BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for the Establishment of a Charge Pursuant to Revised Code Section 4909.18.	))))	Case No. 12-2400-EL-UNC
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 12-2401-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc. for the Approval of a Tariff for a New Service.	)))	Case No. 12-2402-EL-ATA

FIRSTENERGY SOLUTIONS CORP.'S INITIAL COMMENTS

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I. INTRODUCTION

Duke Energy Ohio, Inc. ("Duke") seeks to charge its customers approximately $600 million more than existing Commission-approved rates over the next two and a half years. In accordance with the Attorney Examiner's October 3, 2012 Entry, FirstEnergy Solutions Corp. ("FES") submits these Comments setting forth numerous reasons why Duke's Application for this significant price increase should be rejected. These Comments have been submitted in advance of the parties' exchange of testimony, completion of discovery, and the hearing, which is not scheduled until April 2013. Thus, FES' Comments do not reflect an exhaustive list of the issues, many of which will be developed through the upcoming process. However, it is clear that there are a number of independent reasons why the Commission should reject the Application ***now*** before the Commission, Staff and the numerous parties are required to invest significant time and resources into addressing this clearly unlawful Application.

First and foremost, Duke's Application should be rejected because it agreed to the current capacity pricing for both SSO customers and shopping customers just one year ago as part of a package of terms in its Stipulation and Recommendation setting its electric security plan through May 31, 2015 (the "ESP Stipulation").[1] This is not, as Duke pretends, an application to establish a new rate but is instead a direct attack on the capacity pricing established in the ESP Stipulation and approved by the Commission in Case No. 11-3549-EL-SSO, *et al*.[2] Duke has offered no justification for unilaterally changing just one of the many interrelated terms of that agreement.

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[1] *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case Nos. 11-3549-EL-SSO *et al.* ("Duke ESP II"), Stipulation and Recommendation, § IV.A. (Oct. 24, 2011) (fixing charge for capacity resources provided to all CRES providers at the Final Zonal Capacity Price in the unconstrained PJM RTO region for the period of January 1, 2012 through May 31, 2015).

[2] Duke ESP II, Opinion and Order (Nov. 22, 2011).

Second, the current capacity price is the proper price – the market-based price resulting from PJM Interconnection, LLC's Reliability Pricing Model ("RPM"). RPM prices promote significant benefits for customers and have been successful in instituting the proper price signals for the most economic investments in electric generating capacity. If Duke was authorized to receive more than the market-based price for capacity, those benefits, and the proper working of market forces, would be jeopardized. Duke's voluntary decision to elect to serve as a Fixed Resource Requirement ("FRR") entity within PJM is of no material consequence to its role as one of the many capacity suppliers in PJM and, in any event, Duke cannot unilaterally remove itself from the competitive market required by Ohio law and policy for electric generation service.

Third, Duke already receives an above-market revenue stream associated with its role as a capacity supplier through a separate provision of the ESP Stipulation – Rider ESSC. Thus, its Application filed here is both unnecessary and easily distinguishable from the Ohio Power Company ("AEP Ohio") proceedings upon which it relies. Regardless, any above-market capacity price would have to be offset through a corresponding reduction in Rider ESSC.

Fourth, even if Duke had grounds to establish a capacity charge in this proceeding (it does not), Duke's Application would have to be rejected because it fails to meet the procedures required by Revised Code Chapter 4909 and ignore issues that would have a material impact on its Application.

Given Duke's reliance on Commission orders approving a state compensation mechanism for AEP Ohio,[3] this Application also is premature. Those orders are the subject of a pending appeal process that will not be resolved for months and, as set forth by FES and several other

[3] *See* Application, ¶¶ 4, 15; *see also* Case No. 10-2929-EL-UNC and Case No. 11-346-EL-SSO *et al.*

interested parties, warrant substantial modification, if not complete repeal. Duke's request for revised, above-market state compensation mechanism could be rendered moot by the Ohio Supreme Court's determination of the AEP Ohio appeals. Therefore, to the extent Duke's Application is not rejected outright, the Commission should consider staying this proceeding until such time as the lawfulness of AEP Ohio's "state compensation mechanism" is established.

