

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company for Authority to)	
Establish a Standard Service Offer)	Case No. 13-2385-EL-SSO
Pursuant to §4928.143, Revised Code,)	
in the Form of an Electric Security Plan.)	

In the Matter of the Application of)	
Ohio Power Company for Approval of)	Case No. 13-2386-EL-AAM
Certain Accounting Authority.)	

**INDUSTRIAL ENERGY USERS-OHIO'S
MOTION TO COMPEL OHIO POWER COMPANY AND
REQUEST FOR EXPEDITED TREATMENT
AND MEMORANDUM IN SUPPORT**

Samuel C. Randazzo (Counsel of Record)
Frank P. Darr
Matthew R. Pritchard
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com

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Attorneys for Industrial Energy Users-Ohio

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REQUEST FOR EXPEDITED TREATMENT**

Pursuant to Rule 4901-1-12 and 4901-1-23, Ohio Administrative Code ("O.A.C."), Industrial Energy Users-Ohio ("IEU-Ohio") hereby moves the Public Utilities Commission of Ohio ("Commission") to grant this Motion to Compel discovery responses to IEU-Ohio's Interrogatories and Requests for Production of Documents Upon Ohio Power Company, Sixth Set, dated March 24, 2014 ("IEU-Ohio's 6th Set") (attached as Attachment A). On April 14, 2014, Ohio Power Company ("AEP-Ohio") served its responses to IEU-Ohio's 6th Set (attached as Attachment B). These responses were incomplete and AEP-Ohio's objections are without merit. Counsel for IEU-Ohio and AEP-Ohio have tried to reach an amicable resolution of the discovery dispute, but have failed. Due to the fact that only nineteen days remain until the deadline for intervenor testimony on May 6, 2014, IEU-Ohio requests that the

Commission, issue an expedited ruling on this Motion to Compel pursuant to Rule 4901-1-12(C), O.A.C.

The reasons supporting this Motion to Compel and the request for expedited treatment are more fully addressed in the attached Memorandum in Support.

Respectfully submitted,

/s/ Matthew R. Pritchard

Samuel C. Randazzo (Counsel of Record)

Frank P. Darr

Matthew R. Pritchard

MCNEES WALLACE & NURICK LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

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MEMORANDUM IN SUPPORT

As discussed herein, IEU-Ohio moves the Commission to grant this Motion to Compel AEP-Ohio to respond to IEU-Ohio's 6th Set. IEU-Ohio's discovery requests are within the proper scope of discovery and AEP-Ohio's objections are meritless. Because only nineteen days remain until intervenor testimony is due in this proceeding, IEU-Ohio requests that the Commission make an expedited ruling on this Motion to Compel.

I. BACKGROUND

According to AEP-Ohio, the Ohio Valley Electric Corporation ("OVEC") owns and operates two electric generating stations, Clifty Creek and Kyber Creek. These generating units were initially constructed to provide power to the Department of Energy ("DOE"), with any excess power sold to the sponsoring companies of OVEC pursuant to the Inter-Company Power Agreement ("ICPA") (the ICPA is attached as Attachment C).¹ The ICPA is a Federal Energy Regulatory Commission ("FERC")-approved agreement

¹ Testimony of William Allen at 8-9.

that addresses the rights and obligations of the sponsoring companies of OVEC. AEP-Ohio is a sponsoring company. The contract to sell power to the DOE ended in 2003.² "Since 2003, OVEC's entire generating capacity has been available to the sponsoring companies under the ICPA."³ AEP-Ohio has a 19.93% share of OVEC's generating capacity.⁴

Section 9.18 of the ICPA provides three methods for a sponsoring company to transfer its contractual rights and obligations under the ICPA to another entity. Section 9.181 allows a sponsoring company to transfer its rights and obligations to any third party with the consent of all the other parties to the ICPA. Section 9.182 of the ICPA allows a sponsoring company to transfer its rights and obligations to a Permitted Assignee (*i.e.*, another sponsoring company or an affiliate of a sponsoring company) without consent of the other sponsoring companies if the assignee has a certain credit rating or if the assignor remains liable under the ICPA.⁵ Section 9.183 of the ICPA allows a sponsoring company to transfer its rights and obligations to any third party if certain conditions are satisfied (*i.e.*, notice is given to the other sponsoring companies, the other sponsoring companies are given the right of first refusal, and the third party has a certain credit rating).

² *Id.* at 9.

³ *Id.*

⁴ *Id.*

⁵ The ICPA defines Permitted Assignee as: (a) a Sponsoring Company or its Affiliate that has a certain investment grade; or (b) a Sponsoring Company or its Affiliate if the Sponsoring Company or its affiliate agree to remain obligated to the obligations under the agreement. The definition of Permitted Assignee further restricts a transfer if the transfer to a Permitted Assignee would cause a termination, default, loss or payment obligation under any security issued, or agreement entered into by the Corporation. ICPA, Section 1.0115 (Attachment C).

In Case No. 12-1126-EL-UNC ("*Corporate Separation Case*"),⁶ AEP-Ohio initially proposed to transfer its share of OVEC to AEP Generation Resources, Inc. ("AEP Genco"). However, AEP-Ohio subsequently filed an amended corporate separation plan and indicated that it could not receive consent from the other parties to the ICPA to transfer its rights and obligations to AEP Genco.⁷ AEP-Ohio also indicated that it could transfer its interest to AEP Genco without the consent of the other parties if AEP-Ohio agreed to remain liable in the event of a default by AEP Generation.⁸

On December 4, 2013, the Commission authorized AEP-Ohio's amendment to its corporate separation plan subject to two conditions: (1) that AEP-Ohio liquidate its contractual entitlements into the PJM market or through bilateral contracts at market prices; and (2) AEP-Ohio's actions be subject to a semi-annual audit.¹⁰ The Commission then held:

These conditions should apply during AEP Ohio's current ESP period and beyond, until the OVEC contractual entitlements can be transferred to AEP Genco or otherwise divested, or until otherwise ordered by the Commission.¹²

Thus, the Commission made it clear in the Corporate Separation Order that AEP-Ohio's ability to retain its rights and obligations under the ICPA was limited in duration and lasts only "until the OVEC contractual entitlements can be transferred."

In this proceeding, AEP-Ohio has proposed to implement a non-bypassable rider, the Purchase Power Adjustment ("PPA") Rider, to recoup the net costs or net benefits of

⁶ *In the Matter of the Application of Ohio Power Company for Approval of Full Legal Corporate Separation and Amendment to its Corporate Separation Plan*, Case No. 12-1126-EL-UNC (hereinafter "*Corporate Separation Case*").

⁷ *Id.*; *Corporate Separation Case*, Finding and Order at 1-2 (Dec. 4, 2013) (hereinafter "*Corporate Separation Order*").

⁸ *Id.* at 2.

¹⁰ *Id.* at 8-9

¹² *Id.* at 9 (emphasis added).

AEP-Ohio's OVEC contractual entitlements.¹³ If the sale of AEP-Ohio's 19.93% share of OVEC's energy, capacity, and ancillary services is less than AEP-Ohio's responsibility for 19.93% of OVEC's costs, then the PPA Rider would result in a net non-bypassable charge to AEP-Ohio's distribution customers.¹⁴ If AEP-Ohio's sale of its share of OVEC's energy, capacity, and ancillary services exceeds AEP-Ohio's portion of the OVEC costs, then the PPA Rider would result in a net non-bypassable credit to AEP-Ohio's distribution customers.¹⁵

The Commission should reject the PPA Rider because it is unlawful and unreasonable. However, because AEP-Ohio has proposed the PPA Rider, IEU-Ohio has served discovery upon AEP-Ohio regarding the factual merits of the rider.

IEU-Ohio's discovery requests that are the subject of this Motion to Compel seek information from AEP-Ohio related to AEP-Ohio's efforts to transfer its rights and obligations under the ICPA and potential or actual impediments to the transfer. Specifically, IEU-Ohio's Interrogatories 6-1 and 6-4 seek information about whether AEP-Ohio sought to transfer its OVEC contractual entitlements under Sections 9.182 and 9.183 of the ICPA, respectively. IEU-Ohio's Interrogatories 6-2 and 6-5 seek information from AEP-Ohio, assuming AEP-Ohio had not sought to transfer its interests under Sections 9.18 and 9.183 of the ICPA, regarding the reasons why AEP-Ohio had not sought a transfer under these sections. IEU-Ohio's Interrogatories 6-3 and 6-6 seek information from AEP-Ohio regarding its attempts to transfer its OVEC contractual entitlements under Sections 9.182 and 9.183 of the ICPA, and the impediments that

¹³ Testimony of William Allen at 8-11.

¹⁴ *See id.*

¹⁵ *Id.*

AEP-Ohio ran into (assuming that AEP-Ohio has attempted to transfer its interest pursuant to these sections). IEU-Ohio's RPD 6-1 seeks any documents identified in response to IEU-Ohio's Interrogatories 6-1 to 6-6.

On April 14, 2014, AEP-Ohio served its response to IEU-Ohio's 6th Set. AEP-Ohio refused to provide a substantive response to IEU-Ohio's 6th Set. Instead, AEP-Ohio objected claiming that the information sought by IEU-Ohio was neither relevant nor reasonably calculated to lead to admissible evidence in this proceeding.¹⁶ AEP-Ohio also claimed that "[d]ocuments and information leading up" to the Corporate Separation Order "are reflected in the public record" in the *Corporate Separation Case*.¹⁷

IEU-Ohio has attempted to amicably resolve the discovery dispute with AEP-Ohio, but has failed. On December 14, 2014, IEU-Ohio sent a letter to AEP-Ohio regarding the reasons why counsel for IEU-Ohio believed the discovery requests were within the proper scope of discovery and counsel for IEU-Ohio's belief that the information sought was not in the public record in the *Corporate Separation Case*. As discussed in additional detail below, counsel for IEU-Ohio and AEP-Ohio could not resolve the discovery dispute. Additionally, counsel for AEP-Ohio has not provided any specific citation to a document in the *Corporate Separation Case* that provides information responsive to IEU-Ohio's 6th Set.

II. DISCOVERY STANDARDS

Rule 4901-1-16(B), O.A.C. (General provisions and scope of discovery), provides:

¹⁶ See Attachment B.

¹⁷ *Id.*

any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may be obtained through interrogatories, requests for the production of documents and things or permission to enter upon land or other property, depositions, and requests for admission.

Rule 4901-1-19(B), O.A.C. (Interrogatories and response time), provides:

Subject to the scope of discovery set forth in rule 4901-1-16 of the Administrative Code, interrogatories may elicit facts, data, or other information known or readily available to the party upon whom the interrogatories are served. An interrogatory which is otherwise proper is not objectionable merely because it calls for an opinion, contention, or legal conclusion ...

Finally, Rule 4901-1-23(A), O.A.C., governs motions to compel and provides that any party may file a motion to compel with respect to:

- (1) Any failure of a party to answer an interrogatory served under rule 4901-1-19 of the Administrative Code.
- (2) Any failure of a party to produce a document or tangible thing or permit entry upon land or other property as requested under rule 4901-1-20 of the Administrative Code.
- (3) Any failure of a deponent to appear or to answer a question propounded under rule 4901-1-21 of the Administrative Code.
- (4) Any other failure to answer or respond to a discovery request made under rules 4901-1-19 to 4901-1-22 of the Administrative Code.

Rule 4901-1-23(B), O.A.C., also treats evasive answers as a failure to answer. Finally, before the Commission allows a motion to compel to be filed, the party seeking discovery must exhaust all other reasonable means of obtaining discovery.

III. ARGUMENT

As discussed below, the Commission should grant IEU-Ohio's Motion to Compel. IEU-Ohio's discovery requests seek information that is relevant and reasonably

calculated to lead to the discovery of admissible evidence. The information IEU-Ohio seeks is not in the public record in the *Corporate Separation Case*. Despite IEU-Ohio's attempts to secure the information from AEP-Ohio without Commission intervention, AEP-Ohio has refused to provide complete answers to IEU-Ohio's 6th Set. Because IEU-Ohio has exhausted all other reasonable means of receiving responses to its proper discovery requests, IEU-Ohio has been forced to file this Motion to Compel. For the reasons below, the Commission should grant this Motion to Compel.

A. IEU-Ohio's discovery requests seek information that is relevant and is reasonably calculated to lead to the discovery of admissible evidence

IEU-Ohio's Interrogatories 6-1 through 6-6 and RPD 6-1 are within the proper scope of discovery. AEP-Ohio refused to answer these discovery requests based on a meritless objection. AEP-Ohio claims that the information sought in IEU-Ohio's 6th Set is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. Because the information IEU-Ohio seeks is within the scope of permissible discovery the Commission should compel AEP-Ohio to respond to IEU-Ohio's discovery requests.

As discussed in more detail in the Background section above, the Commission authorized AEP-Ohio to retain its rights and obligations under the ICPA (the OVEC contractual entitlements) until that interest could be transferred to AEP-Ohio's affiliate, AEP Genco, or otherwise divested.¹⁸ In this proceeding, AEP-Ohio has requested authority to implement the non-bypassable PPA Rider to pass on AEP-Ohio's net costs associated with its 19.93% share of the OVEC power participation benefits and

¹⁸ Corporate Separation Order at 8-9.

requirements.¹⁹ AEP-Ohio's application and supporting testimony do not discuss AEP-Ohio's ability, or lack thereof, to transfer its rights and obligations under the ICPA to a third party. This omission, coupled with AEP-Ohio's request to follow through its net OVEC-related costs to all customers on a non-bypassable basis, implies that AEP-Ohio does not intend to review the possibility of transferring its rights and obligations under the ICPA to a third party during the proposed term of its electric security plan ("ESP").

IEU-Ohio's discovery requests seek information that is reasonably calculated to uncover admissible evidence regarding AEP-Ohio's ability to reduce its 19.93% OVEC power participation share, which would in turn reduce the net costs AEP-Ohio proposes to flow through the proposed non-bypassable PPA Rider. Specifically, IEU-Ohio seeks information regarding AEP-Ohio's attempts thus far to transfer its rights and obligations under the ICPA pursuant to Sections 9.182 and 9.183 of the ICPA (INT. 6-1, 6-4), any actual impediments that prevented a transfer under these Sections (INT. 6-3, 6-6), the impediments that AEP-Ohio perceives that prevent it from seeking a transfer under these Sections (INT. 6-2, 6-5), and any documents related to this information (RPD 6-1). This information will directly address AEP-Ohio's OVEC-related costs that it proposes to flow through to customers through the PPA Rider, and directly addresses the Commission's finding in the Corporate Separation Order that AEP-Ohio could retain its rights and obligations under the ICPA until those rights and obligations could be transferred.

Additionally, the Commission recently held in the Dayton Power & Light Company's ("DP&L") ESP proceeding that it has authority to impose its own conditions

¹⁹ Testimony of William Allen at 9.

on any rider proposed by an Electric Distribution Utility (“EDU”) as part of an ESP: “the Commission finds that R.C. 4928.143(B)(2)(d) authorizes the Commission to establish the SSR-E and does not limit our discretion to make the SSR-E conditional.”²⁰ Since the Commission has found that it has authority to adopt conditions on a rider proposed by an EDU in an ESP proceeding, it therefore follows that parties may propose conditions for the Commission’s consideration. Furthermore, one of the conditions imposed by the Commission in DP&L’s ESP proceeding tied the authorization of a rider to a divestiture of generation. Thus, information IEU-Ohio seeks in discovery related to AEP-Ohio’s divestiture of generation rights and obligations under the ICPA is relevant and reasonably calculated to lead to the discovery of admissible evidence.

