

BOEHM, KURTZ & LOWRY

ATTORNEYS AT LAW
36 EAST SEVENTH STREET
SUITE 1510
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255
TELECOPIER (513) 421-2764

Via E-File and
Overnight Mail

May 15, 2012

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

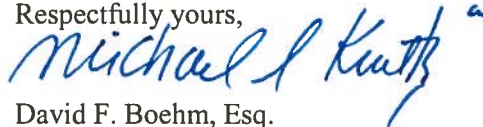
In re: 11-346-EL-SSO, 11-348-EL-SSO
11-349-EL-AAM, 11-350-EL-AAM

Dear Sir/Madam:

Please find attached the OHIO ENERGY GROUP'S MEMORANDUM CONTRA INDUSTRIAL ENERGY USERS-OHIO AND OFFICE OF THE OHIO CONSUMERS' COUNSEL MOTION TO STRIKE for filing in the above-referenced matters. The original and twenty (20) copies will follow by overnight mail.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.

BOEHM, KURTZ & LOWRY

MLKkew
Encl.
Cc: Certificate of Service

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OHIO**

In the Matter of the Application of Columbus Southern	:	Case No. 11-346-EL-SSO
Power Company and Ohio Power Company for Authority to	:	Case No. 11-348-EL-SSO
Establish a Standard Service Offer 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 and Ohio Power Company for Approval of	:	Case No. 11-349-EL-AAM
Certain Accounting Authority	:	Case No. 11-350-EL-AAM

**MEMORANDUM CONTRA
INDUSTRIAL ENERGY USERS-OHIO AND OFFICE OF THE OHIO CONSUMERS'
COUNSEL'S MOTION TO STRIKE
OF THE OHIO ENERGY GROUP**

Pursuant to §4901-1-12 of the Ohio Administrative Code, the Ohio Energy Group ("OEG") hereby submits this Memorandum Contra the Motion to Strike filed by Industrial Energy Users-Ohio and the Office of the Ohio Consumers' Counsel (collectively, "IEU/OCC") on May 11, 2012 ("Motion").

In their Motion, IEU/OCC argue that portions of OEG witness Lane Kollen's Direct Testimony filed May 4, 2012 ("Testimony") should be stricken from the record as irrelevant.¹ IEU/OCC allege that the Earnings Stabilization Mechanism ("ESM") proposed by Mr. Kollen is a "transition cost recovery mechanism" and that such a mechanism is precluded by R.C. 4928.141(A) and R.C. 4928.38. On that basis, IEU/OCC claim that certain portions of the Testimony relate to the ESM, are irrelevant, and should be stricken.

¹ Motion at 3-6.

As an initial matter, IEU/OCC fail to recognize that Mr. Kollen filed testimony in the first half of this proceeding on behalf of OEG that proposed a mechanism substantially similar to the ESM, though the mechanism was called an “Equity Stabilization Incentive Plan” in that testimony.² No party contested the inclusion of Mr. Kollen’s proposal in the first half of this proceeding. Thus, that proposal is already in the record in this docket. Further, Mr. Kollen’s testimony in the pending Ohio Power Company (“AEP”) capacity compensation case included the proposed ESM.³ No party, including IEU and OCC, contested the inclusion of the ESM proposal in Mr. Kollen’s testimony in that case. The Commission’s determination in the capacity compensation case will likely have a significant impact on this proceeding and vice versa. Consequently, Mr. Kollen’s proposal to establish the ESM in the capacity compensation case may already significantly impact this proceeding. Accordingly, IEU/OCC’s arguments are tardy at this point in time.

Additionally, IEU/OCC improperly ask the Commission to make a premature conclusion on an ultimate legal issue during an evidentiary stage of the proceeding. IEU/OCC allege that the proposed ESM is illegal and is therefore, irrelevant to this proceeding. But the legality of the proposed ESM is an issue for parties to address in post-hearing Briefs. It is inappropriate to request that the Commission make an ultimate legal conclusion before the parties have had the opportunity to present evidence and legal argument in support of such a mechanism.