II. ARGUMENT

A. Duke Cannot Unilaterally Change The Terms Of Its ESP Stipulation, Which Already Sets Duke's Compensation For Its FRR Capacity.

Duke has offered no justification for reopening the ESP Stipulation and rebalancing all of its terms in order to increase by a factor of three the existing charge for capacity provided to SSO and shopping customers.[4] Approximately one year ago, the Commission approved the comprehensive ESP Stipulation agreed to by Duke and numerous interested parties. The ESP Stipulation was the result of extensive negotiations between the parties and represented a package of compromises covering a wide range of issues. In addition to setting the terms for Duke's provision of a standard service offer ("SSO") to its customers, the ESP Stipulation fixed Duke's charges for capacity to both SSO and shopping customers through May 31, 2015. Duke agreed to supply all necessary capacity under its FRR election to PJM and, in turn, both wholesale bidders in the SSO auctions <u>and</u> CRES providers would be charged RPM RTO prices for capacity.[5] In exchange for this commitment and others in the ESP Stipulation, Duke obtained a separate, non-bypassable revenue stream of $110 million annually for the calendar years 2012, 2013 and 2014 – on top of the RPM-priced compensation that Duke would receive for its capacity – for providing service as an FRR entity:

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[4] *See* Application, ¶¶ 8-9 (describing proposed increase in average capacity charge from $66.06/MW-day to $224.15/MW-day).

[5] ESP II Stipulation ("ESP Stip."), §§ II.B, IV.A.

> For the calendar years 2012, 2013, and 2014 of the ESP, Duke Energy Ohio shall recover annually, via a non-bypassable generation charge called the Electric Service Stability Charge (Rider ESSC), an amount intended to provide stability and certainty regarding Duke Energy Ohio's provision of retail electric service as an FRR entity while continuing to operate under an ESP.[6]

Duke's Application offers no legitimate basis for reopening and renegotiating the carefully crafted terms of the ESP Stipulation in place through May 31, 2015.[7]

Notably, because Duke's Application requests approval of a state compensation mechanism under Schedule 8.1, Section D.8, of PJM's Reliability Assurance Agreement ("RAA"), this exempts from consideration the ESP Stipulation's capacity pricing for SSO customers.[8] As set forth in Schedule 8.1, Section D.8 of the RAA, the state compensation mechanism applies whenever a state utilities commission requires shopping customers or competitive retail electric service ("CRES") providers (called "alternative retail LSEs" in the RAA) to pay an FRR Entity for PJM's reliability product:

> 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.

SSO load does not switch to an alternative retail LSE but remains Duke's load as the SSO provider and, thus, is not governed by the provisions of Schedule 8.1, Section D.8. of the RAA.

When the Commission approved the ESP Stipulation, it required alternative retail LSEs to compensate Duke for its FRR capacity obligations by paying the RPM RTO market price and

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[6] ESP Stip., § VII.A (emphasis added).

[7] *See* ESP Stip., § I.A.

[8] Duke appears to request new capacity pricing both for SSO customers and shopping customers. *See* Application, ¶¶ 7 and fn. 10 (citing para. II.B. of ESP Stipulation, which set capacity pricing for SSO customers).

also required switching customers to compensate Duke for its FRR capacity obligations by paying the ESSC. As such, pursuant to a Stipulation that was not opposed by any party, the Commission's Nov. 22, 2011 Order in Duke's ESP II proceeding established Duke's state compensation mechanism as a combination of two charges. This state compensation mechanism is but one of many inseparable components of a package of terms. Indeed, Duke's current request for embedded cost recovery for its FRR capacity is no different than what it initially requested in its ESP proceeding – and which was modified through the parties' negotiations. In its ESP II Application, Duke stated: "In exchange for effectively dedicating its generating assets to provide capacity for Ohio customers, Duke Energy Ohio proposes to recover its embedded costs for capacity."[9] That request led to the compromise reflected in the ESP Stipulation's terms for RPM-priced capacity and Rider ESSC. Duke cannot now unilaterally change the state compensation mechanism without all parties' agreement, which agreement Duke does not have and could never obtain under the current circumstances. Duke disingenuously claims that it seeks to establish a new charge under R.C. § 4909.18,[10] but it cannot avoid the existing state compensation mechanism simply by pretending it does not exist. Indeed, Duke's Application describes in detail the existing capacity charges established in its ESP Stipulation that it seeks to amend.[11] Duke's Application fails to provide any basis for increasing the existing state compensation mechanism that was negotiated in good faith in the ESP Stipulation and approved by the Commission.