Because IEU-Ohio’s Interrogatories 6-1 through 6-6 and RPD 6-1 are within the proper scope of discovery and AEP-Ohio refuses to answer these questions, the Commission should grant this Motion to Compel.

B. The information IEU-Ohio seeks in its discovery requests are not in the public domain in the *Corporate Separation Case*

The Commission should grant IEU-Ohio’s Motion to Compel because the information IEU-Ohio seeks is not available in the public record in the *Corporate Separation Case*. Furthermore, even if the information IEU-Ohio seeks in its discovery requests were part of the public record in that case, AEP-Ohio has failed to comply with Rule 4901-1-19(C), O.A.C., which requires AEP-Ohio to “specify the title of the document, the location of the document..., and the page or pages from which the answer may be derived or ascertained.” Because the information IEU-Ohio seeks is not

²⁰ *In the Matter of the Application of the Dayton Power and Light Company to Establish a Standard Service Offer in the Form of An Electric Security Plan*, Case Nos. 12-426-EL-SSO, *et al.*, Second Entry on Rehearing at 15 (Mar. 19, 2014).

in the public record in the *Corporate Separation Case*, the Commission should grant this Motion to Compel.

In response to IEU-Ohio's Interrogatory 6-1, AEP-Ohio provided the following objection and response:

... Through its December 4, 2013 Finding and Order in Case No. 12-1126-EL-UNC, the Commission authorized AEP Ohio to retain the OVEC contractual entitlement and that adjudicative determination is now a final order. Documents and information leading up to that decision are reflected in the public record as part of that proceeding. (emphasis added).

AEP-Ohio's response to Interrogatories 6-2 through 6-6 all state "See the Company's response to IEU INT-6-001."

IEU-Ohio is unaware of any public documents in the *Corporate Separate Case* that address the information sought in its 6th Set. In that case, AEP-Ohio claimed that it could not transfer its rights and obligations under Section 9.181 of the ICPA because AEP-Ohio could not obtain consent from all of the other sponsoring companies.²¹ AEP-Ohio also claimed that it could transfer, without obtaining consent, its rights and obligations to AEP Genco pursuant to Section 9.182 of the ICPA if it remained liable for any future default by AEP Genco.²²

AEP-Ohio, however, did not address two other possibilities that exist under the ICPA for AEP-Ohio to transfer its rights and obligations under the ICPA. Specifically, AEP-Ohio did not address its ability to transfer its rights and obligations under Section 9.182 of the ICPA to a Permitted Assignee that has an acceptable credit rating. Additionally, AEP-Ohio did not address its ability to transfer its rights and obligations pursuant to Section 9.183 of the ICPA to a third party with an acceptable credit rating.

²¹ Corporate Separation Order at 1-2.

²² *Id.*

IEU-Ohio's discovery requests that are the subject of this Motion to Compel address these scenarios. Because the information IEU-Ohio seeks is not available in the public record in the *Corporate Separation Case*, IEU-Ohio's discovery requests are proper.

Furthermore, even if the information IEU-Ohio seeks is available in the public record, AEP-Ohio has not complied with the Commission rules. If the information is available in the public record, AEP-Ohio is required by Rule 4901-1-19(C), O.A.C., to "specify the title of the document, the location of the document, ... and the page or pages from which the answer may be derived or ascertained." AEP-Ohio has not complied with this requirement.

In sum, the information IEU-Ohio seeks is not publicly available and AEP-Ohio has not specifically identified any responsive information in the public record. Accordingly, the Commission should grant this Motion to Compel responses to IEU-Ohio's proper discovery requests.

C. IEU-Ohio has exhausted all other reasonable means of obtaining responses to its discovery

Prior to filing this Motion to Compel, counsel for IEU-Ohio exhausted all other reasonable means of obtaining responses to its discovery requests. AEP-Ohio served its incomplete discovery responses to IEU-Ohio's 6th Set on Monday, April 14, 2014. IEU-Ohio served a letter (attached as Attachment D) upon counsel for AEP-Ohio in the afternoon of Monday, April 14, 2014, explaining IEU-Ohio's belief that its discovery requests were within the permissible scope of discovery and that AEP-Ohio's responses were incomplete. Counsel for AEP-Ohio responded to IEU-Ohio's letter on April 14, 2014, and a telephone call was set up for Tuesday, April 15, 2014.

During this phone call, counsel for IEU-Ohio and counsel for AEP-Ohio discussed the discovery issue and attempted to reach an amicable resolution of the discovery dispute. The correspondence between counsel for IEU-Ohio and counsel for AEP-Ohio is attached as Attachment E. Counsel for AEP-Ohio made an offer to respond to IEU-Ohio's requests, if the requests were reworded to only seek prospective information regarding AEP-Ohio's ability to transfer its rights and obligations under the ICPA. (IEU-Ohio's discovery requests seek information regarding what AEP-Ohio has already done). Following the telephone call, counsel for AEP-Ohio sent IEU-Ohio its proposal in writing (this proposal is contained in the email exchange in Attachment E). Counsel for IEU-Ohio rejected AEP-Ohio's counter-offer around 5:00 p.m. on Tuesday, April 15, 2014.

In rejecting AEP-Ohio's offer, counsel for IEU-Ohio indicated that he believed prospective questions could be best addressed with new discovery requests instead of attempting to reword the existing requests. On Wednesday, April 16, 2014, IEU-Ohio served discovery requests regarding AEP-Ohio's ability and actions to transfer its rights and obligations under the ICPA, prospectively from December 4, 2013 (the date the Commission issued the Corporate Separation Order). Counsel for IEU-Ohio and counsel for AEP-Ohio exchanged additional emails on Wednesday, April 16, 2014, and counsel for both parties agreed that they were at an impasse on IEU-Ohio's 6th Set.

Accordingly, IEU-Ohio has exhausted all other reasonable methods of obtaining responses to IEU-Ohio's 6th Set.

- D. An expedited ruling on this Motion to Compel is necessary to resolve the discovery issue without the need to modify the procedural schedule in this proceeding or the need to file supplemental testimony**

IEU-Ohio requests an expedited ruling on this Motion to Compel. The current deadline for intervenor testimony is in 19 days, May 6, 2014. If this discovery dispute is not resolved by an expedited ruling, IEU-Ohio may not receive the information to its discovery requests prior to the deadline for filing intervenor testimony. Resolving this discovery dispute on an expedited basis also will reduce the likelihood that IEU-Ohio would need to seek an extension to the procedural schedule to incorporate the compelled discovery responses into IEU-Ohio's testimony, or would need to seek to file supplemental testimony.

IV. CONCLUSION

As demonstrated herein, IEU-Ohio's discovery requests are within the proper scope of discovery, the information IEU-Ohio seeks is not available in the public domain, and expedited treatment of this Motion to Compel is appropriate. Accordingly, the Commission should grant this Motion to Compel and require AEP-Ohio to respond expeditiously to IEU-Ohio's 6th Set.

Respectfully submitted,

/s/ Matthew R. Pritchard

Samuel C. Randazzo (Counsel of Record)

Frank P. Darr

Matthew R. Pritchard

MCNEES WALLACE & NURICK LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

sam@mwncmh.com

fdarr@mwncmh.com

mpritchard@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Motion to Compel Ohio Power Company and Request for Expedited Treatment and Memorandum in Support* was served upon the following parties of record this 17th day of April 2014 via electronic transmission, hand-delivery or first class mail, U.S. postage prepaid.

/s/ Matthew R. Pritchard

Matthew R. Pritchard

Steven T. Nourse (0046705)
Matthew J. Satterwhite (0071972)
AMERICAN ELECTRIC POWER
CORPORATION
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215-2373
stnourse@aep.com
mjsatterwhite@aep.com

Daniel R. Conway (0023058)
PORTER WRIGHT MORRIS & ARTHUR
Huntington Center
41 South High Street
Columbus, Ohio 43215
dconway@porterwright.com

ON BEHALF OF OHIO POWER COMPANY

William L. Wright (0018010)
Werner Margard (0024858)
Devin Parram (0082507)
Katherine Johnson (0091064)
Assistant Attorneys' General
180 E. Broad Street, 6th Floor
Columbus, Ohio 43215-3793
William.wright@puc.state.oh.us
werner.margard@puc.state.oh.us
Devin.Parram@puc.state.oh.us
katherine.johnson@puc.state.oh.us

ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

David F. Boehm (0021881)
Michael L. Kurtz (0033350)
Jody Kyler Cohn (0085402)
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkylercohn@BKLawfirm.com

ON BEHALF OF THE OHIO ENERGY GROUP

Maureen R. Grady (0020847)
Assistant Consumers' Counsel
OFFICE OF THE OHIO CONSUMERS'
COUNSEL
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
grady@occ.state.oh.us

ON BEHALF OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Rocco D'Ascenzo (0077651)
DUKE ENERGY OHIO, INC.
139 East Fourth Street
Cincinnati, Ohio 45202
Rocco.D'Ascenzo@duke-energy.com

ON BEHALF OF DUKE ENERGY OHIO, INC.

Barth E. Royer (0016999)
BELL & ROYER Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
BarthRoyer@aol.com

Gary A. Jeffries (0071742)
DOMINION RESOURCES SERVICES, INC.
501 Martindale Street, Suite 400
Pittsburg, PA 15212-5817
Gary.A.Jeffries@dom.com

**ON BEHALF OF DOMINION RETAIL, INC.
D/B/A DOMINION ENERGY SOLUTIONS**

Richard L. Sites (0019887)
OHIO HOSPITAL ASSOCIATION
155 East Broad Street, 15th Floor
Columbus, Ohio 43215-3620
ricks@ohanet.org

Thomas J. O'Brien (0066249)
Dylan F. Borchers (0090690)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
tobrien@bricker.com
dborchers@bricker.com

**ON BEHALF OF THE OHIO HOSPITAL
ASSOCIATION**

Phillip B. Sineneng (0083406)
THOMPSON HINE LLP
41 South High Street, Suite 1700
Columbus, Ohio 43215
PhilipSineneng@ThompsonHine.com

**ON BEHALF OF DUKE ENERGY RETAIL
SALES, LLC AND DUKE ENERGY
COMMERCIAL ASSET MANAGEMENT, INC.**

Mark A. Whitt (0067996)
Andrew J. Campbell (0081485)
Gregory L. Williams (0088758)
WHITT STURTEVANT LLP
The KeyBank Building, Suite 1590
88 East Broad Street
Columbus, Ohio 43215
whit@whitt-sturtevant.com
campbell@whitt-sturtevant.com
williams@whitt-sturtevant.com

Vincent Parisi (0073283)
Lawrence Friedeman (0018902)
Matthew White (0082859)
INTERSTATE GAS SUPPLY, INC.
6100 Emerald Parkway
Dublin, Ohio 43016
vparisi@igsenergy.com
lfriedeman@igsenergy.com
mswhite@igsenergy.com

**ON BEHALF OF INTERSTATE GAS SUPPLY,
INC.**

Kimberly W. Bojko (0069402)
Mallory M. Mohler (0089508)
CARPENTER LIPPS & LELAND LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Bojko@carpenterlipps.com
Mohler@carpenterlipps.com

ON BEHALF OF OMA ENERGY GROUP

Joseph M. Clark (0080711)
DIRECT ENERGY
21 East State Street, 19th Floor
Columbus, Ohio 43215
joseph.clark@directenergy.com

**On BEHALF of Direct Energy Services,
LLC and Direct Energy Business,
LLC**

Mark A. Hayden (0081077)
Jacob A. McDermott (0087187)
Scott J. Casto (0085756)
First Energy Service Company
76 South Main Street
Akron, Ohio 44308
haydenm@firstenergycorp.com
jmcdermott@firstenergycorp.com
scasto@firstenergycorp.com

**ON BEHALF OF FIRSTENERGY SOLUTIONS
CORP.**

Colleen L. Mooney (0015668)
Cathryn N. Loucas (0073533)
OHIO PARTNERS FOR AFFORDABLE
ENERGY
231 West Lima Street
Findlay, Ohio 45839-1793
cmooney@ohiopartners.org
cloucas@ohiopartners.org

**ON BEHALF OF OHIO PARTNERS FOR
AFFORDABLE ENERGY**

Mark S. Yurick (0039176)
Zachary D. Kravitz (0084238)
TAFT, STETTINIUS & HOLLISTER LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215
myurick@taftlaw.com
zkravitz@taftlaw.com

ON BEHALF OF THE KROGER CO.

Judi L. Sobecki (0067186)
THE DAYTON POWER AND LIGHT COMPANY
1065 Woodman Drive
Dayton, Ohio 45432
judi.sobecki@aes.com

**ON BEHALF OF THE DAYTON POWER AND
LIGHT COMPANY**

Trent Dougherty (0079817)
OHIO ENVIRONMENTAL COUNCIL
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
tdougherty@theOEC.org

John Finnigan (0018689)
Senior Regulatory Attorney
ENVIRONMENTAL DEFENSE FUND
128 Winding Brook Lane
Terrace Park, Ohio 45174
jfinnigan@edf.org

**ON BEHALF OF THE OHIO ENVIRONMENTAL
COUNCIL AND ENVIRONMENTAL DEFENSE
FUND**

Michael R. Smalz (0041897)
OHIO POVERTY LAW CENTER
555 Buttles Avenue
Columbus, Ohio 43215-1137
msmalz@ohiopovertylaw.com

Peggy P. Lee (0067912)
SOUTHEASTERN OHIO LEGAL SERVICES
964 E. State Street
Athens, Ohio 45701
plee@oslsa.org

**ON BEHALF OF THE APPALACHIAN PEACE
AND JUSTICE NETWORK**

M. Howard Petricoff (0008287)
Gretchen L. Petrucci (0046608)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com
glpetrucci@vorys.com

David I Fein
Vice President, State Government
Affairs-East
EXELON CORPORATION
10 South Dearborn Street, 47th Floor
Chicago, IL 60603
david.fein@exeloncorp.com

Cynthia Fonner Brady
Assistant General Counsel
EXELON BUSINESS SERVICES COMPANY
4300 Winfield Road
Warrenville, IL 60555
cynthia.brady@constellation.com

Lael Campbell
EXELON
101 Constitution Avenue, NW
Washington, DC 20001
Lael.Campbell@constellation.com

**ON BEHALF OF CONSTELLATION
NEWENERGY, INC. AND EXELON
GENERATION COMPANY, LLC**

M. Howard Petricoff
Gretchen L. Petrucci
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com
glpetrucci@vorys.com

**ON BEHALF OF THE RETAIL ENERGY
SUPPLY ASSOCIATION**

Nicholas McDaniel (0089817)
ENVIRONMENTAL LAW & POLICY CENTER
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212
NMcdaniel@elpc.org

**ON BEHALF OF THE ENVIRONMENTAL LAW
AND POLICY CENTER**

Lisa M. Hawrot
SPILMAN THOMAS & BATTLE, PLLC
Century Centre Building
1233 Main Street, Suite 4000
P.O. Box 831
Wheeling, WV 26003-8731
lhawrot@spilmanlaw.com

Derrick Price Williamson
SPILMAN THOMAS & BATTLE, PLLC
1100 Bent Creek Blvd., Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com

Steve W. Chriss
Senior Manager, Energy Regulatory
Analysis
WAL-MART STORES, INC.
2001 SE 10th Street
Bentonville, AR 72716-0550
Stephen.Chriss@walmart.com

**ON BEHALF OF WAL-MART STORES EAST,
LP AND SAM'S EAST, INC.**

Samantha Williams
NATURAL RESOURCES DEFENSE COUNCIL
20 N. Wacker Drive, Suite 1600
Chicago, IL 60606
swilliams@nrdc.org

**ON BEHALF OF THE NATURAL RESOURCES
DEFENSE COUNCIL**

Stephanie M. Chmiel (0087555)
THOMPSON HINE LLP
41 S. High Street, Suite 1700
Columbus, Ohio 43215
Stephanie.Chmiel@ThompsonHine.com

**ON BEHALF OF BORDER ENERGY
ELECTRIC SERVICES, INC.**

Gregory J. Poulos (0070532)
ENERNOC, INC.
471 E. Broad Street, Suite 1520
Columbus, Ohio 43215
gpoulos@enernoc.com

ON BEHALF OF ENERNOC, INC.