IEU/OCC’s request that the Commission strike portions of the Testimony because the ESM is allegedly illegal is based upon a mischaracterization of the ESM as a “transition cost recovery mechanism.”⁴ The ESM is not a “transition cost recovery mechanism” as contemplated under R.C. 4928.141(A) or 4928.38. Rather, the ESM is a mechanism by which to provide retail stability and certainty as a result of AEP’s Electric Security Plan (“ESP”). Pursuant to R.C. 4928.142(B)(2)(d),

² Direct Testimony and Exhibits of Lane Kollen, Case Nos. 11-346-EL-SSO *et al* (June 25, 2011) at 3:4-8; 3:20-6:3; 10:29-15:12.

³ Direct Testimony and Exhibits of Lane Kollen, Case No. 10-2929-EL-UNC (April 4, 2012) at 4:10-18; 18:5-21:16.

⁴ Motion at 5.

terms, conditions, and charges that “would have the effect of stabilizing or providing certainty regarding retail electric service” can properly be included in an ESP. Thus, state law recognizes that the Commission can appropriately consider the objectives of rate stability and certainty in the context of an ESP. The ESM is a manner in which the Commission can accomplish these objectives. As such, the ESM is not illegal, nor is it irrelevant to this proceeding.

Setting the impropriety of IEU/OCC’s request aside, the proposed ESM is very relevant to this proceeding. The proposed ESM can assist the Commission in ensuring that AEP provides “reasonably priced retail electric service” consistent with state policy outline in R.C. 4928.02(A). Though IEU/OCC focus on the 7% return on equity floor proposed under the ESM,⁵ the proposed ESM would also protect customers from unreasonably priced retail electric service resulting from AEP’s ESP by providing a credit to customers if AEP’s earnings exceed the 11% return on equity ceiling. Thus, the proposed ESM is relevant to this proceeding because it provides a manner in which the Commission can further state policy.

Moreover, the existence of a superior alternative to AEP’s proposed Retail Stability Rider (“RSR”) is a critical factor for the Commission to consider in evaluating the RSR in this case. IEU/OCC request to strike portions of the Testimony that provide valuable information regarding the ESM, which represents a superior alternative to the RSR. Additionally, IEU/OCC attempt to strike portions of the Testimony explaining how earnings, rather than projected revenues, are a superior metric of a utility’s financial performance and ability to attract capital because earnings: 1) incorporate the effects of all decisions that affect AEP’s generating assets; 2) are the basis for measuring AEP’s various coverage ratios used by rating agencies and investors to determine bond ratings; and 3) accurately capture the actual energy margins realized by the utility from selling energy free up by shopping.⁶ But the portions of the Testimony related to both the ESM and the reasons why earnings are a superior

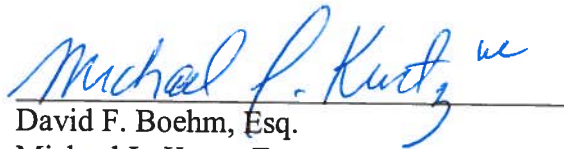
⁵ Motion at 4-5.

⁶ Testimony at 16:8-17:13.

metric to projected revenues can assist the Commission in determining whether to approve AEP's proposed RSR. Consequently, the disputed portions of the Testimony are very relevant to this proceeding and should not be stricken.

The Commission is not strictly bound by the rules of evidence.⁷ The Commission can give the disputed portions of Mr. Kollen's Testimony appropriate weight without resorting to the extreme approach of striking entire portions. The inclusion of all of Mr. Kollen's Testimony in this proceeding will help develop a full record for the Commission to consider in making its determination in this case. The Commission should reject IEU/OCC's extreme suggestion and should rely upon the Testimony to the extent the Commission deems appropriate. For these reasons, the Commission should deny IEU/OCC's Motion.

Respectfully Submitted,

A handwritten signature in blue ink, reading "Michael L. Kurtz" with a stylized flourish at the end.

David F. Boehm, Esq.

Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

BOEHM, KURTZ & LOWRY

36 East Seventh Street, Suite 1510

Cincinnati, OH 45202

dboehm@BKLawfirm.com

mkurtz@BKLawfirm.com

kboehm@BKLawfirm.com

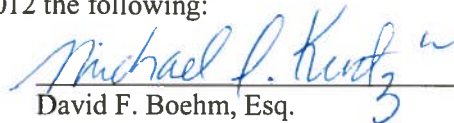
COUNSEL FOR THE OHIO ENERGY GROUP

May 15, 2012

⁷ *S.G. Foods v. FirstEnergy Corp.*, Case Nos. 04-28-EL-CSS et al., Entry (March 7, 2006) at 29 (citing *Greater Cleveland Welfare Rights Org. Inv. v. Pub. Util. Comm.*, 2 Ohio St. 3d 62 (1982)).

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or ordinary mail, unless otherwise noted, this 15th day of May, 2012 the following:



David F. Boehm, Esq.

Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

JOE HAMROCK
1 RIVERSIDE PLAZA 29TH FL
COLUMBUS OH 43215

APPALACHIAN PEACE AND JUSTICE NETWORK, C/O
MICHAEL SMALZ OHIO POVERTY LAW CENTER
555 BUTTLES AVENUE
COLUMBUS OH 43215

COLUMBUS SOUTHERN POWER COMPANY
1 RIVERSIDE PLAZA
COLUMBUS OH 43215

OHIO POWER COMPANY
LEGAL DEPARTMENT
1 RIVERSIDE PLAZA
COLUMBUS OH 43215

MONTGOMERY, CHRISTOPHER
BRICKER & ECKLER LLP
100 SOUTH THIRD STREET
COLUMBUS OH 43215

MEYER, DAVID A
ONE EAST FOURTH STREET SUITE 1400
CINCINNATI OH 45202

KREIDER, KENNETH P.
KEATING, MUETHING & KLEKAMP PLL
ONE EAST FOURTH STREET, SUITE 1400
CINCINNATI OH 45202

ECKHART, HENRY W.
1200 CHAMBERS ROAD STE 106
COLUMBUS OH 43212

RODRIGUEZ, JESSE A ATTORNEY
300 EXELON WAY

SATTERWHITE, MATTHEW
1 RIVERSIDE PLAZA 29TH FLOOR
COLUMBUS OH 43215

SMALZ, MICHAEL ATTORNEY AT LAW
OHIO STATE LEGAL SERVICE ASSOC.
555 BUTTLES AVENUE
COLUMBUS OH 43215-1137

NOURSE, STEVEN T. MR.
AMERICAN ELECTRIC POWER
1 RIVERSIDE PLAZA
COLUMBUS OH 43215

BONNER, DOUGLAS G. ATTORNEY
SONNENSCHN NATH & ROSENTHAL LLP
1301 K STREET, N.W., SUITE 600, EAST TOWER
WASHINGTON, D.C. 20005