Moreover, if the Commission were to reopen Duke's ESP II proceeding to increase the state compensation mechanism to a rate of $224.15/MW-day, the Commission would then be

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[9] ESP II Application, p. 10; *see also* ESP II testimony of Duke witness Janson, pp. 14-16.

[10] Application, ¶ 11.

[11] Application, ¶ 7.

required to determine whether Duke's ESP, with this $250+ million annual rate increase, was more favorable in the aggregate than the expected results of an MRO.[12] Duke has not submitted any such evidence, nor could it. Indeed, Duke's testimony in support of the ESP Stipulation demonstrated that it was more favorable than a comparable MRO by only $62 million on a net present value basis over the entire term of the ESP.[13] Thus, Duke's Application essentially requests a modification to its existing ESP that would cause it to fail the ESP vs. MRO price test. On this basis alone, the Commission should find that it lacks reasonable grounds for hearing the Application.

Duke's agreement to RPM-priced capacity and the additional, above-market Rider ESSC in its ESP Stipulation holds further significance when one considers its timing. At the time Duke was negotiating with the Signatory Parties and Staff and agreeing to an ESP that included these provisions, the Commission was considering the establishment of a state compensation mechanism for another FRR entity – AEP Ohio. AEP Ohio's request for above-market pricing for capacity provided to shopping customers was the subject of a Commission proceeding that was initiated in December 2010.[14] In fact, at the time Duke's ESP Stipulation was filed in October 2011, hearings were being held on AEP Ohio's capacity case. Two Duke affiliates – Duke Energy Retail Sales, LLC and Duke Energy Commercial Asset Management, Inc. – participated in that hearing, as did many of the other Signatory Parties to Duke's ESP Stipulation. Duke could have waited to assess the results of that hearing (on which Duke bases its Application here), but instead chose to negotiate the agreement reflected in the ESP Stipulation. The Commission must hold Duke to its word. If a party could enter into a

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[12] R.C. § 4928.143(C)(1).

[13] ESP II Order, p. 47 (citing testimony of Duke witness Wathen).

[14] *See* Case No. 10-2929-EL-UNC.

stipulation and later unilaterally seek to alter the terms of that agreement, a significant aspect of Commission proceedings would be eviscerated, stipulations would have little value and intervening parties would have no incentive to agree to stipulations.

Duke's Application should be dismissed because it has no basis to unilaterally change the terms of the ESP Stipulation or to increase the costs of Duke's current ESP and there has been no determination that an ESP that includes Duke's proposal here is more favorable in the aggregate than the expected results of an MRO.

B. Ohio Law Does Not Authorize Duke To Receive Above-Market Revenue For Generation-Related Services.

Even if Duke had not voluntarily relinquished any right it may have to seek further above-market revenue associated with its role as an FRR entity, Duke's Application should be rejected. Ohio law does not authorize guaranteed cost recovery for Duke's provision of electric generation service. The General Assembly has mandated that electric generation service is a competitive service under Ohio law.[15] Ohio state policy also expressly requires the Commission to:

> Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates; . . . [and]
>
> Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power . . . .[16]

[15] *See* R.C. § 4928.03.

[16] R.C. § 4928.02 (H), (I).

The General Assembly's statutory direction to the Commission is well supported. It is essentially undisputed that a competitive market such as that established under Ohio law for electric generation service provides significant benefits. For example, the FERC has stated that competitive markets "provide important economic advantages to electricity customers in comparison with cost of service regulation" and "keep[] prices as low as possible."[17] In order to carry out the state's law and policy establishing Ohio's competitive market and to foster that market, an Ohio utility can only be allowed to recover competitively set prices for electric generation service. Duke is currently recovering the competitive, market-based RPM prices for capacity (not to mention its above-market Rider ESSC revenue) and that is all that it is entitled to under Ohio law.