J. Thomas Siwo (0088069)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
tsiwo@bricker.com

**ON BEHALF OF PAULDING WIND FARM II
LLC**

Sarah Parrot (0082197)
Attorney Examiner
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, OH 43215
sarah.parrot@puc.state.oh.us

ATTORNEY EXAMINER

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Ohio Power Company for Authority to)
Establish a Standard Service Offer) Case No. 13-2385-EL-SSO
Pursuant to §4928.143, Revised Code,)
in the Form of an Electric Security Plan.)

In the Matter of the Application of)
Ohio Power Company for Approval of) Case No. 13-2386-EL-AAM
Certain Accounting Authority.)

**INDUSTRIAL ENERGY USERS-OHIO'S
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
UPON
OHIO POWER COMPANY
SIXTH SET
MARCH 24, 2014**

Samuel C. Randazzo (Counsel of Record)
Frank P. Darr
Matthew R. Pritchard
McNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
fdarr@mwncmh.com
mpritichard@mwncmh.com

March 24, 2014

Attorneys for Industrial Energy Users-Ohio

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Ohio Power Company for Authority to)
Establish a Standard Service Offer) Case No. 13-2385-EL-SSO
Pursuant to §4928.143, Revised Code,)
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**INDUSTRIAL ENERGY USERS-OHIO'S
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
UPON
OHIO POWER COMPANY
SIXTH SET
MARCH 24, 2014**

Industrial Energy Users-Ohio ("IEU-Ohio") in the above-captioned proceeding before the Public Utilities Commission of Ohio ("Commission") submits the following Interrogatories, Requests for Production of Documents, and Requests for Admission pursuant to Rules 4901-1-16, 4901-1-17, 4901-1-18, 4901-1-19, and 4901-1-20, Ohio Administrative Code ("O.A.C."), for response from Ohio Power Company ("AEP-Ohio"). All responses should be directed to:

Samuel C. Randazzo
Frank P. Darr
Matthew R. Pritchard
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215
(614) 469-8000 (T)
(614) 469-4653 (Fax)
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com

Additionally, AEP-Ohio must follow the instructions provided herein in responding to the inquiries. As required by Rule 4901-1-16, O.A.C., responses must be subsequently supplemented.

DEFINITIONS

As used herein, the following definitions apply:

1. "Document" or "Documentation" when used herein, is used in its customary broad sense and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: punch cards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analysis, projections, transcripts, electronic mail, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, work papers, maps, graphs, sketches, summaries or reports of

investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets, articles, advertisements, circulars, press releases, graphic records or representations/publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic, mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring to or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately identified or produced; however, drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. "Communication" shall mean any transmission of information by oral, graphic, written, pictorial, electronic or otherwise perceptible means, including, but not

limited to, telephone conversations, letters, telegrams, and personal conversations.

A request seeking the identity of a communication addressing, relating or referring to, or discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.

3. The "substance" of a communication or act includes the essence, purport or meaning of the same, as well as the exact words or actions involved.
4. "And" or "or" shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
5. "You" and "your" or "yourself" refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venture of such party.
6. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.
7. Words expressing the masculine gender shall be deemed to express the feminine and neuter genders; those expressing the past tense shall be deemed to express the present tense; and vice versa.
8. "Person" includes any firm, corporation, joint venture, association, entity or group of persons unless the context clearly indicates that only an individual person is referred to.
9. "Identify," or "state the identity of," or "identified" means as follows:

- A. When used in reference to an individual, to state his full name and present or last known position and business affiliation, and his position and business affiliation at the time in question;
- B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), and its present or last known address;
- C. When used in reference to a document, to state the date, author, title, type of document (e.g., letter, memorandum, photograph, tape recording, etc.) and its present or last known location and custodian;
- D. When used in reference to a communication, to state the type of communication (i.e., letter, personal conversation, etc.), the date thereof, and the parties thereto and, in the case of a conversation, to state the substance, place, and approximate time thereof, and identity of other persons in the presence of each party thereto;
- E. When used in reference to an act, to state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present.

INSTRUCTIONS FOR ANSWERING

1. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
2. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in

lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.

3. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.
4. You are under a continuing duty to supplement your responses with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, the identity of any person expected to be called as a witness at trial, and the subject matter on which he or she is expected to testify and to correct any response which you know or later learn is incorrect.

INTERROGATORIES

- 6-1. Pursuant to Section 9.182 of the Amended and Restated Inter-Company Power Agreement ("ICPA"), did AEP-Ohio seek to assign all or part of its rights, title, and interests in, and obligations under the ICPA to an assignee?

REPONSE:

- 6-2. If the response to Interrogatory 6-1 is negative, what is (are) the reason(s) AEP-Ohio did not seek to assign all or part of its rights, title, and interests in, and obligations under the ICPA to an assignee?

RESPONSE:

- 6-3. If the response to Interrogatory 6-1 is affirmative, identify the following:
- a. The name of the person(s) that was (were) the intended assignee(s);

- b. The date on which notice of assignment was provided to Ohio Valley Electric Corporation and any subsidiaries and the Sponsoring Utilities as defined by the ICPA;
- c. The reason(s) why the assignment was not completed; and
- d. Documents supporting the responses to the subparts of this interrogatory.

RESPONSE:

6-4. Pursuant to Section 9.183 of the ICPA, did AEP-Ohio seek to assign all or part of its rights, title, and interests in, and obligations under the ICPA to an assignee?

REPOSE:

6-5. If the response to Interrogatory 6-4 is negative, what is (are) the reason(s) AEP-Ohio did not seek to assign all or part of its rights, title, and interests in, and obligations under the ICPA to an assignee?

RESPONSE:

- 6-6. If the response to Interrogatory 6-4 is affirmative, identify the following:
- a. The name of the person(s) that was (were) the intended assignee(s);
 - b. The date on which Offer Notice was provided to Ohio Valley Electric Corporation and any subsidiaries and the Sponsoring Utilities as defined by the ICPA;
 - c. The reason(s) why the assignment was not completed; and
 - d. Documents supporting the responses to the subparts of this interrogatory.

RESPONSE:

REQUEST FOR PRODUCTION OF DOCUMENTS

6-1. Provide documents identified in responses to Interrogatories 6-1 to 6-6.

Respectfully submitted,

/s/ Frank P. Darr

Samuel C. Randazzo (Counsel of Record)

Frank P. Darr

Matthew R. Pritchard

MCNEES WALLACE & NURICK LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

sam@mwncmh.com

fdarr@mwncmh.com

mpritchard@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Interrogatories and Requests for Production of Documents upon Ohio Power Company Sixth Set* was served upon the following parties of record this 24th day of March 2014 via electronic transmission, hand-delivery or first class mail, U.S. postage prepaid.

/s/ Frank P. Darr

Frank P. Darr

Steven T. Nourse (0046705)
Matthew J. Satterwhite (0071972)
AMERICAN ELECTRIC POWER
CORPORATION
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215-2373
stnourse@aep.com
mjsatterwhite@aep.com

Daniel R. Conway (0023058)
PORTER WRIGHT MORRIS & ARTHUR
Huntington Center
41 South High Street
Columbus, Ohio 43215
dconway@porterwright.com

ON BEHALF OF OHIO POWER COMPANY

William L. Wright (0018010)
Werner Margard (0024858)
Devin Parram (0082507)
Katherine Johnson (0091064)
Assistant Attorneys' General
180 E. Broad Street, 6th Floor
Columbus, Ohio 43215-3793
William.wright@puc.state.oh.us
werner.margard@puc.state.oh.us
Devin.Parram@puc.state.oh.us
katherine.johnson@puc.state.oh.us

ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

David F. Boehm (0021881)
Michael L. Kurtz (0033350)
Jody Kyler Cohn (0085402)
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkylercohn@BKLawfirm.com

ON BEHALF OF THE OHIO ENERGY GROUP

Maureen R. Grady (0020847)
Assistant Consumers' Counsel
OFFICE OF THE OHIO CONSUMERS'
COUNSEL
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
grady@occ.state.oh.us

ON BEHALF OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Rocco D'Ascenzo (0077651)
DUKE ENERGY OHIO, INC.
139 East Fourth Street
Cincinnati, Ohio 45202
Rocco.D'Ascenzo@duke-energy.com

ON BEHALF OF DUKE ENERGY OHIO, INC.

Barth E. Royer (0016999)
BELL & ROYER CO., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
BarthRoyer@aol.com

Gary A. Jeffries (0071742)
DOMINION RESOURCES SERVICES, INC.
501 Martindale Street, Suite 400
Pittsburg, PA 15212-5817
Gary.A.Jeffries@dom.com

**ON BEHALF OF DOMINION RETAIL, INC.
D/B/A DOMINION ENERGY SOLUTIONS**

Richard L. Sites (0019887)
OHIO HOSPITAL ASSOCIATION
155 East Broad Street, 15th Floor
Columbus, Ohio 43215-3620
ricks@ohanet.org

Thomas J. O'Brien (0066249)
Dylan F. Borchers (0090690)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
tobrien@bricker.com
dborchers@bricker.com

**ON BEHALF OF THE OHIO HOSPITAL
ASSOCIATION**

Phillip B. Sineneng (0083406)
THOMPSON HINE LLP
41 South High Street, Suite 1700
Columbus, Ohio 43215
PhilipSineneng@ThompsonHine.com

**ON BEHALF OF DUKE ENERGY RETAIL
SALES, LLC AND DUKE ENERGY
COMMERCIAL ASSET MANAGEMENT, INC.**

Mark A. Whitt (0067996)
Andrew J. Campbell (0081485)
Gregory L. Williams (0088758)
WHITT STURTEVANT LLP
The KeyBank Building, Suite 1590
88 East Broad Street
Columbus, Ohio 43215
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
williams@whitt-sturtevant.com

Vincent Parisi (0073283)
Lawrence Friedeman (0018902)
Matthew White (0082859)
INTERSTATE GAS SUPPLY, INC.
6100 Emerald Parkway
Dublin, Ohio 43016
vparisi@igsenergy.com
lfriedeman@igsenergy.com
mswhite@igsenergy.com

**ON BEHALF OF INTERSTATE GAS SUPPLY,
INC.**

Kimberly W. Bojko (0069402)
Mallory M. Mohler (0089508)
CARPENTER LIPPS & LELAND LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Bojko@carpenterlipps.com
Mohler@carpenterlipps.com

ON BEHALF OF OMA ENERGY GROUP

Mark A. Hayden (0081077)
Jacob A. McDermott (0087187)
Scott J. Casto (0085756)
First Energy Service Company
76 South Main Street
Akron, Ohio 44308
haydenm@firstenergycorp.com
jmcdermott@firstenergycorp.com
scasto@firstenergycorp.com

**ON BEHALF OF FIRSTENERGY SOLUTIONS
CORP.**

Colleen L. Mooney (0015668)
Cathryn N. Loucas (0073533)
OHIO PARTNERS FOR AFFORDABLE
ENERGY
231 West Lima Street
Findlay, Ohio 45839-1793
cmooney@ohiopartners.org
cloucas@ohiopartners.org

**ON BEHALF OF OHIO PARTNERS FOR
AFFORDABLE ENERGY**

Mark S. Yurick (0039176)
Zachary D. Kravitz (0084238)
TAFT, STETTINIUS & HOLLISTER LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215
myurick@taftlaw.com
zkravitz@taftlaw.com

ON BEHALF OF THE KROGER Co.

Judi L. Sobecki (0067186)
THE DAYTON POWER AND LIGHT COMPANY
1065 Woodman Drive
Dayton, Ohio 45432
judi.sobecki@aes.com

**ON BEHALF OF THE DAYTON POWER AND
LIGHT COMPANY**

Joseph M. Clark (0080711)
DIRECT ENERGY
21 East State Street, 19th Floor
Columbus, Ohio 43215
joseph.clark@directenergy.com

**On BEHALF of Direct Energy Services,
LLC and Direct Energy Business,
LLC**

Trent Dougherty (0079817)
OHIO ENVIRONMENTAL COUNCIL
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
tdougherty@theOEC.org

John Finnigan (0018689)
Senior Regulatory Attorney
ENVIRONMENTAL DEFENSE FUND
128 Winding Brook Lane
Terrace Park, Ohio 45174
jfinnigan@edf.org

**ON BEHALF OF THE OHIO ENVIRONMENTAL
COUNCIL AND ENVIRONMENTAL DEFENSE
FUND**

Michael R. Smalz (0041897)
OHIO POVERTY LAW CENTER
555 Buttles Avenue
Columbus, Ohio 43215-1137
msmalz@ohiopovertylaw.com

Peggy P. Lee (0067912)
SOUTHEASTERN OHIO LEGAL SERVICES
964 E. State Street
Athens, Ohio 45701
plee@oslsa.org

**ON BEHALF OF THE APPALACHIAN PEACE
AND JUSTICE NETWORK**

M. Howard Petricoff (0008287)
Gretchen L. Petrucci (0046608)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com
glpetrucci@vorys.com

David I Fein
Vice President, State Government
Affairs-East
EXELON CORPORATION
10 South Dearborn Street, 47th Floor
Chicago, IL 60603
david.fein@exeloncorp.com

Cynthia Fonner Brady
Assistant General Counsel
EXELON BUSINESS SERVICES COMPANY
4300 Winfield Road
Warrenville, IL 60555
cynthia.brady@constellation.com

Lael Campbell
EXELON
101 Constitution Avenue, NW
Washington, DC 20001
Lael.Campbell@constellation.com

**ON BEHALF OF CONSTELLATION
NEWENERGY, INC. AND EXELON
GENERATION COMPANY, LLC**

M. Howard Petricoff
Gretchen L. Petrucci
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com
glpetrucci@vorys.com

**ON BEHALF OF THE RETAIL ENERGY
SUPPLY ASSOCIATION**

Nicholas McDaniel (0089817)
ENVIRONMENTAL LAW & POLICY CENTER
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212
NMcDaniel@elpc.org

**ON BEHALF OF THE ENVIRONMENTAL LAW
AND POLICY CENTER**

Lisa M. Hawrot
SPILMAN THOMAS & BATTLE, PLLC
Century Centre Building
1233 Main Street, Suite 4000
P.O. Box 831
Wheeling, WV 26003-8731
lhawrot@spilmanlaw.com

Derrick Price Williamson
SPILMAN THOMAS & BATTLE, PLLC
1100 Bent Creek Blvd., Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com

Steve W. Chriss
Senior Manager, Energy Regulatory
Analysis
WAL-MART STORES, INC.
2001 SE 10th Street
Bentonville, AR 72716-0550
Stephen.Chriss@walmart.com

**ON BEHALF OF WAL-MART STORES EAST,
LP AND SAM'S EAST, INC.**

Samantha Williams
NATURAL RESOURCES DEFENSE COUNCIL
20 N. Wacker Drive, Suite 1600
Chicago, IL 60606
swilliams@nrdc.org

**ON BEHALF OF THE NATURAL RESOURCES
DEFENSE COUNCIL**

Stephanie M. Chmiel (0087555)
THOMPSON HINE LLP
41 S. High Street, Suite 1700
Columbus, Ohio 43215
Stephanie.Chmiel@ThompsonHine.com

**ON BEHALF OF BORDER ENERGY
ELECTRIC SERVICES, INC.**

Gregory J. Poulos (0070532)
ENERNOC, INC.
471 E. Broad Street, Suite 1520
Columbus, Ohio 43215
gpoulos@enernoc.com

ON BEHALF OF ENERNOC, INC.