HAND, EMMA F
SONNENSCHN NATH & ROSENTHAL LLP
1301 K STREET NW SUITE 600 EAST TOWER
WASHINGTON DC 20005

HAND, EMMA F
SONNENSCHN NATH & ROSENTHAL LLP
1301 K STREET NW SUITE 600 EAST TOWER
WASHINGTON DC 20005

*FLAHIVE, CAROLYN S
THOMPSON HINE LLP
41 SOUTH HIGH STREET SUITE 1700
COLUMBUS OH 43215-6101

ALEXANDER, N TREVOR
CALFEE HALTER & GRISWOLD LLP
1100 FIFTH THIRD CENTER 21 EAST STATE STREET
COLUMBUS OH 43215-4243

DARR, FRANK P. ATTORNEY AT LAW
MCNEES WALLACE & NURICK LLC

KENNETT SQUARE PA 19348

21 EAST STATE STREET, 17TH FLOOR
COLUMBUS OH 43215-422

GRACE, SANDY I
101 CONSTITUTION AVENUE SUITE 400 EAST
WASHINGTON DC 20001

HAEDT, ALLISON E. ATTORNEY AT LAW
JONES DAY
325 JOHN H. MCCONNELL BLVD., SUITE 600
COLUMBUS OH 43215-2673

ALLWEIN, CHRISTOPHER J
1373 GRANDVIEW AVE SUITE 212
COLUMBUS OH 43212

*MOSER, NOLAN M MR.
THE OHIO ENVIRONMENTAL COUNCIL
1207 GRANDVIEW AVE.
COLUMBUS OH 43212-3449

O'BRIEN, THOMAS
BRICKER & ECKLER LLP
100 SOUTH THIRD STREET
COLUMBUS OH 43215-4291

*SANTARELLI, TARA
ENVIRONMENTAL LAW & POLICY CENTER
1207 GRANDVIEW AVE., STE. 201
COLUMBUS OH 43212

MEBANE, TERRANCE A
THOMPSON HINE LLP
41 S. HIGH STREET SUITE 1700
COLUMBUS OH 43215

*DUFFER, JENNIFER MRS.
ARMSTRONG & OKEY, INC.
222 EAST TOWN STREET 2ND FLOOR
COLUMBUS OH 43215

SMITH, HOLLY RACHEL
KEATING MUETHING & KLEKAMP PLL
HITT BUSINESS CENTER 3803 RECTORTOWN ROAD
MARSHALL VA 20115

MEBANE, TERRANCE A
THOMPSON HINE LLP
41 S. HIGH STREET SUITE 1700
COLUMBUS OH 43215

FISK, SHANNON
2 NORTH RIVERSIDE PLAZA SUITE 2250
CHICAGO IL 60606

ROYER, BARTH E
BELL & ROYER CO LPA
33 SOUTH GRANT AVENUE
COLUMBUS OH 43215-3927

*KALEPS-CLARK, LIJA K MS.
VORYS, SATER, SEYMOUR AND PEASE
52 E. GAY ST. PO BOX 1008
COLUMBUS OH 43216

O'DONNELL, TERRENCE ATTORNEY
BRICKER & ECKLER LLP
100 SOUTH THIRD STREET
COLUMBUS OH 43215

*RANDAZZO, SAMUEL C. MR.
MCNEES WALLACE & NURICK LLC
21 E. STATE STREET, 17TH FLOOR
COLUMBUS OH 43215

*KALEPS-CLARK, LIJA K MS.
VORYS, SATER, SEYMOUR AND PEASE
52 E. GAY ST. PO BOX 1008
COLUMBUS OH 43216

*SATTEWHITE, MATTHEW J MR.
AMERICAN ELECTRIC POWER SERVICE CORPORATION
1 RIVERSIDE PLAZA, 29TH FLOOR
COLUMBUS OH 43215

*KUTIK, DAVID A MR.
JONES DAY
901 LAKESIDE AVENUE
CLEVELAND OH 44114

LAWRENCE ECONOMIC DEVELOPMENT CORPORATION
BILL DINGUS
HAQUE, ASIM Z
250 WEST STREET

P.O. BOX 488
SOUTH POINT OH 45680-0488

AMERICAN ELECTRIC POWER SERVICE CORPORATION
1 RIVERSIDE PLAZA, 29TH FLOOR
COLUMBUS OH 43215-2373

ASSOCIATION OF INDEPENDENT COLLEGES AND
UNIVERSITIES OF OHIO
41 S. HIGH STREET, SUITE 2720
COLUMBUS OH 43215-6152

CITY OF GROVE CITY
CHRISTOPHER L. MILLER, AT
250 WEST STREET
COLUMBUS OH 43215

COMPETE COALITION
1317 F. STREET NW SUITE 600
WASHINGTON DC 20004

CONSTELLATION ENERGY COMMODITIES GROUP, INC.
M.H. PETRICOFF, ATTORNEY
52 EAST GAY STREET P O BOX 1008
COLUMBUS OH 43216-1008