The additional above-market revenue Duke seeks through its Application is wholly inconsistent with Ohio's competitive market. Duke's Application should be rejected.

C. All Capacity Suppliers, Including Duke, Should Be Limited To RPM-Based Prices, Which Are Based On Sound Economic Policies That Benefit Customers.

1. The RPM Settlement Agreement and the RAA do not recognize the recovery of embedded costs for capacity suppliers.

Duke's request for embedded cost recovery is antithetical to PJM's capacity market design for the purpose of ensuring reliability. The amount capacity suppliers receive for the capacity they provide in PJM are set by PJM's RAA and Attachment DD of PJM's Open Access Transmission Tariff ("OATT"). This is true for all capacity supplied in the PJM territory – whether the capacity is supplied through PJM's Reliability Pricing Model ("RPM") or, like Duke and AEP Ohio, through a FRR capacity obligation.[18] Therefore, the compensation that Duke is

[17] 121 FERC ¶ 61,173, FERC Docket No. ER05-1410-005 and EL05-148-005, Order Denying Rehearing, Nov. 15, 2007, at ¶ 32 (*quoting* 117 FERC ¶ 61,331, Dec. 22 Order, at ¶ 141).

[18] *See* RAA Schedule 8.1, Section D.8.

entitled to receive for its capacity must be in accordance with and consistent with the RAA and OATT. The RAA and the OATT both were developed through a collaborative process involving subject-matter experts on behalf of PJM and suppliers, and both are subject to FERC oversight and were approved by the FERC. Therefore, it is both necessary and reasoned for the Commission to defer to the reliability-promotion policies embodied in the RAA and the OATT to frame the state compensation mechanism for FRR capacity pricing, particularly when all capacity suppliers are operating within an interdependent economic system.

Indeed, the capacity obligation of an FRR entity, such as Duke, is of no material difference than any other capacity supplier in PJM, all of which are subject to the beneficial competitive incentives designed into the RPM. An FRR entity simply commits capacity to meet a PJM-established reliability target while all other capacity suppliers commit all of the capacity they own to the extent that such capacity clears the RPM auctions. Notably, FERC has determined that "RPM, *including the Fixed Resource Requirement,* establishes the just and reasonable rate in order to ensure that PJM is able to meet the applicable resource requirements."[19] Capacity is priced based on PJM's reliability requirements, not based on a single supplier's embedded costs.

The RAA and the RPM created in Attachment DD of the PJM OATT are designed to implement a competitive system that maximizes the incentives for economic investments that promote reliability. The FERC explained the well-recognized benefits of the RPM framework:

> Such competitive market mechanisms provide important economic advantages to electricity customers in comparison to cost of service regulation. For example, a competitive market with a single, market-clearing price creates incentives for sellers to minimize their costs, because cost-reductions increase a seller's

[19] 121 FERC ¶ 61,173, FERC Docket No. ER05-1410-005 and EL05-148-005, Order Denying Rehearing, Nov. 15, 2007, at ¶ 49 (emphasis added).

> profits. And when many sellers work to minimize their costs, competition among them keeps prices as low as possible. While an efficient seller may, at times, receive revenues that are above its average total costs, the revenues to an inefficient seller may be below its average total costs and it may be driven out of business. This market result benefits customers because over time it results in an industry with more efficient sellers and lower prices.[20]

The RPM is founded on, and its FERC-recognized benefits flow from, a pricing construct based on the costs that a capacity resource's owner can avoid by retiring or "mothballing" the resource – referred to as the Avoidable Cost Rate ("ACR").[21] Capacity price bids offered into the RPM auctions must be based on the ACR, which process replicates the bidding behavior that would be expected in a competitive environment. Under such a construct, suppliers are assured the ability to recover the costs necessary to produce their product (in this case, capacity) and remain competitive in the market while promoting the lowest price for customers.