J. Thomas Siwo (0088069)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
tsiwo@bricker.com

**ON BEHALF OF PAULDING WIND FARM II
LLC**

Sarah Parrot (0082197)
Attorney Examiner
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, OH 43215
sarah.parrot@puc.state.oh.us

ATTORNEY EXAMINER

**OHIO POWER COMPANY'S RESPONSE
TO INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
PUCO CASE NO. 13-2385-EL-SSO et al.
SIXTH SET**

INTERROGATORY

INT-6-001 Pursuant to Section 9.182 of the Amended and Restated Inter-Company Power Agreement ("ICPA"), did AEP-Ohio seek to assign all or part of its rights, title, and interests in, and obligations under the ICPA to an assignee?

RESPONSE

The Company objects to the extent the request seeks information which is outside the scope of the case and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Through its December 4, 2013 Finding and Order in Case No. 12-1126-EL-UNC, the Commission authorized AEP Ohio to retain the OVEC contractual entitlement and that adjudicative determination is now a final order. Documents and information leading up to that decision are reflected in the public record as part of that proceeding.

Prepared by: Counsel

**OHIO POWER COMPANY'S RESPONSE
TO INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
PUCO CASE NO. 13-2385-EL-SSO et al.
SIXTH SET**

INTERROGATORY

INT-6-002 . If the response to Interrogatory 6-1 is negative, what is (are) the reason(s) AEP-Ohio did not seek to assign all or part of its rights, title, and interests in, and obligations under the ICPA to an assignee?

RESPONSE

See the Company's response to IEU INT-6-001.

Prepared by: Counsel

**OHIO POWER COMPANY'S RESPONSE
TO INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
PUCO CASE NO. 13-2385-EL-SSO et al.
SIXTH SET**

INTERROGATORY

INT-6-003 If the response to Interrogatory 6-1 is affirmative, identify the following:

- a. The name of the person(s) that was (were) the intended assignee(s);
- b. The date on which notice of assignment was provided to Ohio Valley Electric Corporation and any subsidiaries and the Sponsoring Utilities as defined by the ICPA;
- c. The reason(s) why the assignment was not completed; and
- d. Documents supporting the responses to the subparts of this interrogatory.

RESPONSE

See the Company's response to IEU INT-6-001.

Prepared by: Counsel

**OHIO POWER COMPANY'S RESPONSE
TO INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
PUCO CASE NO. 13-2385-EL-SSO et al.
SIXTH SET**

INTERROGATORY

INT-6-004 Pursuant to Section 9.183 of the ICPA, did AEP-Ohio seek to assign all or part of its rights, title, and interests in, and obligations under the ICPA to an assignee?

RESPONSE

See the Company's response to IEU INT-6-001.

Prepared by: Counsel

**OHIO POWER COMPANY'S RESPONSE
TO INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
PUCO CASE NO. 13-2385-EL-SSO et al.
SIXTH SET**

INTERROGATORY

INT-6-005 If the response to Interrogatory 6-4 is negative, what is (are) the reason(s) AEP-Ohio did not seek to assign all or part of its rights, title, and interests in, and obligations under the ICPA to an assignee?

RESPONSE

See the Company's response to IEU INT-6-001.

Prepared by: Counsel

**OHIO POWER COMPANY'S RESPONSE
TO INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
PUCO CASE NO. 13-2385-EL-SSO et al.
SIXTH SET**

INTERROGATORY

- INT-6-006 If the response to Interrogatory 6-4 is affirmative, identify the following:
- a. The name of the person(s) that was (were) the intended assignee(s);
 - b. The date on which Offer Notice was provided to Ohio Valley Electric Corporation and any subsidiaries and the Sponsoring Utilities as defined by the ICPA;
 - c. The reason(s) why the assignment was not completed; and
 - d. Documents supporting the responses to the subparts of this interrogatory.

RESPONSE

See the Company's response to IEU INT-6-001.

Prepared by: Counsel

**OHIO POWER COMPANY'S RESPONSE
TO INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
PUCO CASE NO. 13-2385-EL-SSO et al.
SIXTH SET**

REQUEST FOR PRODUCTION OF DOCUMENTS

RPD-6-001 Provide documents identified in responses to Interrogatories 6-1 to 6-6.

RESPONSE

N/A.

Prepared by: Counsel

AMENDED AND RESTATED
INTER-COMPANY POWER AGREEMENT
DATED AS OF SEPTEMBER 10, 2010

AMONG

OHIO VALLEY ELECTRIC CORPORATION,
ALLEGHENY ENERGY SUPPLY COMPANY, L.L.C.
APPALACHIAN POWER COMPANY,
BUCKEYE POWER GENERATING, LLC,
COLUMBUS SOUTHERN POWER COMPANY,
THE DAYTON POWER AND LIGHT COMPANY,
DUKE ENERGY OHIO, INC.,
FIRSTENERGY GENERATION CORP.,
INDIANA MICHIGAN POWER COMPANY,
KENTUCKY UTILITIES COMPANY,
LOUISVILLE GAS AND ELECTRIC COMPANY,
MONONGAHELA POWER COMPANY,
OHIO POWER COMPANY,
PENINSULA GENERATION COOPERATIVE, and
SOUTHERN INDIANA GAS AND ELECTRIC COMPANY

AMENDED AND RESTATED
INTER-COMPANY POWER AGREEMENT

THIS AGREEMENT, dated as of September 10, 2010 (the "Agreement"), by and among OHIO VALLEY ELECTRIC CORPORATION (herein called OVEC), ALLEGHENY ENERGY SUPPLY COMPANY, L.L.C. (herein called Allegheny), APPALACHIAN POWER COMPANY (herein called Appalachian), BUCKEYE POWER GENERATING, LLC (herein called Buckeye), COLUMBUS SOUTHERN POWER COMPANY (herein called Columbus), THE DAYTON POWER AND LIGHT COMPANY (herein called Dayton), DUKE ENERGY OHIO, INC. (formerly known as The Cincinnati Gas & Electric Company and herein called Duke Ohio), FIRSTENERGY GENERATION CORP. (herein called FirstEnergy), INDIANA MICHIGAN POWER COMPANY (herein called Indiana), KENTUCKY UTILITIES COMPANY (herein called Kentucky), LOUISVILLE GAS AND ELECTRIC COMPANY (herein called Louisville), MONONGAHELA POWER COMPANY (herein called Monongahela), OHIO POWER COMPANY (herein called Ohio Power), PENINSULA GENERATION COOPERATIVE (herein called Peninsula), and SOUTHERN INDIANA GAS AND ELECTRIC COMPANY (herein called Southern Indiana, and all of the foregoing, other than OVEC, being herein sometimes collectively referred to as the Sponsoring Companies and individually as a Sponsoring Company) hereby amends and restates in its entirety, the Inter-Company Power Agreement dated as of March 13, 2006, as amended by Modification No. 1, dated as of March 13, 2006 (herein called the Current Agreement), by and among OVEC and the Sponsoring Companies.

WITNESSETH THAT:

WHEREAS, the Current Agreement amended and restated the original Inter-Company Power Agreement, dated as of July 10, 1953, as amended by Modification No. 1, dated as of June 3, 1966; Modification No. 2, dated as of January 7, 1967; Modification No. 3, dated as of November 15, 1967; Modification No. 4, dated as of November 5, 1975; Modification No. 5, dated as of September 1, 1979; Modification No. 6, dated as of August 1, 1981; Modification No. 7, dated as of January 15, 1992; Modification No. 8, dated as of January 19, 1994; Modification No. 9, dated as of August 17, 1995; Modification No. 10, dated as of January 1, 1998; Modification No. 11, dated as of April 1, 1999; Modification No. 12, dated as of November 1, 1999; Modification No. 13, dated as of May 24, 2000; Modification No. 14, dated as of April 1, 2001; and Modification No. 15, dated as of April 30, 2004 (together, herein called the Original Agreement); and

WHEREAS, OVEC designed, purchased, and constructed, and continues to operate and maintain two steam-electric generating stations, one station (herein called Ohio Station) consisting of five turbo-generators and all other necessary equipment, at a location on the Ohio River near Cheshire, Ohio, and the other station (herein called Indiana Station) consisting of six turbogenerators and all other necessary equipment, at a location on the Ohio River near Madison,

Indiana, (the Ohio Station and the Indiana Station being herein called the Project Generating Stations); and

WHEREAS, OVEC also designed, purchased, and constructed, and continues to operate and maintain necessary transmission and general plant facilities (herein called the Project Transmission Facilities) and OVEC established or cause to be established interconnections between the Project Generating Stations and the systems of certain of the Sponsoring Companies; and

WHEREAS, OVEC entered into an agreement, attached hereto as Exhibit A, with Indiana-Kentucky Electric Corporation (herein called IKEC), a corporation organized under the laws of the State of Indiana as a wholly owned subsidiary corporation of OVEC, which has been amended and restated as of the date of this Agreement and embodies the terms and conditions for the ownership and operation by IKEC of the Indiana Station and such portion of the Project Transmission Facilities which are to be owned and operated by it; and

WHEREAS, transmission facilities were constructed by certain of the Sponsoring Companies to interconnect the systems of such Sponsoring Companies, directly or indirectly, with the Project Generating Stations and/or the Project Transmission Facilities, and the Sponsoring Companies have agreed to pay for Available Power, as hereinafter defined, as may be available at the Project Generating Stations; and

WHEREAS, the parties hereto desire to amend and restate in their entirety, the Current Agreement to define the terms and conditions governing the rights of the Sponsoring Companies to receive Available Power from the Project Generating Stations and the obligations of the Sponsoring Companies to pay therefor.

NOW, THEREFORE, the parties hereto agree with each other as follows:

ARTICLE 1

DEFINITIONS

1.01. For the purposes of this Agreement, the following terms, wherever used herein, shall have the following meanings:

1.011 "Affiliate" means, with respect to a specified person, any other person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, such specified person; provided that "control" for these purposes means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

1.012 "Arbitration Board" has the meaning set forth in Section 9.10.

1.013 "Available Energy" of the Project Generating Stations means the energy associated with Available Power.

1.014 "Available Power" of the Project Generating Stations at any particular time means the total net kilowatts at the 345-kV busses of the Project Generating Stations which Corporation in its sole discretion will determine that the Project Generating Stations will be capable of safely delivering under conditions then prevailing, including all conditions affecting capability.

1.015 "Corporation" means OVEC, IKEC, and all other subsidiary corporations of OVEC.

1.016 "Decommissioning and Demolition Obligation" has the meaning set forth in Section 5.03(f) hereof.

1.017 "Effective Date" means September 10, 2010, or to the extent necessary, such later date on which Corporation notifies the Sponsoring Companies that all conditions to effectiveness, including all required waiting periods and all required regulatory acceptances or approvals, of this Agreement have been satisfied in form and substance satisfactory to the Corporation.

1.018 "Election Period" has the meaning set forth in Section 9.183(a) hereof.

1.019 "Minimum Generating Unit Output" means 80 MW (net) for each of the Corporation's generation units; provided that such "Minimum Generating Unit Output" shall be confirmed from time to time by operating tests on the Corporation's generation units and shall be adjusted by the Operating Committee as appropriate following such tests.

1.0110 "Minimum Loading Event" means a period of time during which one or more of the Corporation's generation units are operating at below the Minimum Generating Output as a result of the Sponsoring Companies' failure to schedule and take delivery of sufficient Available Energy.

1.0111 "Minimum Loading Event Costs" means the sum of the following costs caused by one or more Minimum Loading Events: (i) the actual costs of any of the Corporation's generating units burning fuel oil; and (ii) the estimated actual additional costs to the Corporation resulting from Minimum Loading Events, including without limitation the incremental costs of additional emissions allowances, reflected in the schedule of charges prepared by the Operating Committee and in effect as of the commencement of any Minimum Loading Event, which schedule may be adjusted from time to time as necessary by the Operating Committee.

1.0112 "Month" means a calendar month.

1.0113 "Nominal Power Available" means an individual Sponsoring Company's Power Participation Ratio share of the Corporation's current estimate of the maximum amount of Available Power available for delivery at any given time.

1.0114 "Offer Notice" means the notice required to be given to the other Sponsoring Companies by a Transferring Sponsor offering to sell all or a portion of such Transferring Sponsor's rights, title and interests in, and obligations under this Agreement. At a minimum, the Offer Notice shall be in writing and shall contain (i) the rights, title and interests in, and obligations under this Agreement that the Transferring Sponsor proposes to Transfer; and (ii) the cash purchase price and any other material terms and conditions of such proposed transfer. An Offer Notice may not contain terms or conditions requiring the purchase of any non-OVEC interests.

1.0115 "Permitted Assignee" means a person that is (a) a Sponsoring Company or its Affiliate whose long-term unsecured non-credit enhanced indebtedness, as of the date of such assignment, has a Standard & Poor's credit rating of at least BBB- and a Moody's Investors Service, Inc. credit rating of at least Baa3 (provided that, if the proposed assignee's long-term unsecured non-credit enhanced indebtedness is not currently rated by one of Standard & Poor's or Moody, such assignee's long-term unsecured non-credit enhanced indebtedness, as of the date of such assignment, must have either a Standard & Poor's credit rating of at least BBB- or a Moody's Investors Service, Inc. credit rating of at least Baa3); or (b) a Sponsoring Company or its Affiliate that does not meet the criteria in subsection (a) above, if the Sponsoring Company or its Affiliate that is assigning its rights, title and interests in, and obligations under, this Agreement agrees in writing (in form and substance satisfactory to Corporation) to remain obligated to satisfy all of the obligations related to the assigned rights, title and interests to the extent such obligations are not satisfied by the assignee of such rights, title and interests; provided that, in no event shall a person be deemed a "Permitted Assignee" if counsel for the Corporation reasonably determines that the assignment of the rights, title or interests in, or obligations under, this Agreement to such person could cause a termination, default, loss or payment obligation under any security issued, or agreement entered into, by the Corporation prior to such transfer.

1.0116 "Postretirement Benefit Obligation" has the meaning set forth in Section 5.03(e) hereof.

1.0117 "Power Participation Ratio" as applied to each of the Sponsoring Companies refers to the percentage set forth opposite its respective name in the tabulation below:

Company	Power Participation Ratio—Percent
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Allegheny	3.01
Appalachian.....	15.69
Buckeye.....	18.00
Columbus	4.44
Dayton.....	4.90
Duke Ohio.....	9.00
FirstEnergy	4.85
Indiana.....	7.85
Kentucky	2.50
Louisville	5.63
Monongahela.....	0.49
Ohio Power	15.49
Peninsula	6.65
Southern Indiana	<u>1.50</u>
Total	100.0

1.0118 "Tariff" means the open access transmission tariff of the Corporation, as amended from time to time, or any successor tariff, as accepted by the Federal Energy Regulatory Commission or any successor agency.

1.0119 "Third Party" means any person other than a Sponsoring Company or its Affiliate.

1.0120 "Total Minimum Generating Output" means the product of the Minimum Generating Unit Output times the number of the Corporation's generation units available for service at that time.

1.0121 "Transferring Sponsor" has the meaning set forth in Section 9.183(a) hereof.