CONSTELLATION NEWENERGY INC
SENIOR COUNSEL
CYNTHIA FONNER BRADY
550 W WASHINGTON STREET SUITE 300
CHICAGO IL 60661

DOMINION RETAIL INC
ASSISTANT GENERAL COUNSEL
GARY A JEFFRIES
501 MARTINDALE STREET SUITE 400
PITTSBURGH PA 15212

DUKE ENERGY RETAIL SERVICES, LLC
DOROTHY K CORBETT
139 E. FORTH STREET, 1303
CINCINNATI OH 45202

ENERNOC INC
101 FEDERAL STREET SUITE 1100
BOSTON MA 02110

ENVIRONMENTAL LAW & POLICY CENTER
35 E. WACKER DR STE 1600

COLUMBUS OH 43215

JADWIN, JAY E COUNSEL OF RECORD
AMERICAN ELECTRIC POWER SERVICE CORPORATION
1 RIVERSIDE PLAZA, 29TH FLOOR
COLUMBUS OH 43215

MILLER, CHRISTOPHER L
SCHOTTENSTEIN, ZOX AND DUNN CO LPA
250 WEST STREET
COLUMBUS OH 43215

CITY OF HILLIARD
CHRIS MILLER, ATTORNEY
SCHOTTENSTEIN, ZOX & DUNN CO., LPA
250 WEST STREET
COLUMBUS OH 43215

MASSEY, WILLIAM L
COVINGTON & BURLING LLP
1201 PENNSYLVANIA AVENUE, NW
WASHINGTON DC 20004-2401

ANTONS, LEO
1237 CISLER DR
MARIETTA OH 45750

*PETRICOFF, M HOWARD
VORYS SATER SEYMOUR AND PEASE LLP
52 E. GAY STREET P.O. BOX 1008
COLUMBUS OH 43216-1008

ROYER, BARTH E
BELL & ROYER CO LPA
33 SOUTH GRANT AVENUE
COLUMBUS OH 43215-3927

SPILLER, AMY
DUKE ENERGY OHIO
139 E. FOURTH STREET, 1303-MAIN P O BOX 961
CINCINNATI OH 45201-0960

POULOS, GREGORY J ATTORNEY
OHIO CONSUMERS' COUNSEL
10 WEST BROAD ST. SUITE 1800
COLUMBUS OH 43215-3485

*SANTARELLI, TARA
ENVIRONMENTAL LAW & POLICY CENTER
1207 GRANDVIEW AVE., STE. 201

CHICAGO IL 60601-2206

ENVIRONMENTAL LAW AND POLICY CENTER
TARA SANTARELLI
1207 GRANDVIEW AVE, SUITE 201
COLUMBUS OH 43212

FIRSTENERGY SOLUTIONS CORP MANAGER MARKET
INTELLIGENCE
LOUIS M D'ALESSANDRIS
341 WHITE POND DRIVE
AKRON OH 44320

KROGER COMPANY, THE
MR. DENIS GEORGE 1014 VINE STREET-GO7
CINCINNATI OH 45202-1100

OHIO ENVIRONMENTAL COUNCIL
1207 GRANDVIEW AVE. SUITE 201
COLUMBUS OH 43212-3449

OHIO MANUFACTURERS' ASSOCIATION
33 N HIGH STREET
COLUMBUS OH 43215

OHIO PARTNERS FOR AFFORDABLE ENERGY
RINEBOLT DAVID C
231 WEST LIMA ST. PO BOX 1793
FINDLAY OH 45839-1793

ORMET PRIMARY ALUMINUM CORP.
P.O. BOX 176
HANNIBAL OH 43931

PAULDING WIND FARM LLC
STEVE HOWARD, ATTY
52 EAST GAY ST. P O BOX 1008
COLUMBUS OH 43215

RETAIL ENERGY SUPPLY ASSOCIATION (RESA)
STEPHEN HOWARD
52 E. GAY ST.
COLUMBUS OH 43215

THE PJM POWER PROVIDERS GROUP
STEPHEN HOWARD, ATTORNEY
52 EAST GAY STREET P O BOX 1008
COLUMBUS OH 43216-1008

COLUMBUS OH 43212

EXELON GENERATION COMPANY LLC
SANDY I. GRACE, ATTY
101 CONSTITUTION AVE N.W. SUITE 400 EAST
