

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

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## Attorneys for Industrial Energy Users-Ohio

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**INDUSTRIAL ENERGY USERS-OHIO’S  
MEMORANDUM IN PARTIAL OPPOSITION TO FIRSTENERGY SOLUTIONS CORP.’S  
APPLICATION FOR REHEARING**

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Pursuant to Rule 4901-1-35(B), Ohio Administrative Code (“O.A.C.”), the Industrial Energy Users-Ohio (“IEU-Ohio”) respond to the Application for Rehearing (“Application”) filed by FirstEnergy Solutions Corp. (“FES”) on August 1, 2012. While IEU-Ohio generally supports the positions of FES on questions regarding the lawfulness and reasonableness (or lack thereof) of the Opinion and Order issued by the Public Utilities Commission of Ohio (“Commission”) on July 2, 2012 (“July 2 Order”), FES’ claim that rehearing is warranted because the July 2 Order “... fails to establish that any charge for the recovery of deferred capacity costs should be nonbypassable”<sup>1</sup> invites the Commission to further ignore Ohio law. An unlawful and unreasonable charge cannot be made lawful and reasonable by turning it into a non-bypassable charge.

FES’ principled advocacy in this and other proceedings and regarding the methodology that must be used to establish generation service capacity prices has been, unlike most other competitive retail electric service (“CRES”) providers,

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<sup>1</sup> FirstEnergy Solutions Corp.’s Application for Rehearing of the July 2, 2012 Opinion and Order at 1 (August 1, 2012).

consistently well aligned with the interest of ultimate customers. Indeed, the bulk of FES' Application provides forceful support for the full restoration of RPM-Based Pricing and demonstrates why, as a matter of law, the Commission cannot use a "cost-based" ratemaking methodology to uniquely authorize a generation service capacity price. However, FES' claim that the Commission erred because it did not make the portion of the \$188.88 per megawatt-day ("MW-day") generation service capacity price that is not contemporaneously charged to CRES providers non-bypassable reflects an unprincipled disregard for the law, the evidence and the interest of consumers (shopping and non-shopping alike).

Predictably, the Commission's July 2 Order has ignited a fight between some stakeholders over which stakeholders (including CRES providers) the Commission must or should victimize with the unlawful, unjust and unreasonable consequences of such Order. This unfortunate fight may be seen by some as being a form of self-defense against the Commission's indulgence of Ohio Power Company's<sup>2</sup> demands for things that the law precludes or that justice should have long ago foreclosed. Whatever the provocation, this fight is the latest symptom of a Commission process and Commission decisions that are detached from the rule of law and fundamental fairness.

The purpose of economic regulation is to simulate the forces of a competitive market.<sup>3</sup> The regulatory structure in Ohio is designed to let competition do directly what prior forms of economic regulation did poorly or not at all. Instead of serving the fundamental purposes of economic regulation and following Ohio law, the Commission has acted to provide AEP-Ohio with above-market compensation for generation

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<sup>2</sup> ("OP") (now merged with Columbus Southern Power Company or "CSP" as "AEP-Ohio").

<sup>3</sup> Principles of Utility Corporate Finance, Leonardo R. Giacchino, Ph.D. & Jonathan A. Lesser, Ph.D., Public Utility Report, Inc.

capacity service and imposed Ohio's monopoly rent on somebody else. Collecting unwarranted and unlawful monopoly rent through a non-bypassable charge, as FES (and others) now stoop to favor, cannot and will not fix what is so fundamentally wrong with the July 2 Order.

Accordingly, FES' assertion that rehearing is warranted because the July 2 Order "... fails to establish that any charge for the recovery of deferred capacity costs should be nonbypassable"<sup>4</sup> invites the Commission to further ignore Ohio law. An unlawful and unreasonable charge cannot be made lawful and reasonable by turning it into a non-bypassable charge. To the extent FES' Application asserts otherwise, it is without merit.

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<sup>4</sup> FirstEnergy Solutions Corp.'s Application for Rehearing of the July 2, 2012 Opinion and Order at 1 (August 1, 2012).

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Memorandum in Partial Opposition to FirstEnergy Solutions Corp.'s Application for Rehearing* was served upon the following parties of record this 7<sup>th</sup> day of August 2012, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

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