1.0122 "Uniform System of Accounts" means the Uniform System of Accounts prescribed by the Federal Energy Regulatory Commission as in effect on January 1, 2004.

ARTICLE 2

TRANSMISSION AGREEMENT AND FACILITIES

2.01. *Transmission Agreement.* The Corporation shall enter into a transmission service agreement under the Tariff, and the Corporation shall reserve and schedule transmission service, ancillary services and other transmission-related services in accordance with the Tariff to provide for the delivery of Available Power and Available Energy to the applicable delivery point under this Agreement.

2.02. *Limited Burdening of Corporation's Transmission Facilities.*

Transmission facilities owned by the Corporation, including the Project Transmission Facilities, shall not be burdened by power and energy flows of any Sponsoring Company to an extent which would impair or prevent the transmission of Available Power.

ARTICLE 3

[RESERVED]

ARTICLE 4

AVAILABLE POWER SUPPLY

4.01. *Operation of Project Generating Stations.* Corporation shall operate and maintain the Project Generating Stations in a manner consistent with safe, prudent, and efficient operating practice so that the Available Power available from said stations shall be at the highest practicable level attainable consistent with OVEC's obligations under Reliability *First Reliability* Standard BAL-002-RFC throughout the term of this Agreement.

4.02. *Available Power Entitlement.* The Sponsoring Companies collectively shall be entitled to take from Corporation and Corporation shall be obligated to supply to the Sponsoring Companies any and all Available Power and Available Energy pursuant to the provisions of this Agreement. Each Sponsoring Company's Available Power Entitlement hereunder shall be its Power Participation Ratio, as defined in *subsection 1.0117*, of Available Power.

4.03. *Available Energy.* Corporation shall make Available Energy available to each Sponsoring Company in proportion to said Sponsoring Company's Power Participation Ratio. No Sponsoring Company, however, shall be obligated to avail itself of any Available Energy. Available Energy shall be scheduled and taken by the Sponsoring Companies in accordance with the following procedures:

4.031 Each Sponsoring Company shall schedule the delivery of all or any portion (in whole MW increments) of its entitlement to Available Energy in accordance with scheduling procedures established by the Operating Committee from time to time.

4.032 In the event that any Sponsoring Company does not schedule the delivery of all of its Power Participation Ratio share of Available Energy, then each such other Sponsoring Company may schedule the delivery of all or any portion (in whole MW increments) of any such unscheduled share of Available Energy (through successive allotments if necessary) in proportion to their Power Participation Ratios.

4.033 Notwithstanding any Available Energy schedules made in accordance with this Section 4.03 and the applicable scheduling procedures, (i) the Corporation shall adjust all schedules to the extent that the Corporation's actual generation output is less than or more than the expected Nominal Power Available to all Sponsoring Companies, or to the extent that the Corporation is unable to obtain sufficient transmission service under the Tariff for the delivery of all scheduled Available Energy; and (ii) immediately following a Minimum Loading Event, any Sponsoring Company causing (in whole or part) such Minimum Loading Event shall have its Available Energy schedules increased after the schedules of the Sponsoring Companies not causing such Minimum Load Event, in accordance with the estimated ramp rates associated with the shutdown and start-up of the Corporation's generation units as reflected in the schedules prepared by the Operating Committee and in effect as of the commencement of any Minimum Loading Event, which schedules may be adjusted from time to time as necessary by the Operating Committee.

4.034 Each Sponsoring Company availing itself of Available Energy shall be entitled to an amount of energy (herein called billing kilowatt-hours of Available Energy) equal to its portion, determined as provided in this Section 4.03, of the total Available Energy after deducting therefrom such Sponsoring Company's proportionate share, as defined in this Section 4.03, of all losses as determined in accordance with the Tariff incurred in transmitting the total of such Available Energy from the 345-kV busses of the Project Generating Stations to the applicable delivery points, as scheduled pursuant to Section 9.01, of all Sponsoring Companies availing themselves of Available Energy. The proportionate share of all such losses that shall be so deducted from such Sponsoring Company's portion of Available Energy shall be equal to all such losses multiplied by the ratio of such portion of Available Energy to the total of such Available Energy. Each Sponsoring Company shall have the right, pursuant to this Section 4.03, to avail itself of Available Energy for the purpose of meeting the loads of its own system and/or of supplying energy to other systems in accordance with agreements, other than this Agreement, to which such Sponsoring Company is a party.

4.035 To the extent that, as a result of the failure by one or more Sponsoring Companies to take its respective Power Participation Ratio share of the applicable Total Minimum Generating Output during any hour, a Minimum Loading Event shall occur, then such one or more Sponsoring Companies shall be assessed charges for any Minimum Loading Event Costs in accordance with Section 5.05.

ARTICLE 5

CHARGES FOR AVAILABLE POWER AND MINIMUM LOADING EVENT COSTS

5.01. *Total Monthly Charge.* The amount to be paid to Corporation each month by the Sponsoring Companies for Available Power and Available Energy supplied under this

Agreement shall consist of the sum of an energy charge, a demand charge, and a transmission charge, all determined as set forth in this *Article 5*.

5.02. *Energy Charge*. The energy charge to be paid each month by the Sponsoring Companies for Available Energy shall be determined by Corporation as follows:

5.021 Determine the aggregate of all expenses for fuel incurred in the operation of the Project Generating Stations, in accordance with Account 501 (Fuel), Account 506.5 (Variable Reagent Costs Associated With Pollution Control Facilities) and 509 (Allowances) of the Uniform System of Accounts.

5.022 Determine for such month the difference between the total cost of fuel as described in subsection 5.021 above and the total cost of fuel included in any Minimum Loading Event Costs payable to the Corporation for such month pursuant to Section 8.03. For the purposes hereof the difference so determined shall be the fuel cost allocable for such month to the total kilowatt-hours of energy generated at the Project Generating Stations for the supply of Available Energy. For Available Energy availed of by the Sponsoring Companies, each Sponsoring Company shall pay Corporation for each such month an amount obtained by multiplying the ratio of the billing kilowatt-hours of such Available Energy availed of by such Sponsoring Company during such month to the aggregate of the billing kilowatt-hours of all Available Energy availed of by all Sponsoring Companies during such month times the total cost of fuel as described in this subsection 5.022 for such month.

5.03. *Demand Charge*. During the period commencing with the Effective Date and for the remainder of the term of this Agreement, demand charges payable by the Sponsoring Companies to Corporation shall be determined by the Corporation as provided below in this Section 5.03. Each Sponsoring Company's share of the aggregate demand charges shall be the percentage of such charges represented by its Power Participation Ratio.

The aggregate demand charge payable each month by the Sponsoring Companies to Corporation shall be equal to the total costs incurred for such month by Corporation resulting from its ownership, operation, and maintenance of the Project Generating Stations and Project Transmission Facilities determined as follows:

As soon as practicable after the close of each calendar month the following components of costs of Corporation (eliminating any duplication of costs which might otherwise be reflected among the corporate entities comprising Corporation) applicable for such month to the ownership, operation and maintenance of the Project Generating Stations and the Project Transmission Facilities, including additional facilities and/or spare parts (such as fuel processing plants, flue gas or waste product processing facilities, and facilities reasonably required to enable the Corporation to limit the emission of pollutants or the discharge of wastes in compliance with governmental requirements) and

replacements necessary or desirable to keep the Project Generating Stations and the Project Transmission Facilities in a dependable and efficient operating condition, and any provision for any taxes that may be applicable to such charges, to be determined and recorded in the following manner:

(a) Component (A) shall consist of fixed charges made up of (i) the amounts of interest properly chargeable to Accounts 427, 430 and 431, less the amount thereof credited to Account 432, of the Uniform System of Accounts, including the interest component of any purchase price, interest, rental or other payment under an installment sale, loan, lease or similar agreement relating to the purchase, lease or acquisition by Corporation of additional facilities and replacements (whether or not such interest or other amounts have come due or are actually payable during such Month), (ii) the amounts of amortization of debt discount or premium and expenses properly chargeable to Accounts 428 and 429, and (iii) an amount equal to the sum of (I) the applicable amount of the debt amortization component for such month required to retire the total amount of indebtedness of Corporation issued and outstanding, (II) the amortization requirement for such month in respect of indebtedness of Corporation incurred in respect of additional facilities and replacements, and (III) to the extent not provided for pursuant to clause (II) of this clause (iii), an appropriate allowance for depreciation of additional facilities and replacements.

(b) Component (B) shall consist of the total operating expenses for labor, maintenance, materials, supplies, services, insurance, administrative and general expense, etc., properly chargeable to the Operation and Maintenance Expense Accounts of the Uniform System of Accounts (exclusive of Accounts 501, 509, 555, 911, 912, 913, 916, and 917 of the Uniform System of Accounts), minus the total of all non-fuel costs included in any Minimum Loading Event Costs payable to the Corporation for such month pursuant to Section 8.03, minus the total of all transmission charges payable to the Corporation for such month pursuant to Section 5.04, and plus any additional amounts which, after provision for all income taxes on such amounts (which shall be included in Component (C) below), shall equal any amounts paid or payable by Corporation as fines or penalties with respect to occasions where it is asserted that Corporation failed to comply with a law or regulation relating to the emission of pollutants or the discharge of wastes.

(c) Component (C) shall consist of the total expenses for taxes, including all taxes on income but excluding any federal income taxes arising from payments to Corporation under Component (D) below, and all operating or other costs or expenses, net of income, not included or

specifically excluded in Components (A) or (B) above, including tax adjustments, regulatory adjustments, net losses for the disposition of property and other net costs or expenses associated with the operation of a utility.

(d) Component (D) shall consist of an amount equal to the product of \$2.089 multiplied by the total number of shares of capital stock of the par value of \$100 per share of Ohio Valley Electric Corporation which shall have been issued and which are outstanding on the last day of such month.

(e) Component (E) shall consist of an amount to be sufficient to pay the costs and other expenses relating to the establishment, maintenance and administration of life insurance, medical insurance and other postretirement benefits other than pensions attributable to the employment and employee service of active employees, retirees, or other employees, including without limitation any premiums due or expected to become due, as well as administrative fees and costs, such amounts being sufficient to provide payment with respect to all periods for which Corporation has committed or is otherwise obligated to make such payments, including amounts attributable to current employee service and any unamortized prior service cost, gain or loss attributable to prior service years ("Postretirement Benefit Obligation"); provided that, the amount payable for Postretirement Benefit Obligations during any month shall be determined by the Corporation based on, among other factors, the Statement of Financial Accounting Standards No. 106 (Employers' Accounting For Postretirement Benefits Other Than Pensions) and any applicable accounting standards, policies or practices as adopted from time to time relating to accruals with respect to all or any portion of such Postretirement Benefit Obligation.

(f) Component (F) shall consist of an amount that may be incurred in connection with the decommissioning, shutdown, demolition and closing of the Project Generating Stations when production of electric power and energy is discontinued at such Project Generating Stations, which amount shall include, without limitation the following costs (net of any salvage credits): the costs of demolishing the plants' building structures, disposal of non-salvageable materials, removal and disposal of insulating materials, removal and disposal of storage tanks and associated piping, disposal or removal of materials and supplies (including fuel oil and coal), grading, covering and reclaiming storage and disposal areas, disposing of ash in ash ponds to the extent required by regulatory authorities, undertaking corrective or remedial action required by regulatory authorities, and any other costs incurred in putting the facilities

in a condition necessary to protect health or the environment or which are required by regulatory authorities, or which are incurred to fund continuing obligations to monitor or to correct environmental problems which result, or are later discovered to result, from the facilities' operation, closure or post-closure activities ("Decommissioning and Demolition Obligation") provided that, the amount payable for Decommissioning and Demolition Obligations during any month shall be calculated by Corporation based on, among other factors, the then-estimated useful life of the Project Generating Stations and any applicable accounting standards, policies or practices as adopted from time to time relating to accruals with respect to all or any portion of such Decommissioning and Demolition Obligation, and provided further that, the Corporation shall recalculate the amount payable under this Component (F) for future months from time to time, but in no event later than five (5) years after the most recent calculation.

5.04. *Transmission Charge.* The transmission charges to be paid each month by the Sponsoring Companies shall be equal to the total costs incurred for such month by Corporation for the purchase of transmission service, ancillary services and other transmission-related services under the Tariff as reserved and scheduled by the Corporation to provide for the delivery of Available Power and Available Energy to the applicable delivery point under this Agreement. Each Sponsoring Company's share of the aggregate transmission charges shall be the percentage of such charges represented by its Power Participation Ratio.

5.05. *Minimum Loading Event Costs.* To the extent that, as a result of the failure by one or more Sponsoring Companies to take its respective Power Participation Ratio share of the applicable Total Minimum Generating Output during any hour, a Minimum Loading Event shall occur, then the sum of all Minimum Loading Event Costs relating to such Minimum Loading Event shall be charged to such Sponsoring Company or group of Sponsoring Companies that failed take its respective Power Participation Ratio share of the applicable Total Minimum Generating Output during such period, with such Minimum Loading Event Costs allocated among such Sponsoring Companies on a pro-rata basis in accordance with such Sponsoring Company's MWh share of the MWh reduction in the delivery of Available Energy causing any Minimum Loading Event. The applicable charges for Minimum Loading Event Costs as determined by the corporation in accordance with Section 5.05 shall be paid each month by the applicable Sponsoring Companies.

ARTICLE 6

Metering of Energy Supplied

6.01. *Measuring Instruments.* The parties hereto shall own and maintain such metering equipment as may be necessary to provide complete information regarding the delivery of power and energy to or for the account of any of the parties hereto; and the ownership and

expense of such metering shall be in accordance with agreements among them. Each party will at its own expense make such periodic tests and inspections of its meters as may be necessary to maintain them at the highest practical commercial standard of accuracy and will advise all other interested parties hereto promptly of the results of any such test showing an inaccuracy of more than 1%. Each party will make additional tests of its meters at the request of any other interested party. Other interested parties shall be given notice of, and may have representatives present at, any test and inspection made by another party.

ARTICLE 7

COSTS OF REPLACEMENTS AND ADDITIONAL FACILITIES; PAYMENTS FOR EMPLOYEE BENEFITS; DECOMMISSIONING, SHUTDOWN, DEMOLITION AND CLOSING CHARGES

7.01. *Replacement Costs.* The Sponsoring Companies shall reimburse Corporation for the difference between (a) the total cost of replacements chargeable to property and plant made by Corporation during any month prior thereto (and not previously reimbursed) and (b) the amounts received by Corporation as proceeds of fire or other applicable insurance protection, or amounts recovered from third parties responsible for damages requiring replacement, plus provision for all taxes on income on such difference; provided that, to the extent that the Corporation arranges for the financing of any replacements, the payments due under this Section 7.01 shall equal the amount of all principal, interest, taxes and other costs and expenses related to such financing during any month. Each Sponsoring Company's share of such payment shall be the percentage of such costs represented by its Power Participation Ratio. The term cost of replacements, as used herein, shall include all components of cost, plus removal expense, less salvage.

7.02. *Additional Facility Costs.* The Sponsoring Companies shall reimburse Corporation for the total cost of additional facilities and/or spare parts purchased and/or installed by Corporation during any month prior thereto (and not previously reimbursed), plus provision for all taxes on income on such costs; provided that, to the extent that the Corporation arranges for the financing of any additional facilities and/or spare parts, the payments due under this Section 7.02 shall equal the amount of all principal, interest, taxes and other costs and expenses related to such financing during any month. Each Sponsoring Company's share of such payment shall be the percentage of such costs represented by its Power Participation Ratio.