WASHINGTON DC 200001

*HAYDEN, MARK A MR.
FIRSTENERGY CORP
76 SOUTH MAIN STREET
AKRON OH 44308

*YURICK, MARK
CHESTER WILLCOX & SAXBE LLP
65 E. STATE STREET SUITE 1000
COLUMBUS OH 43215

*DOUGHERTY, TRENT A MR.
OHIO ENVIRONMENTAL COUNCIL
1207 GRANDVIEW AVE. SUITE 201
COLUMBUS OH 43212

MCALISTER, LISA G
BRICKER & ECKLER
100 SOUTH THIRD STREET
COLUMBUS OH 43215-4291

MOONEY, COLLEEN
231 WEST LIMA STREET
FINDLAY OH 45840

HAND, EMMA F
SONNENSCHN NATH & ROSENTHAL LLP
1301 K STREET NW SUITE 600 EAST TOWER
WASHINGTON DC 20005

MONTGOMERY, CHRISTOPHER
BRICKER & ECKLER LLP
100 SOUTH THIRD STREET
COLUMBUS OH 43215

THE DISTRIBUTED WIND ENERGY ASSOCIATION
TERRENCE O'DONNELL
100 SOUTH THIRD STREET
COLUMBUS OH 43215-4291

WAL-MART STORES EAST, LP AND SAM'S EAST, INC
KENNETH KREIDER, ATTORNEY
ONE EAST FOURTH STREET SUITE 1400
CINCINNATI OH 45202

AEP RETAIL ENERGY PARTNERS LLC
ANNE M. VOGEL
1 RIVERSIDE PLAZA, 29TH FLOOR
COLUMBUS OH 43215

ASSOCIATION OF INDEPENDENT COLLEGES AND
UNIVERSITIES OF OHIO
41 S. HIGH STREET, SUITE 2720
COLUMBUS OH 43215-6152

INDUSTRIAL ENERGY USERS OF OHIO GENERAL
COUNSEL
SAMUEL C RANDAZZO
21 EAST STATE STREET, 17TH FLOOR
COLUMBUS OH 43215

MEIGS COUNTY COMMISSIONERS
MICHAEL DAVENPORT, PRESIDENT
100 EAST SECOND STREET
POMEROY OH 45769

OHIO CONSUMERS' COUNSEL
10 W. BROAD STREET SUITE 1800
COLUMBUS OH 43215-3485

TUSCARAWAS COUNTY
330 UNIVERSITY DRIVE NE
NEW PHILADELPHIA OH 44663

UNITED WAY OF JEFFERSON COUNTY
501 WASHINGTON STREET
P.O. BOX 1463
STEUBENVILLE OH 43952

WHITE, SCOTT MR.
INTERSTATE GAS SUPPLY, INC.
6100 EMERALD PKWY
DUBLIN OH 43016

JADWIN, JAY E
AEP
155 W NATIONWIDE BLVD SUITE 500
COLUMBUS OH 43215

JONES, C. TODD GENERAL COUNSEL
SCHOTTENSTEIN ZOX & DUNN CO LPA
250 WEST STREET
COLUMBUS OH 43215

OLIKER, JOSEPH E ATTORNEY
MCNEE WALLACE & NURICK LLC
21 EAST STATE STREET, 17TH FLOOR
COLUMBUS OHIO 43215

KRAVITZ, ZACHARY D.
CHESTER, WILCOX & SAXBE, LLP
65 EAST STATE STREET, STE 1000
COLUMBUS OH 43215

ETTER, TERRY
OHIO CONSUMERS' COUNSEL
10 W. BROAD STREET SUITE 1800
COLUMBUS OH 43215

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/15/2012 2:19:14 PM

in

Case No(s). 11-0346-EL-SSO, 11-0348-EL-SSO, 11-0349-EL-AAM, 11-0350-EL-AAM

Summary: Memorandum Ohio Energy Group (OEG) Memorandum Contra Industrial Energy Users-Ohio and Office of the Ohio Consumers' Counsel's Motion to Strike electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group