  
ssmith@szd.com  
gdunn@szd.com

Sandy Grace  
Exelon Business Services Company  
101 Constitution Avenue N.W., Suite 400 East  
Washington, DC 20001  
sandy.grace@exeloncorp.com

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

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

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

M. Howard Petricoff  
Stephen M. Howard  
Michael J. Settineri  
Lija Kaleps-Clark; Benita Kahn  
Vorys, Sater, Seymour and Pease LLP  
52 E. Gay Street  
Columbus, Ohio 43215  
mhpeticoff@vorys.com  
smhoward@vorys.com  
mjsettineri@vorys.com  
lkalepsclark@vorys.com  
bakahn@vorys.com

Gary A. Jeffries  
Dominion Resources Services, Inc.  
501 Martindale Street, Suite 400  
Pittsburgh, PA 15212-5817  
gary.a.jeffries@aol.com

Steve W. Chriss  
Wal-Mart Stores, Inc.  
2001 SE 10th Street  
Bentonville, Arkansas 72716  
stephen.chriss@wal-mart.com

Barth E. Royer  
Bell & Royer Co., LPA  
33 South Grant Avenue  
Columbus, Ohio 43215-3927  
barthroyer@aol.com

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

Philip B. Sineneng  
Terrance A. Mebane  
Carolyn S. Flahive  
Thompson Hine LLP  
41 S. High Street, Suite 1700  
Columbus, Ohio 43215  
philip.sineneng@thompsonhine.com  
carolyn.flahive@thompsonhine.com  
terrance.mebane@thompsonhine.com

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

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

Emma F. Hand  
Douglas G. Bonner  
Clinton A. Vince  
SNR Denton US LLP  
1301 K Street, NW, Suite 600, East Tower  
Washington, DC 20005-3364  
emma.hand@snrdenton.com  
doug.bonner@snrdenton.com  
Clinton.vince@snrdenton.com

Colleen L. Mooney  
David C. Rinebolt  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Findlay, Ohio 45840  
cmooney2@columbus.rr.com  
drinebolt@ohiopartners.org

Trent A. Dougherty  
Cathryn Loucas  
Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, Ohio 43212-3449  
trent@theoeg.org  
cathy@theoec.org

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

David M. Stahl  
Arin C. Aragona  
Scott C. Solberg  
Eimer Stahl Klevorn & Solberg LLP  
224 South Michigan Avenue, Suite 1100  
Chicago, IL 60604  
dstahl@eimerstahl.com  
aaragona@eimerstahl.com  
ssolberg@eimerstahl.com

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

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

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

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**5/3/2012 4:27:32 PM**

**in**

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

Summary: Memorandum FirstEnergy Solutions Corp. and Industrial Energy Users-Ohio  
Memorandum Contra The Motion For Extension Of Ohio Power Company electronically filed  
by Mr. Nathaniel Trevor Alexander on behalf of FirstEnergy Solutions Corp.