7.03. *Payments for Employee Benefits.* Not later than the effective date of termination of this Agreement, each Sponsoring Company will pay to Corporation its Power Participation Ratio share of additional amounts, after provision for any taxes that may be applicable thereto, sufficient to cover any shortfall if the amount of the Postretirement Benefit Obligation collected by the Corporation prior to the effective date of termination of the Agreement is insufficient to permit Corporation to fulfill its commitments or obligations with respect to both postemployment benefit obligations under the Statement of Financial Accounting Standards No. 112 and postretirement benefits other than pensions, as determined by Corporation

with the aid of an actuary or actuaries selected by the Corporation based on the terms of the Corporation's then-applicable plans.

7.04. *Decommissioning, Shutdown, Demolition and Closing.* The Sponsoring Companies recognize that a part of the cost of supplying power to it under this Agreement is the amount that may be incurred in connection with the decommissioning, shutdown, demolition and closing of the Project Generating Stations when production of electric power and energy is discontinued at such Project Generating Stations. Not later than the effective date of termination of this Agreement, each Sponsoring Company will pay to Corporation its Power Participation Ratio share of additional amounts, after provision for any taxes that may be applicable thereto, sufficient to cover any shortfall if the amount of the Decommissioning and Demolition Obligation collected by the Corporation prior to the effective date of termination of the Agreement is insufficient to permit Corporation to complete the decommissioning, shutdown, demolition and closing of the Project Generating Stations, based on the Corporation's recalculation of the Decommissioning and Demolition Obligation in accordance with Section 5.03(f) of this Agreement no earlier than twelve (12) months before the effective date of termination of this Agreement.

ARTICLE 8

BILLING AND PAYMENT

8.01. *Available Power, and Replacement and Additional Facility Costs.* As soon as practicable after the end of each month Corporation shall render to each Sponsoring Company a statement of all Available Power and Available Energy supplied to or for the account of such Sponsoring Company during such month, specifying the amount due to the Corporation therefor, including any amounts for reimbursement for the cost of replacements and additional facilities and/or spare parts incurred during such month, pursuant to *Articles 5 and 7* above. Such Sponsoring Company shall make payment therefor promptly upon the receipt of such statement, but in no event later than fifteen (15) days after the date of receipt of such statement. In case any factor entering into the computation of the amount due for Available Power and Available Energy cannot be determined at the time, it shall be estimated subject to adjustment when the actual determination can be made.

8.02. *Provisional Payments for Available Power.* The Sponsoring Companies shall, from time to time, at the request of the Corporation, make provisional semi-monthly payments for Available Power in amounts approximately equal to the estimated amounts payable for Available Power delivered by Corporation to the Sponsoring Companies during each semi-monthly period. As soon as practicable after the end of each semi-monthly period with respect to which Corporation has requested the Sponsoring Companies to make provisional semi-monthly payments for Available Power, Corporation shall render to each Sponsoring Company a separate statement indicating the amount payable by such Sponsoring Company for such semi-monthly period. Such Sponsoring Company shall make payment therefor promptly upon receipt of such statement, but in no event later than fifteen (15) days after the date of receipt of such

statement and the amounts so paid by such Sponsoring Company shall be credited to the account of such Sponsoring Company with respect to future payments to be made pursuant to *Articles 5 and 7* above by such Sponsoring Company to Corporation for Available Power.

8.03. *Minimum Loading Event Costs.* As soon as practicable after the end of each month, Corporation shall render to each Sponsoring Company a statement indicating any applicable charges for Minimum Loading Event Costs pursuant to Section 5.05 during such month, specifying the amount due to the Corporation therefor pursuant to *Article 5* above. Such Sponsoring Company shall make payment therefor promptly upon the receipt of such statement, but in no event later than fifteen (15) days after the date of receipt of such statement. In case the computation of the amount due for Minimum Loading Event Costs cannot be determined at the time, it shall be estimated subject to adjustment when the actual determination can be made, and all payments shall be subject to subsequent adjustment.

8.04. *Unconditional Obligation to Pay Demand and Other Charges.* The obligation of each Sponsoring Company to pay its specified portion of the Demand Charge under Section 5.03, the Transmission Charge under Section 5.04, and all charges under *Article 7* for any Month shall not be reduced irrespective of:

(a) whether or not any Available Power or Available Energy are supplied by the Corporation during such calendar month and whether or not any Available Power or Available Energy are accepted by any Sponsoring Company during such calendar month;

(b) the existence of any claim, set-off, defense, reduction, abatement or other right (other than irrevocable payment, performance, satisfaction or discharge in full) that such Sponsoring Company may have, or which may at any time be available to or be asserted by such Sponsoring Company, against the Corporation, any other Sponsoring Company, any creditor of the Corporation or any other Person (including, without limitation, arising as a result of any breach or alleged breach by either the Corporation, any other Sponsoring Company, any creditor of the Corporation or any other Person under this Agreement or any other agreement (whether or not related to the transactions contemplated by this Agreement or any other agreement) to which such party is a party); or

(c) the validity or enforceability against any other Sponsoring Company of this Agreement or any right or obligation hereunder (or any release or discharge thereof) at any time.

ARTICLE 9

GENERAL PROVISIONS

9.01. *Characteristics of Supply and Points of Delivery.* All power and energy delivered hereunder shall be 3-phase, 60-cycle, alternating current, at a nominal unregulated voltage designated for the point of delivery as described in this *Article 9*. Available Power and Available Energy to be delivered between Corporation and the Sponsoring Companies pursuant to this Agreement shall be delivered under the terms and conditions of the Tariff at the points, as scheduled by the Sponsoring Company in accordance with procedures established by the Operating Committee and in accordance with Section 9.02, where the transmission facilities of Corporation interconnect with the transmission facilities of any Sponsoring Company (or its successor or predecessor); provided that, to the extent that a joint and common market is established for the sale of power and energy by Sponsoring Companies within one or more of the regional transmission organizations or independent system operators approved by the Federal Energy Regulatory Commission in which the Sponsoring Companies are members or otherwise participate, then Corporation and the Sponsoring Companies shall take such action as reasonably necessary to permit the Sponsoring Companies to bid their entitlement to power and energy from Corporation into such market(s) in accordance with the procedures established for such market(s).

9.02. *Modification of Delivery Schedules Based on Available Transmission Capability.* To the extent that transmission capability available for the delivery of Available Power and Available Energy at any delivery point is less than the total amount of Available Power and Available Energy scheduled for delivery by the Sponsoring Companies at such delivery point in accordance with Section 9.01, then the following procedures shall apply and the Corporation and the applicable Sponsoring Companies shall modify their delivery schedules accordingly until the total amount of Available Power and Available Energy scheduled for delivery at such delivery point is equal to or less than the transmission capability available for the delivery of Available Power and Available Energy: (a) the transmission capability available for the delivery of Available Power and Available Energy at the following delivery points shall be allocated first on a pro rata basis (in whole MW increments) to the following Sponsoring Companies up to their Power Participation Ratio share of the total amount of Available Energy available to all Sponsoring Companies (and as applicable, further allocated among Sponsoring Companies entitled to allocation under this Section 9.02(a) in accordance with their Power Participation Ratios): (i) to Allegheny, Appalachian, Buckeye, Columbus, FirstEnergy, Indiana, Monongahela, Ohio Power and Peninsula (or their successors) for deliveries at the points of interconnection between the Corporation and Appalachian, Columbus, Indiana or Ohio Power, or their successors; (ii) to Duke Ohio (or its successor) for deliveries at the points of interconnection between the Corporation and Duke Ohio or its successor; (iii) to Dayton (or its successor) for deliveries at the points of interconnection between the Corporation and Dayton or its successor; and (iv) to Kentucky, Louisville and Southern Indiana (or their successors) for deliveries at the points of interconnection between the Corporation and Louisville or Kentucky, or their successors; and (b) any remaining transmission capability available for the delivery of

Available Power and Available Energy shall be allocated on a pro rata basis (in whole MW increments) to the Sponsoring Companies in accordance with their Power Participation Ratios.

9.03. *Operation and Maintenance of Systems Involved.* Corporation and the Sponsoring Companies shall operate their systems in parallel, directly or indirectly, except during emergencies that temporarily preclude parallel operation. The parties hereto agree to coordinate their operations to assure maximum continuity of service from the Project Generating Stations, and with relation thereto shall cooperate with one another in the establishment of schedules for maintenance and operation of equipment and shall cooperate in the coordination of relay protection, frequency control, and communication and telemetering systems. The parties shall build, maintain and operate their respective systems in such a manner as to minimize so far as practicable rapid fluctuations in energy flow among the systems. The parties shall cooperate with one another in the operation of reactive capacity so as to assure mutually satisfactory power factor conditions among themselves.

The parties hereto shall exercise due diligence and foresight in carrying out all matters related to the providing and operating of their respective power resources so as to minimize to the extent practicable deviations between actual and scheduled deliveries of power and energy among their systems. The parties hereto shall provide and/or install on their respective systems such communication, telemetering, frequency and/or tie-line control facilities essential to so minimizing such deviations; and shall fully cooperate with one another and with third parties (such third parties whose systems are either directly or indirectly interconnected with the systems of the Sponsoring Companies and who of necessity together with the parties hereto must unify their efforts cooperatively to achieve effective and efficient interconnected systems operation) in developing and executing operating procedures that will enable the parties hereto to avoid to the extent practicable deviations from scheduled deliveries.

In order to foster coordination of the operation and maintenance of Corporation's transmission facilities with those facilities of Sponsoring Companies that are owned or functionally controlled by a regional transmission organization or independent system operator, Corporation shall use commercially reasonable efforts to enter into a coordination agreement with any regional transmission organization or independent system operator approved by the Federal Energy Regulatory Commission that operates transmission facilities that interconnect with Corporation's transmission facilities, and to enter into a mutually agreeable services agreement with a regional transmission organization or independent system operator to provide the Corporation with reliability and security coordination services and other related services.

9.04. *Power Deliveries as Affected by Physical Characteristics of Systems.* It is recognized that the physical and electrical characteristics of the transmission facilities of the interconnected network of which the transmission systems of the Sponsoring Companies, Corporation, and other systems of third parties not parties hereto are a part, may at times preclude the direct delivery at the points of interconnection between the transmission systems of one or more of the Sponsoring Companies and Corporation, of some portion of the energy supplied under this Agreement, and that in each such case, because of said characteristics, some

of the energy will be delivered at points which interconnect the system of one or more of the Sponsoring Companies with systems of companies not parties to this Agreement. The parties hereto shall cooperate in the development of mutually satisfactory arrangements among themselves and with such companies not parties hereto whereby the supply of power and energy contemplated hereunder can be fulfilled.

9.05. *Operating Committee.* There shall be an "Operating Committee" consisting of one member appointed by the Corporation and one member appointed by each of the Sponsoring Companies electing so to do; provided that, if any two or more Sponsoring Companies are Affiliates, then such Affiliates shall together be entitled to appoint only one member to the Operating Committee. The "Operating Committee" shall establish (and modify as necessary) scheduling, operating, testing and maintenance procedures of the Corporation in support of this Agreement, including establishing: (i) procedures for scheduling delivery of Available Energy under Section 4.03, (ii) procedures for power and energy accounting, (iii) procedures for the reservation and scheduling of firm and non-firm transmission service under the Tariff for the delivery of Available Power and Available Energy, (iv) the Minimum Generating Unit Output, and (v) the form of notifications relating to power and energy and the price thereof. In addition, the Operating Committee shall consider and make recommendations to Corporation's Board of Directors with respect to such other problems as may arise affecting the transactions under this Agreement. The decisions of the Operating Committee, including the adoption or modification of any procedure by the Operating Committee pursuant to this Section 9.04, must receive the affirmative vote of at least two-thirds of the members of the Operating Committee, regardless of the number of members of the Operating Committee present at any meeting.

9.06. *Acknowledgment of Certain Rights.* For the avoidance of doubt, all of the parties to this Agreement acknowledge and agree that (i) as of the effective date of the Current Agreement, certain rights and obligations of the Sponsoring Companies or their predecessors under the Original Agreement were changed, modified or otherwise removed, (ii) to the extent that the rights of any Sponsoring Company or their predecessors were thereby changed, modified or otherwise removed as of the effective date of the Current Agreement, such Sponsoring Company may be entitled to rights under applicable law, regulation, rules or orders under the Federal Power Act or otherwise adopted by the Federal Energy Regulatory Commission ("FERC"), (iii) as a result of the elimination as of the effective date of the Current Agreement of the firm transmission service previously provided during the term of the Original Agreement to Sponsoring Companies or their predecessors whose transmission systems were only indirectly connected to the Corporation's facilities through intervening transmission systems by certain Sponsoring Companies or their predecessors whose transmission systems were directly connected to the Corporation's facilities, such Sponsoring Companies or their predecessors whose transmission systems were only indirectly connected to the Corporation's facilities through intervening transmission systems shall have been entitled to such "roll over" firm transmission service for delivery of their entitlement to their Power Participation Ratio share of Surplus Power and Surplus Energy under this Agreement, to the border of such Sponsoring Company system and intervening Sponsoring Company system, as would be accorded a long-

term firm point-to-point transmission service reservation under the then otherwise applicable FERC Open Access Transmission Tariff ("OATT"), (iv) the obligation of any Sponsoring Company to maintain or expand transmission capacity to accommodate another Sponsoring Company's "roll over" rights to transmission service for delivery of their entitlement to their Power Participation Ratio share of Surplus Power and Surplus Energy under this Agreement shall be consistent with the obligations it would have for long-term firm point-to-point transmission service provided pursuant to the then otherwise applicable OATT, and (v) the parties shall cooperate with any Sponsoring Company that seeks to obtain and/or exercise any such rights available under applicable law, regulation, rules or orders under the Federal Power Act or otherwise adopted by the FERC.

9.07. *Term of Agreement.* This Agreement shall become effective upon the Effective Date and shall terminate upon the earlier of: (1) June 30, 2040 or (2) the sale or other disposition of all of the facilities of the Project Generating Stations or the permanent cessation of operation of such facilities; provided that, the provisions of *Articles 5, 7 and 8*, this Section 9.07 and Sections 9.08, 9.09, 9.10, 9.11, 9.12, 9.14, 9.15, 9.16, 9.17 and 9.18 shall survive the termination of this Agreement, and no termination of this Agreement, for whatever reason, shall release any Sponsoring Company of any obligations or liabilities incurred prior to such termination.

9.08. *Access to Records.* Corporation shall, at all reasonable times, upon the request of any Sponsoring Company, grant to its representatives reasonable access to the books, records and accounts of the Corporation, and furnish such Sponsoring Company such information as it may reasonably request, to enable it to determine the accuracy and reasonableness of payments made for energy supplied under this Agreement.

9.09. *Modification of Agreement.* Absent the agreement of all parties to this Agreement, the standard for changes to provisions of this Agreement related to rates proposed by a party, a non-party or the Federal Energy Regulatory Commission (or a successor agency) acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipeline Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

9.10. *Arbitration.* Any controversy, dispute or claim arising out of this Agreement or the refusal by any party hereto to perform the whole or any part thereof, shall be determined by arbitration, in the City of Columbus, Franklin County, Ohio, in accordance with the Commercial Arbitration Rules of the American Arbitration Association or any successor organization, except as otherwise set forth in this Section 9.10.

The party demanding arbitration shall serve notice in writing upon all other parties hereto, setting forth in detail the controversy, dispute or claim with respect to which arbitration is demanded, and the parties shall thereupon endeavor to agree upon an arbitration board, which shall consist of three members ("Arbitration Board"). If all the parties hereto fail so to agree within a period of thirty (30) days from the original notice, the party demanding

arbitration may, by written notice to all other parties hereto, direct that any members of the Arbitration Board that have not been agreed to by the parties shall be selected by the American Arbitration Association, or any successor organization. No person shall be eligible for appointment to the Arbitration Board who is an officer, employee, shareholder of or otherwise interested in any of the parties hereto or in the matter sought to be arbitrated.