Compensation for capacity obligations – both RPM and FRR obligations – based on avoidable costs is the only cost-based compensation consistent with the RAA. The RAA never uses the term "embedded cost." The only "costs" discussed or referred to in the RAA are *avoidable* costs. Moreover, in determining that RPM-produced rates were just and reasonable, FERC expressly rejected embedded cost recovery as the standard by which the reasonableness of market-based rates should be judged.[22] If a capacity supplier is unable to cover its costs through ACR-based market pricing, it must reduce its costs.

Because the state compensation mechanism and the FRR option operate within the framework of the RAA and RPM, the compensation for FRR entities is limited by the language

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[20] 121 FERC ¶ 61,173, FERC Docket No. ER05-1410-005 and EL05-148-005, Order Denying Rehearing, Nov. 15, 2007, at ¶ 32, quoting *In re PJM Interconnection, LLC*, 117 FERC ¶ 61,331 at ¶ 141.

[21] PJM OATT Section 6.8, Attachment DD.

[22] 121 FERC ¶ 61,173, FERC Docket No. ER05-1410-005 and EL05-148-005, Order Denying Rehearing, Nov. 15, 2007, at ¶¶ 31-32.

and purpose of the RAA and, to the extent costs are considered, by the FRR entity's Avoided Cost Rate. To allow an FRR entity to recover embedded costs, while all other suppliers are limited to avoided cost-based recovery, would jeopardize the entire RPM system as all suppliers would seek the higher priced FRR compensation. Therefore, Duke's request for additional, above-market cost recovery based on its embedded costs must be rejected.

2. The RPM market-based pricing Duke currently receives is reasonable and economically sound.

The competitive market embodied in PJM's RPM benefits customers because it provides appropriate signals for the construction or retirement of capacity. When the supply of capacity greatly exceeds demand, the RPM price signals suppliers accordingly and, as a result, customers benefit and new unnecessary capacity is not encouraged. However, when prices need to rise to stimulate investment in new capacity, the market will do that as well. Thus, RPM is designed to promote efficient new capacity resources while allowing investors to earn a compensatory rate of return. And the process is working; many new resources are scheduled to come on line under the RPM model, while other capacity has been made available through improvements to existing resources. However, if Duke or other suppliers are provided with guaranteed, above-market revenue associated with their provision of capacity, they will not receive the appropriate market signals and they will be isolated from the signals necessary to ensure only economic investments in capacity.

Indeed, the additional revenue Duke seeks in its Application would provide Duke with an unfair competitive advantage relative to all other capacity suppliers in PJM. Duke seeks to recover hundreds of millions of dollars in above-market revenue for capacity when no other

suppliers have such an opportunity.[23] All other suppliers of existing PJM resources cannot include embedded costs in their capacity price bids and, as described above, are limited to the lesser avoidable costs. If Duke was allowed to receive guaranteed, above-market revenue for its role as a capacity supplier, it would be put ahead of all other suppliers and the benefits of competition, which requires a level playing field, would be erased. Duke's Application is unsupported by Ohio law or sound economic policy, and should be rejected.

D. Duke's Application Fails To Address Significant Issues That Affect Its Request For Further Above-Market Revenue.

Beyond the substantive deficiencies that warrant the dismissal of Duke's Application, the Application may contain additional technical and procedural deficiencies. FES has not yet had the opportunity to fully explore these issues. However, to the extent these issues are not already addressed in Duke's Application, it should be rejected and Duke should be directed to re-file its application after corrections are made.

- **Duke's Application fails to provide the information required by Revised Code Chapter 4909.**

If the Commission seeks to approve a cost-based compensation mechanism for Duke's FRR capacity obligation, the Commission must follow the procedures and parameters required by Revised Code Chapter 4909.[24] "While the General Assembly has delegated authority to the [Commission] to set just and reasonable rates for public utilities under its jurisdiction, it has done so by providing a detailed, comprehensive and, as construed by this court, mandatory ratemaking

[23] While the Commission approved above-market compensation for AEP Ohio's FRR capacity, that approval is the subject of appeals by several parties and should be reversed on appeal. *See* Case No. 10-2929-EL-UNC and Supreme Court of Ohio Case No. 12-2098, Notice of Appeal, filed Dec. 14, 2012.

