

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

In the Matter of the Application of)	
Columbus Southern Power Company)	Case No. 11-349-EL-AAM
and Ohio Power Company for Approval)	Case No. 11-350-EL-AAM
of Certain Accounting Authority.)	

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

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

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

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

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

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

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

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

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

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

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

II. Consolidation

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

III. Auction Structure

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

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

IV. Conclusion

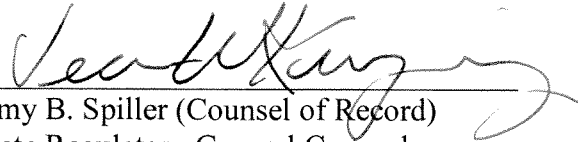
For the reasons stated herein, Duke Energy Commercial Asset Management, Inc., and Duke Energy Retail Sales, LLC, respectfully request that the Commission deny the claimed errors of Ohio Power Company, Ohio Energy Group, Industrial Energy Users-Ohio, and, jointly, the Office of the Ohio Consumers' Counsel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

Respectfully submitted,

DUKE ENERGY COMMERCIAL ASSET
MANAGEMENT, INC.

and

DUKE ENERGY RETAIL SALES, LLC

A handwritten signature in black ink, appearing to read "Jeanne W. Kingery", is written over a horizontal line.

Amy B. Spiller (Counsel of Record)

State Regulatory General Counsel

Jeanne W. Kingery

Associate General Counsel

139 East Fourth Street

1303-Main

Cincinnati, Ohio 45202


(513) 287-4359 (telephone)

Amy.Spiller@duke-energy.com

Jeanne.Kingery@duke-energy.com

CERTIFICATE OF SERVICE

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


Jeanne W. Kingery

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

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

Counsel for Ohio Power Company

Mark S. Yurick
myurick@taftlaw.com

Zachary D. Kravitz
zkravitz@taftlaw.com

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

Counsel for The Kroger Co.

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

Counsel for NFIB/Ohio

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

Counsel for the Ohio Farm Bureau Federation

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

Counsel for the Retail Energy Supply Association

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

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

Counsel for Dominion Retail, Inc.

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

Counsel for Ohio Partners for Affordable Energy

Mark A. Whitt
Whitt Sturtevant LLP
PNC Plaza, Suite 2020
155 East Broad Street
Columbus, Ohio 43215
whitt@whitt-sturtevant.com

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

Counsel for Interstate Gas
Supply, INC.

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

Counsel for The Ohio Energy Group

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

Counsel for OMA Energy Group

Randy J. Hart
rjhart@hahnlaw.com

Rob Remington
rremington@hahnlaw.com

David J. Michalski
djmichalski@hahnlaw.com

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

Counsel for Summit Ethanol, LLC and
Fostoria Ethanol, LLC

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

Counsel for the City of Grove City, Ohio

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

Counsel for Industrial Energy Users-Ohio

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

Counsel for Ohio Hospital Association

Brian P. Barger
bpbarger@bcslawyers.com

4052 Holland-Sylvania Road
Toledo, Ohio 43623

Counsel for the Ohio Construction Materials
Coalition

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

Counsel for the AICUO

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

Ohio Consumers' Counsel

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

Counsel for Ohio Hospital Association

David A. Kutik
Allison E. Haedt
Jones Day
901 Lakeside Ave
Cleveland OH 44114
dkutik@jonesday.com
aehaedt@jonesday.com

Counsel for FirstEnergy Solutions Corp.

Mark A. Hayden
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

Counsel for FirstEnergy Solutions Corp.

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

Counsel for the Appalachian Peace and Justice Network

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

Counsel for AEP Retail Energy
Partners LLC

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

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

Counsel for FirstEnergy Solutions Corp.

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

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

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

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

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

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

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

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

christopher.miller@icemiller.com
gregory.dunn@icemiller.com
asim.haque@icemiller.com

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

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

Counsel for Exelon Generation Company, LLC

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

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

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

Counsel for the COMPETE Coalition

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

Counsel for Natural Resources Defense Council and Sierra Club

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

Counsel for Exelon Generation Company, LLC

Gregory M Poulos
EnerNOC
101 Federal St Suite 1100
Boston, MA 02110
gpoulos@enernoc.com

Counsel for ENERNOC, Inc.

Steve W. Chriss
Wal-Mart Stores, Inc
2001 SE 10th St
Bentonville, AR 72716
Stephen.chriss@wal-mart.com

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

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

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

Counsel for OEC

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

Counsel for Exelon Generation Company, LLC

Diem N. Kaelber
Robert Walter
10 West Broad St, Suite 1300
Columbus OH 43215
kaelber@buckleyking.com
walter@buckleyking.com

Counsel for Ohio Restaurant Association

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

Counsel for the Environmental Law & Policy Center

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

Counsel for Ormet Primary Aluminum Corporation

Shannon Fisk
2 North Riverside Plaza, Suite 2250
Chicago, IL 60606
sfisk@nrhc.org

Dane Stinson
BAILEY CAVALIERI LLC
10 West Broad Street, Suite 2100
Columbus, Ohio 43215
Dane.stinson@baileycavalieri.com

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

Matthew R. Cox
Matthew Cox Law, Ltd.
4145 St. Theresa Blvd.
Avon, OH 44011
matt@matthewcoxlaw.com

Counsel for the Council of Smaller Enterprises (COSE)

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

Counsel for Ormet Primary Aluminum Corporation

Jeanine Amid Hummer
Thomas K. Lindsey
jhummer@uaoh.net
tlindsey@uaoh.net

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

Christopher L. Miller
Gregory J. Dunn
Asim Z. Haque Christopher.Miller@icemiller.com
Gregory.Dunn@icemiller.com
Asim.Haque@icemiller.com

Ice Miller LLP
250 West Street
Columbus, Ohio 43215

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

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

rjhart@hahnlaw.com
djmichalski@hahnlaw.com
rrremington@hahnlaw.com

Counsel for Summit Ethanol, LLC and
Fostoria Ethanol, LLC

Jack D'Aurora
The Behal Law Group LLC
501 S. High Street
Columbus, OH 43215
jdaurora@behallaw.com

Counsel for the University of Toledo Innovation
Enterprises Corporation

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

Counsel for The Dayton Power and Light Company

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

Counsel for Staff, Public Utilities Commission of Ohio

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

Counsel for Border Energy Electric Services, Inc.

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

Larry F. Eisenstat
Counsel of Record
Richard Lehfeldt
Robert L. Kinder, Jr.
Dickstein Shapiro LLP
1825 Eye St. NW
Washington, DC 20006
eisenstatl@dicksteinshapiro.com
lehfeldtr@dicksteinshapiro.com
kinderr@dicksteinshapiro.com

Counsel for CPV Power Development, Inc.

Sue A. Salamido
Kristin Watson
Cloppert, Latanick, Sauter & Washburn
225 E. Broad Street, 4th Floor
Columbus, OH 43215
ssalamido@cloppertlaw.com
kwatson@cloppertlaw.com

Counsel for IBEW Local 1466

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

Sara Reich Bruce
Staff Counsel
Ohio Automobile Dealers Association
655 Metro Place South, Suite 270
Dublin, OH 43017
sbruce@oada.com
Counsel for The Ohio Automobile Dealers
Association

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Summary: Memorandum Memorandum Contra Rehearing of Duke Energy Commercial Asset Management and Duke Energy Retail Sales electronically filed by Carys Cochern on behalf of Kingery, Jeanne W Ms.