The Arbitration Board shall afford adequate opportunity to all parties hereto to present information with respect to the controversy, dispute or claim submitted to arbitration and may request further information from any party hereto; provided, however, that the parties hereto may, by mutual agreement, specify the rules which are to govern any proceeding before the Arbitration Board and limit the matters to be considered by the Arbitration Board, in which event the Arbitration Board shall be governed by the terms and conditions of such agreement.

The determination or award of the Arbitration Board shall be made upon a determination of a majority of the members thereof. The findings and award of the Arbitration Board shall be final and conclusive with respect to the controversy, dispute or claim submitted for arbitration and shall be binding upon the parties hereto, except as otherwise provided by law. The award of the Arbitration Board shall specify the manner and extent of the division of the costs of the arbitration proceeding among the parties hereto.

9.11. *Liability.* The rights and obligations of all the parties hereto shall be several and not joint or joint and several.

9.12. *Force Majeure.* No party hereto shall be held responsible or liable for any loss or damage on account of non-delivery of energy hereunder at any time caused by an event of Force Majeure. "Force Majeure" shall mean the occurrence or non-occurrence of any act or event that could not reasonably have been expected and avoided by exercise of due diligence and foresight and such act or event is beyond the reasonable control of such party, including to the extent caused by act of God, fire, flood, explosion, strike, civil or military authority, insurrection or riot, act of the elements, or failure of equipment. For the avoidance of doubt, "Force Majeure" shall in no event be based on any Sponsoring Company's financial or economic conditions, including without limitation (i) the loss of the Sponsoring Company's markets; or (ii) the Sponsoring Company's inability economically to use or resell the Available Power or Available Energy purchased hereunder.

9.13. *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio.

9.14. *Regulatory Approvals.* This Agreement is made subject to the jurisdiction of any governmental authority or authorities having jurisdiction in the premises and the performance thereof shall be subject to the following:

- (a) The receipt of all regulatory approvals, in form and substance satisfactory to Corporation, necessary to permit Corporation to perform all the duties and obligations to be performed by Corporation hereunder.

(b) The receipt of all regulatory approvals, in form and substance satisfactory to the Sponsoring Companies, necessary to permit the Sponsoring Companies to carry out all transactions contemplated herein.

9.15. *Notices.* All notices, requests or other communications under this Agreement shall be in writing and shall be sufficient in all respects: (i) if delivered in person or by courier, upon receipt by the intended recipient or an employee that routinely accepts packages or letters from couriers or other persons for delivery to personnel at the address identified above (as confirmed by, if delivered by courier, the records of such courier), (ii) if sent by facsimile transmission, when the sender receives confirmation from the sending facsimile machine that such facsimile transmission was transmitted to the facsimile number of the addressee, or (iii) if mailed, upon the date of delivery as shown by the return receipt therefor.

9.16. *Waiver.* Performance by any party to this Agreement of any responsibility or obligation to be performed by such party or compliance by such party with any condition contained in this Agreement may by a written instrument signed by all other parties to this Agreement be waived in any one or more instances, but the failure of any party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

9.17. *Titles of Articles and Sections.* The titles of the Articles and Sections in this Agreement have been inserted as a matter of convenience of reference and are not a part of this Agreement.

9.18. *Successors and Assigns.* This Agreement may be executed in any number of counterparts, all of which shall constitute but one and the same document.

9.181 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, but a party to this Agreement may not assign this Agreement or any of its rights, title or interests in or obligations (including without limitation the assumption of debt obligations) under this Agreement, except to a successor to all or substantially all the properties and assets of such party or as provided in Section 9.182 or 9.183, without the written consent of all the other parties hereto.

9.182 Notwithstanding the provisions of Section 9.181, any Sponsoring Company shall be permitted to, upon thirty (30) days notice to the Corporation and each other Sponsoring Company, without any further action by the Corporation or the other Sponsoring Companies, assign all or part of its rights, title and interests in, and obligations under this Agreement to a Permitted Assignee, provided that, the assignee and assignor of the rights, title and interests in, and obligations under, this Agreement have executed an assignment agreement in form and substance acceptable to the Corporation

in its reasonable discretion (including, without limitation; the agreement by the Sponsoring Company assigning such rights, title and interests in, and obligations under, this Agreement to reimburse the Corporation and the other Sponsoring Companies for any fees or expenses required under any security issued, or agreement entered into, by the Corporation as a result of such assignment, including without limitation any consent fee or additional financing costs to the Corporation under the Corporation's then-existing securities or agreements resulting from such assignment).

9.183 Notwithstanding the provisions of Section 9.181, any Sponsoring Company shall be permitted to, subject to compliance with all of the requirements of this Section 9.183, assign all or part of its rights, title and interests in, and obligations under this Agreement to a Third Party without any further action by the Corporation or the other Sponsoring Companies.

(a) A Sponsoring Company (the "Transferring Sponsor") that desires to assign all or part of its rights, title and interests in, and obligations under this Agreement to a Third Party shall deliver an Offer Notice to the Corporation and each other Sponsoring Company. The Offer Notice shall be deemed to be an irrevocable offer of the subject rights, title and interests in, and obligations under this Agreement to each of the other Sponsoring Companies that is not an Affiliate of the Transferring Sponsor, which offer must be held open for no less than thirty (30) days from the date of the Offer Notice (the "Election Period").

(b) The Sponsoring Companies (other than the Transferring Sponsor and its Affiliates) shall first have the right, but not the obligation, to purchase all of the rights, title and interests in, and obligations under this Agreement described in the Offer Notice at the price and on the terms specified therein by delivering written notice of such election to the Transferring Sponsor and the Corporation within the Election Period; provided that, irrespective of the terms and conditions of the Offer Notice, a Sponsoring Company may condition its election to purchase the interest described in the Offer Notice on the receipt of approval or consent from such Sponsoring Company's Board of Directors; provided further that, written notice of such conditional election must be delivered to the Transferring Sponsor and the Corporation within the Election Period and such conditional election shall be deemed withdrawn (as if it had never been provided) unless the Sponsoring Company that delivered such conditional election subsequently delivers written notice to the Transferring Sponsor and the Corporation on or before the tenth (10th) day after the expiration of the Election Period that all necessary approval or consent of such Sponsoring Company's Board of Directors have been obtained. To the extent that more than one Sponsoring Company exercises its right to purchase all of the rights, title and interests in, and

obligations under this Agreement described in the Offer Notice in accordance with the previous sentence, such rights, title and interests in, and obligations under this Agreement shall be allotted (successively if necessary) among the Sponsoring Companies exercising such right in proportion to their respective Power Participation Ratios.

(c) Each Sponsoring Company exercising its right to purchase any rights, title and interests in, and obligations under this Agreement pursuant to this Section 9.183 may choose to have an Affiliate purchase such rights, title and interests in, and obligations under this Agreement; provided that, notwithstanding anything in this Section 9.183 to the contrary, any assignment to a Sponsoring Company or its Affiliate hereunder must comply with the requirements of Section 9.182.

(d) If one or more Sponsoring Companies have elected to purchase all of the rights, title and interests in, and obligations under this Agreement of the Transferring Sponsor pursuant to the Offer Notice, the assignment of such rights, title and interests in, and obligations under this Agreement shall be consummated as soon as practical after the delivery of the election notices, but in any event no later than fifteen (15) days after the filing and receipt, as applicable, of all necessary governmental filings, consents or other approvals and the expiration of all applicable waiting periods. At the closing of the purchase of such rights, title and interests in, and obligations under this Agreement from the Transferring Sponsor, the Transferring Sponsor shall provide representations and warranties customary for transactions of this type, including those as to its title to such securities and that there are no liens or other encumbrances on such securities (other than pursuant to this Agreement) and shall sign such documents as may reasonably be requested by the Corporation and the other Sponsoring Companies. The Sponsoring Companies or their Affiliates shall only be required to pay cash for the rights, title and interests in, and obligations under this Agreement being assigned by the Transferring Sponsor.

(e) To the extent that the Sponsoring Companies have not elected to purchase all of the rights, title and interests in, and obligations under this Agreement described in the Offer Notice, the Transferring Sponsor may, within one-hundred and eighty (180) days after the later of the expiration of the Election Period or the deemed withdrawal of a conditional election by a Sponsoring Company under Section 9.183(b) hereof (if applicable), enter into a definitive agreement to, assign such rights, title and interests in, and obligations under this Agreement to a Third Party at a price no less than 92.5% of the purchase price specified in the Offer Notice and on other material terms and conditions no more

favorable to the such Third Party than those specified in the Offer Notice; provided that such purchases shall be conditioned upon: (i) such Third Party having long-term unsecured non-credit enhanced indebtedness, as of the date of such assignment, with a Standard & Poor's credit rating of at least BBB- and a Moody's Investors Service, Inc. credit rating of at least Baa3 (provided that, if such Third Party's long-term unsecured non-credit enhanced indebtedness is not currently rated by one of Standard & Poor's or Moody, such Third Party's long-term unsecured non-credit enhanced indebtedness, as of the date of such assignment, must have either a Standard & Poor's credit rating of at least BBB- or a Moody's Investors Service, Inc. credit rating of at least Baa3); (ii) the filing or receipt, as applicable, of any necessary governmental filings, consents or other approvals; (iii) the determination by counsel for the Corporation that the assignment of the rights, title or interests in, or obligations under, this Agreement to such Third Party would not cause a termination, default, loss or payment obligation under any security issued, or agreement entered into, by the Corporation prior to such transfer; and (iv) such Third Party executing a counterpart of this Agreement, and both such Third Party and the Sponsoring Company which is assigning its rights, title and interests in, and obligations under, this Agreement executing such other documents as may be reasonably requested by the Corporation (including, without limitation, an assignment agreement in form and substance acceptable to the Corporation in its reasonable discretion and containing the agreement by such Sponsoring Company to reimburse the Corporation and the other Sponsoring Companies for any fees or expenses required under any security issued, or agreement entered into, by the Corporation as a result of such assignment, including without limitation any consent fee or additional financing costs to the Corporation under the Corporation's then-existing securities or agreements resulting from such assignment). In the event that the Sponsoring Company and a Third Party have not entered into a definitive agreement to assign the interests specified in the Offer Notice to such Third Party within the later of one-hundred and eighty (180) days after the expiration of the Election Period or the deemed withdrawal of a conditional election by a Sponsoring Company under Section 9.183(b) hereof (if applicable) for any reason or if either the price to be paid by such Third Party would be less than 92.5% of the purchase price specified in the Offer Notice or the other material terms of such assignment would be more favorable to such Third Party than the terms specified in the Offer Notice, then the restrictions provided for herein shall again be effective, and no assignment of any rights, title and interests in, and obligations under this Agreement may be made thereafter without again offering the same to Sponsoring Companies in accordance with this Section 9.183.

ARTICLE 10

REPRESENTATIONS AND WARRANTIES

10.01. *Representations and Warranties.* Each Sponsoring Company hereby represents and warrants for itself, on and as of the date of this Agreement, as follows:

(a) it is duly organized, validly existing and in good standing under the laws of its state of organization, with full corporate power, authority and legal right to execute and deliver this Agreement and to perform its obligations hereunder;

(b) it has duly authorized, executed and delivered this Agreement, and upon the execution and delivery by all of the parties hereto, this Agreement will be in full force and effect, and will constitute a legal, valid and binding obligation of such Sponsoring Company, enforceable in accordance with the terms hereof, except as enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally;

(c) Except as set forth in Schedule 10.01(c) hereto, no consents or approvals of, or filings or registrations with, any governmental authority or public regulatory authority or agency, federal state or local, or any other entity or person are required in connection with the execution, delivery and performance by it of this Agreement, except for those which have been duly obtained or made and are in full force and effect, have not been revoked, and are not the subject of a pending appeal; and

(d) the execution, delivery and performance by it of this Agreement will not conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute a default under its charter or by-laws or any indenture or other material agreement or instrument to which it is a party or by which it may be bound or result in the imposition of any liens, claims or encumbrances on any of its property.

ARTICLE 11

EVENTS OF DEFAULT AND REMEDIES

11.01. *Payment Default.* If any Sponsoring Company fails to make full payment to Corporation under this Agreement when due and such failure is not remedied within ten (10) days after receipt of notice of such failure from the Corporation, then such failure shall constitute a "Payment Default" on the part of such Sponsoring Company. Upon a Payment Default, the

Corporation may suspend service to the Sponsoring Company that has caused such Payment Default for all or part of the period of continuing default (and such Sponsoring Company shall be deemed to have notified the Corporation and the other Sponsoring Companies that any Available Energy shall be available for scheduling by such other Sponsoring Companies in accordance with Section 4.032). The Corporation's right to suspend service shall not be exclusive, but shall be in addition to all remedies available to the Corporation at law or in equity. No suspension of service or termination of this Agreement shall relieve any Sponsoring Company of its obligations under this Agreement, which are absolute and unconditional.

11.02. *Performance Default.* If the Corporation or any Sponsoring Company fails to comply in any material respect with any of the material terms, conditions and covenants of this Agreement (and such failure does not constitute a Payment Default under Section 11.01), the Corporation (in the case of a default by any Sponsoring Company) and any Sponsoring Company (in the case of a default by the Corporation) shall give the defaulting party written notice of the default ("Performance Default"). To the extent that a Performance Default is not cured within thirty (30) days after receipt of notice thereof (or within such longer period of time, not to exceed sixty (60) additional days, as necessary for the defaulting party with the exercise of reasonable diligence to cure such default), then the Corporation (in the case of a default by any Sponsoring Company) and any Sponsoring Company (in the case of a default by the Corporation) shall have all of the rights and remedies provided at law and in equity, other than termination of this Agreement or any release of the obligation of the Sponsoring Companies to make payments pursuant to this Agreement, which obligation shall remain absolute and unconditional.

11.03. *Waiver.* No waiver by the Corporation or any Sponsoring Company of any one or more defaults in the performance of any provision of this Agreement shall be construed as a waiver of any other default or defaults, whether of a like kind or different nature.

11.04. *Limitation of Liability and Damages.* TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER THE CORPORATION, NOR ANY SPONSORING COMPANY SHALL BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST REVENUES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE.

[Signature pages follow]



21 East State Street • 17th Floor • Columbus, OH 43215-4288
Tel: 614.469.8000 • Fax: 614.469.4653

Matthew R. Pritchard
(614) 719-2842—Direct Dial
mpritard@mwncmh.com

April 14, 2014

VIA EMAIL

Steven T. Nourse
Matthew J. Satterwhite
AMERICAN ELECTRIC POWER CORPORATION
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215-2373

Daniel R. Conway
PORTER WRIGHT MORRIS & ARTHUR
Huntington Center
41 S. High Street
Columbus, OH 43215

**RE: IEU-Ohio's Sixth Set of Discovery on AEP-Ohio;
PUCO Case Nos. 13-2385-EL-SSO, *et al.***

Dear Messrs. Nourse, Satterwhite & Conway:

On March 24, 2014, IEU-Ohio served its Sixth Set of Discovery on AEP-Ohio. For your convenience, I have attached another copy of that set of discovery.