[24] *See* R.C. Ch. 4909.

formula under R.C. 4909.15."[25] For example, when establishing a cost-based rate, the Commission must determine, among other things, the value of the utility's used and useful property as of a date certain and the cost of the utility in providing service during a test period.[26] Duke's Application does not propose a test period or provide any documentation of Duke's costs during that test period. R.C. §§ 4909.18 and 4909.19 also mandate that certain notices be given. No such notices were provided by Duke in connection with its Application. Further, the utility applying for an increase in rates must submit certain information in connection with its application, including:

> (A) A report of its property used and useful . . . in rendering the service referred to in such application;
>
> (B) A complete operating statement of its last fiscal year, showing in detail all its receipts, revenues, and incomes from all sources, all of its operating costs and other expenditures . . .; [and]
>
> (D) A statement of financial condition summarizing assets, liabilities, and net worth . . . .[27]

Duke did not submit all of this required information in connection with its Application. Therefore, Duke's Application should be rejected.

- **Duke's Application fails to take into account the above-market revenue it already receives through Rider ESSC.**

As noted above, the ESP Stipulation authorized Duke to receive $330 million "to provide stability and certainty regarding [Duke's] provision of retail electric service as an FRR entity."

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[25] *Columbus So. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 535 (1993) (citing *Gen. Motors Corp. v. Pub. Util. Comm.*, 47 Ohio St.2d 58 (1976)) (emphasis added); *City of Cleveland v. Pub. Util. Comm.*, 164 Ohio St. 442, 443 (1956) (in setting rates, "the statutes of this state and the decisions of this court indicate that the [Commission] must" adhere to the requirements of Chapter 4909) (citing requirements of R.C. §§ 4909.04, 4909.05, and 4909.15).

[26] R.C. § 4909.15(C)(1) ("Except as provided in division (D) of this section [for natural gas companies], the revenues and expenses of the utility shall be determined during a test period.").

[27] R.C. § 4909.18.

This significant revenue should be recognized as an offset to any capacity "revenue requirement" that Duke seeks to establish. It does not appear that Duke has taken the Rider ESSC revenue into account at all in its Application. If the Application is not dismissed in its entirety, Duke should be directed to refile its Application with supporting schedules and workpapers that reflect the Rider ESSC revenue before the parties expend unnecessary time and effort in recreating the effect of such revenue on Duke's financial projections.

- **Duke's Application fails to address the impact of planned plant retirements.**

Duke's calculation of the above-market revenue it believes it is entitled to is based, in large part, on costs associated with its "Legacy Generation Assets" and its electric plant in service. Duke recently announced the retirements of certain of its generating assets – Beckjord and Miami Fort 6 – by January 1, 2015,[28] while it is recovering the additional above-market revenue. It is not clear how, if at all, Duke has accounted for these planned retirements in its financial calculations. To the extent Duke has not adjusted for these retirements, it should do so and resubmit its Application and accompanying schedules.

- **Duke's Application fails to address its impending corporate separation.**

In its Application, Duke seeks to recover, through a deferral, an incremental $158.08/MW-day for capacity it provides through the term of its FRR status – May 31, 2015.[29] However, in accordance with its ESP Stipulation, Duke will not own generation assets as of December 31, 2014.[30] Therefore, any concerns about Duke's rate of return for its generation assets after that date are moot, or at least irrelevant. Duke does not have the right to any

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[28] *See* http://www.duke-energy.com/beckjord/ and http://www.duke-energy.com/pdfs/Transcript-2Q2011.pdf (sites last accessed Dec. 17, 2012).

[29] *See* Application, ¶¶ 7, 9.

[30] ESP Stip., § VIII.A.

guaranteed above-market revenue associated with the capacity provided by those generation assets after it no longer owns the assets. Moreover, Duke's competitive affiliate that will own the generation assets after separation certainly cannot be entitled under Ohio law to guaranteed revenue associated with its capacity because the competitive affiliate is not subject to Commission regulation or protection. Duke's Application should be rejected because it fails to address the impact of its impending corporate separation.