This discovery set seeks information regarding AEP-Ohio's actions pursuant to the Inter-Company Power Agreement ("ICPA"). Under the ICPA, AEP-Ohio currently retains a 19 percent entitlement and is responsible for a proportionate share of costs associated with generation plants of the Ohio Valley Electric Corporation ("OVEC"). As you are aware, AEP-Ohio has requested authority in this case to implement the Purchase Power Adjustment ("PPA") Rider. The PPA Rider, if approved, would flow through to all of AEP-Ohio's customers on a non-bypassable basis AEP-Ohio's net purchase power costs from the OVEC generating units. Thus, AEP-Ohio has placed retention and the costs under the ICPA at issue in this proceeding. Because IEU-Ohio's Interrogatories 6-1 through 6-6 and RPD 6-1 seek information regarding AEP-Ohio's continued participation in the ICPA and its ability to adjust that participation, the requests are seeking additional information about the basis on which AEP-Ohio is seeking to pass through the above-market costs of the OVEC entitlement to customers on a non-bypassable basis.

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Rather than provide the information requested in the Sixth Set of Discovery, AEP-Ohio has objected to the interrogatories and request for production of documents and refused to provide any responsive information. AEP-Ohio's response states: "The Company objects to the extent the request seeks information which is outside the scope of the case and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Through its December 4, 2013 Finding and Order in Case No. 12-1126-EL-UNC, the Commission authorized AEP-Ohio to retain the OVEC contractual entitlement and that adjudicative determination is now a final order. Documents and information leading up to that decision are reflected in the public record as part of that proceeding."

AEP-Ohio is incorrect that IEU-Ohio's requests are not within the scope of discovery. As stated in Rule 4901-1-16(B), O.A.C., "[e]xcept as otherwise provided in paragraphs (G) and (I) of this rule, any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Because AEP-Ohio has placed issues related to its OVEC entitlement into the subject matter of this proceeding by proposing to collect AEP-Ohio's net OVEC costs through the proposed PPA, IEU-Ohio's Interrogatories 6-1 through 6-6 and RPD 6-1 are within the scope of permissible discovery. As a result, AEP-Ohio is required by Commission rules to provide the information IEU-Ohio has sought in its interrogatories and request for production and its objection is unjustified.

IEU-Ohio is unaware of any public documents that address the information sought in its Sixth Set of Discovery. If such publicly available information does exist, AEP-Ohio's refusal to respond also does not comply with the requirements of the Commission's rules. If the information is available in the public record, AEP-Ohio is required by Rule 4901-1-19(C), O.A.C., to "specify the title of the document, the location of the document ..., and the page or pages from which the answer may be derived or ascertained." AEP-Ohio has not complied with this requirement.

Due to the fact that we must file testimony on May 6, 2014, IEU-Ohio is requesting prompt and complete responses to its Sixth Set of Discovery. Accordingly, please provide the requested information by Thursday, April 17, 2014. If we have not received the information by Thursday, April 17, 2014, IEU-Ohio may seek the assistance of the Commission in securing proper responses to its Sixth Set of Discovery.

Sincerely,

/s/ Matthew R. Pritchard
Matthew R. Pritchard

MRP:dr
Attachment

Matthew Pritchard

From: Matthew Pritchard
Sent: Thursday, April 17, 2014 12:25 PM
To: Matthew Pritchard
Subject: FW: AEP-Ohio's Incomplete Response to IEU-Ohio's 6th Set (13-2385)

Matt Pritchard, J.D.
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Direct Telephone: 614.719.2842
Fax: 614.469.4653
mpritchard@mwncmh.com



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From: Steven T Nourse [<mailto:stnourse@aep.com>]
Sent: Wednesday, April 16, 2014 12:32 PM
To: Matthew Pritchard
Cc: Frank Darr; Sam Randazzo; Scott Elisar; Debbie Ryan
Subject: RE: AEP-Ohio's Incomplete Response to IEU-Ohio's 6th Set (13-2385)

Matt:

Thanks for your clarification. I guess the bottom line is that, if IEU wants to proceed with the questions in Set 6 in their current form, I agree we are at an impasse on those items.

Thanks,
Steven T. Nourse
Senior Counsel
American Electric Power Service Corporation
Legal Department, 29th Floor
1 Riverside Plaza
Columbus, Ohio 43215-2373
Phone: (614) 716-1608 Audinet: 8-200-1608
Fax: (614) 716-2014 Audinet: 8-200-2014
Email: stnourse@aep.com



We power life's possibilities

From: Matthew Pritchard [<mailto:mpritchard@mwncmh.com>]
Sent: Wednesday, April 16, 2014 11:18 AM
To: Steven T Nourse
Cc: Frank Darr; Sam Randazzo; Scott Elisar; Debbie Ryan
Subject: RE: AEP-Ohio's Incomplete Response to IEU-Ohio's 6th Set (13-2385)

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Steve,

I believe I was clear in our discussion that IEU-Ohio was interested in what actions AEP-Ohio had already undertaken in regards to transferring the OVEC contractual entitlements. I think you misunderstood what I said; however, I apologize if I misspoke. Towards the conclusion of our phone discussion on Tuesday you offered to modify IEU-Ohio's 6th Set of questions such that the questions would be worded in terms of seeking information about AEP-Ohio's prospective options to transfer the OVEC contractual entitlement. I requested that you send a proposal in writing so that we could review it in our office. Your proposal in the email below indicates (consistent with my recollection of our phone conversation) that the modification of IEU-Ohio's 6th set was only an offer and that I had not agreed to any such terms during on conversation. I again apologize if you misunderstood my position.

Again, I believe the answers to the questions in IEU-Ohio's 6th Set about what AEP-Ohio has already done (or not done) in attempting to transfer its OVEC contractual entitlement are relevant to this proceeding and are within the proper scope of discovery. I believe this information will shed light on AEP-Ohio's ability to eventually transfer its OVEC contractual entitlement and reduce or eliminate the net costs that AEP-Ohio proposes to collect through the Purchase Power Adjustment Rider.

I appreciate AEP-Ohio's willingness to make a counter-offer to IEU-Ohio's 6th Set of discovery to answer the questions on a prospective basis; however, as I indicated in my email yesterday I believe discovery questions about what AEP-Ohio has done (our could do) prospective from the December 4, 2013 order can be best addressed through new discovery questions.

It appears we are still at an impasse as to IEU-Ohio's 6th Set of discovery regarding the actions AEP-Ohio has already undertaken in attempts to transfer the OVEC entitlement. Based on my understanding of AEP-Ohio's position, AEP-Ohio is unwilling to provide response to IEU-Ohio's 6th Set regarding what AEP-Ohio has already done (or not done) to transfer its OVEC contractual agreement under sections 9.182 and 9.183 of the ICPA, the reasons why AEP-Ohio had not attempted a transfer under these sections or the obstacles that prevented AEP-Ohio from completing a transfer under these sections. And, IEU-Ohio still has not received any specific citation to the public record in Case No. 12-1126-EL-UNC such that I could address AEP-Ohio's claim that the information sought is in the public record in that case.

You should expect to receive a discovery set with prospective questions and a Motion to Compel responses to IEU-Ohio's 6th Set of discovery in the coming days (if not later today).

Thanks,

Matt Pritchard, J.D.
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Direct Telephone: 614.719.2842

Fax: 614.469.4653
mpritchard@mwncmh.com



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From: Steven T Nourse [<mailto:stnourse@aep.com>]
Sent: Wednesday, April 16, 2014 10:39 AM
To: Matthew Pritchard
Cc: Frank Darr; Sam Randazzo; Scott Elisar; Debbie Ryan
Subject: RE: AEP-Ohio's Incomplete Response to IEU-Ohio's 6th Set (13-2385)

Your current approach is inconsistent with the discussion we had earlier this week, during which you stated that IEU's interest in pursuing this information was prospective and relates to the going-forward options available to AEP Ohio. I stated that we are willing to respond to those prospective questions, so the dispute should have been resolved.

Thanks,
Steven T. Nourse
Senior Counsel
American Electric Power Service Corporation
Legal Department, 29th Floor
1 Riverside Plaza
Columbus, Ohio 43215-2373
Phone: (614) 716-1608 Audinet: 8-200-1608
Fax: (614) 716-2014 Audinet: 8-200-2014
Email: stnourse@aep.com



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From: Matthew Pritchard [<mailto:mpritchard@mwncmh.com>]
Sent: Tuesday, April 15, 2014 4:56 PM
To: Steven T Nourse
Cc: Frank Darr; Sam Randazzo; Scott Elisar; Debbie Ryan
Subject: RE: AEP-Ohio's Incomplete Response to IEU-Ohio's 6th Set (13-2385)

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Steve,

I am going to have to reject your offer, but I will follow up with an additional set of discovery questions that is prospective in nature. I continue to believe that IEU-Ohio's discovery requests about what actions AEP-Ohio has taken under sections 9.182 and 9.183 of the ICPA to transfer its OVEC contractual entitlements, and the reasons or impediments that exist to have prevented AEP-Ohio from transferring its OVEC contractual entitlements under sections 9.182 and 9.183 of the ICPA are within

the proper scope of discovery. In any event, I do not believe that IEU-Ohio's discovery requests are a collateral attack on the December 4, 2013 Finding and Order in the 12-1126-EL-UNC, which noted that the authorization to retain the OVEC contractual entitlement was temporary in nature and that the authority to retain the contractual entitlement would only last "until the OVEC contractual entitlements can be transferred to AEP Genco or otherwise divested, or until otherwise ordered by the Commission."

Additionally, as noted in our letter yesterday, I do not believe that the information that we seek in Interrogatories 6-1 through 6-6 and RPD 6-1 is publicly available in Case No. 12-1126-EL-UNC and AEP-Ohio has not provided any specific citation to the public record as required by 4901-1-19(C), O.A.C.

I appreciate your counter-proposal reflected in your email below, but I believe prospective questions can be best addressed with new discovery requests rather than modifying the existing questions. As to the actions AEP-Ohio has taken to date to transfer its contractual entitlement under sections 9.182 and 9.183 of the ICPA, and the reasons and impediments that have prevented a transfer to date, it appears we are at an impasse. Given that the deadline to file testimony is quickly approaching, I plan to seek Commission intervention to expeditiously resolve the issue. In the coming days I plan to serve the additional set of discovery referenced above and will be filing a motion to compel with the Commission.

Thanks,

Matt Pritchard, J.D.

McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Direct Telephone: 614.719.2842
Fax: 614.469.4653
mpritchard@mwncmh.com



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From: Steven T Nourse [<mailto:stnourse@aep.com>]
Sent: Tuesday, April 15, 2014 1:53 PM
To: Matthew Pritchard
Cc: Frank Darr; Sam Randazzo; Scott Elisar; Debbie Ryan
Subject: RE: AEP-Ohio's Incomplete Response to IEU-Ohio's 6th Set (13-2385)

Matt:

Per our discussion this morning, I am offering to issue supplemental responses to clarify the intent of your questions and provide a supplemental response by clarifying that IEU INT-6-001 through -006 (and by extension RPD-6-001) are seeking responses that are prospective in nature and seek the answer going-forward and not looking back. As we

discussed, AEP Ohio continues to object to re-litigating issues involving the decision/approval to exclude OVEC from the corporate separation transfers at the end of 2013.

Under this approach, here is how each of the interrogatories would be modified:

INT 6-001 would be rephrased "did" becomes "could"

INT 6-002 The first part of the question up through the comma would be deleted and "did" becomes "would"

INT 6-003 would become "not applicable" since it asks for documents about the prior decisions related to 2013.

INT 6-004 "did" becomes "could"

INT 6-005 The first part of the question up through the comma would be deleted and "did" becomes "would"

INT 6-006 would become "not applicable" since it asks for documents about the prior decisions related to 2013.

Of course, AEP Ohio reserves the right to continue objecting as part of the response -- but would nonetheless provide a substantive response to these questions as clarified above. In addition, IEU can always ask follow-up questions if you want to further develop the question or ask a new question.

Please advise.

Thanks,

Steven T. Nourse

Senior Counsel

American Electric Power Service Corporation

Legal Department, 29th Floor

1 Riverside Plaza

Columbus, Ohio 43215-2373

Phone: (614) 716-1608 Audinet: 8-200-1608

Fax: (614) 716-2014 Audinet: 8-200-2014

Email: stnourse@aep.com



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From: Matthew Pritchard [<mailto:mpritchard@mwncmh.com>]
Sent: Monday, April 14, 2014 1:41 PM
To: Steven T Nourse; Matthew J Satterwhite; 'Daniel R. Conway'
Cc: Frank Darr; Sam Randazzo; Scott Elisar; Debbie Ryan
Subject: AEP-Ohio's Incomplete Response to IEU-Ohio's 6th Set (13-2385)

This is an EXTERNAL email. STOP. THINK before you CLICK links or OPEN attachments.

Good afternoon,

Attached is a letter acknowledging AEP-Ohio's incomplete response to IEU-Ohio's 6th Set of Discovery, which we received earlier today. Also attached for your convenience is IEU-Ohio's 6th Set of Discovery. As indicated in the attached letter, please provide a complete set of responses to IEU-Ohio's 6th Set of Discovery by Thursday April 17, 2014.

Thanks,

Matt Pritchard, J.D.

McNees Wallace & Nurick LLC

21 East State Street, 17th Floor

Columbus, OH 43215-4228

Direct Telephone: 614.719.2842

Fax: 614.469.4653



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Attachment F

AFFIDAVIT OF MATTHEW R. PRITCHARD

State of Ohio : S.S.

County of Franklin :

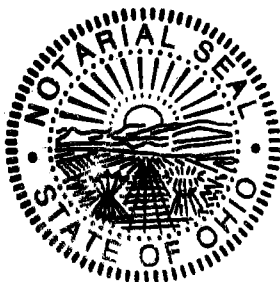
I, Matthew R. Pritchard, counsel for the Industrial Energy Users-Ohio ("IEU-Ohio"), being first duly sworn, depose and say:

1. On April 14, 2014, IEU-Ohio received discovery responses from Ohio Power Company ("AEP-Ohio") to IEU-Ohio's 6th Set in Case Nos. 13-2385-EL-SSO, *et al.*
2. After receiving incomplete discovery responses from AEP-Ohio, I sent a letter to AEP-Ohio on April 14, 2014, requesting that AEP-Ohio provide complete discovery responses.
3. On April 15, 2014, counsel for AEP-Ohio and myself had a phone conversation to attempt to resolve the discovery dispute. A resolution of the discovery dispute was not reached during this phone call, but AEP-Ohio made a counter-offer to respond to modified discovery requests. Following the phone conversation, AEP-Ohio submitted a written counter-offer via email to myself and other counsel for IEU-Ohio.
4. After discussing AEP-Ohio's counter-offer with other counsel for IEU-Ohio, AEP-Ohio's counter-offer was rejected on April 15, 2014.
5. I had additional conversations via email with counsel for AEP-Ohio on April 16, 2014, regarding AEP-Ohio's counter-offer, IEU-Ohio's rejection of the counter-offer, and IEU-Ohio's request that AEP-Ohio respond to IEU-Ohio's 6th Set as drafted. These conversations concluded with myself and counsel for AEP-Ohio agreeing that the parties were at an impasse.

Matthew R. Pritchard

Matthew R. Pritchard

Sworn before me and subscribed in my presence this 17th day of April 2014.



LILLIAN RENÉE GANNON
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Franklin County
My Comm. Exp. 10/7/15

Lillian Renée Gannon
Notary Public
State of Ohio

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in

Case No(s). 13-2385-EL-SSO, 13-2386-EL-AAM

Summary: Motion of Industrial Energy Users-Ohio to Compel Ohio Power Company and Request for Expedited Treatment and Memorandum in Support electronically filed by Mr. Matthew R. Pritchard on behalf of Industrial Energy Users-Ohio