III. CONCLUSION

For the reasons set forth herein, Duke's Application should be dismissed.

Respectfully submitted,

/s/ *Mark A. Hayden*

Mark A. Hayden (0081077)
Associate General Counsel
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
1405 East Sixth St.
Cleveland, OH 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

Attorneys for FirstEnergy Solutions Corp.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *FirstEnergy Solutions Corp.'s Initial Comments* was served this 2nd day of January, 2013, via e-mail upon the parties below.

/s/ *Laura C. McBride*
One of the Attorneys for FirstEnergy Solutions Corp.

Amy B. Spiller
Rocco O. D'Ascenzo
Jeanne W. Kingery
Elizabeth H. Watts
Duke Energy Business Services LLC
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
amy.spiller@duke-energy.com
rocco.dascenzo@duke-energy.com
jeanne.kingery@duke-energy.com
elizabeth.watts@duke-energy.com

Samuel C. Randazzo
Frank P. Darr
Joseph E. Oliker
Matthew R. Pritchard
McNees Wallace & Nurick
21 East State St., 17th Floor
Columbus, OH 43215
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com
mpritchard@mwncmh.com

Maureen R. Grady
Kyle L. Kern
Office of the Ohio Consumers' Counsel
10 West Broad St., Suite 1800
Columbus, OH 43215
grady@occ.state.oh.us
kern@occ.state.oh.us

Kevin J. Osterkamp
Roetzel & Andress LPA
PNC Plaza, 12th Floor
155 East Broad Street
Columbus, OH 43215
kosterkamp@ralaw.com

David F. Boehm
Michael L. Kurtz
Jody M. Kyler
Boehm, Kurtz & Lowry
36 East Seventh St., Suite 1510
Cincinnati, OH 45202
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com
jkyler@bkllawfirm.com

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

Douglas E. Hart
441 Vine Street, Suite 4192
Cincinnati, OH 45202
dhart@douglasehart.com

Thomas J. O'Brien
Bricker & Eckler
100 South Third St.
Columbus, OH 43215
tobrien@bricker.com

J. Thomas Siwo
Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tsiwo@bricker.com
mwarnock@bricker.com

Lawrence W. Thompson
Karen Campbell
Energy Consultants
Energy Strategies, Inc.
525 South Main Street, Suite 900
Tulsa, OK 74103-4510
lthompson@energy-strategies.com
kcampbell@energy-strategies.com

Jay E. Jadwin
Yazen Alami
American Electric Power Service Corporation
155 Nationwide Ave
Columbus, OH 43215
jejadwin@aep.com
yalami@aep.com

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima St.
Findlay, OH 45840
cmooney2@columbus.rr.com

Joseph G. Strines
DPL Energy Resources Inc.
1065 Woodman Dr.
Dayton, OH 45432
joseph.strines@dplinc.com

Steve W. Chriss
Wal-Mart Stores, Inc.
2001 S.E. 10th St,
Bentonville, AR 72716-0550
stephen.chriss@wal-mart.com

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

Judi L. Sobecki
Randall V. Griffin
The Dayton Power and Light Company
1065 Woodman Dr.
Dayton, OH 45432
judi.sobecki@dplinc.com
randall.griffin@dplinc.com

Kimberly W. Bojko
Mallory M. Mohler
Carpenter Lipps & Leland LLP
280 North High St., Suite 1300
Columbus, OH 43215
bojko@carpenterlipps.com
mohler@carpenterlipps.com

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

Thomas W. Craven
Wausau Paper Corp.
200 Paper Place
Mosinee, WI 54455-9099
tcraven@wausaupaper.com

Rick D. Chamberlain
Behrens, Wheeler & Chamberlain
6 N.E. 63rd Street, Suite 400
Oklahoma City, OK 73105
rdc_law@swbell.net

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

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Summary: Comments of FirstEnergy Solutions Corp. electronically filed by Ms. Laura C. McBride on behalf of FirstEnergy Solutions Corp.