

**BOEHM, KURTZ & LOWRY**

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

**Via E-file**

May 14, 2015

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

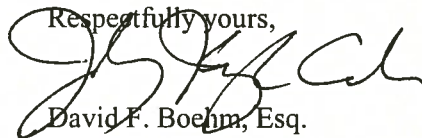
**In re: Case Nos. 14-841-EL-SSO; 14-842-EL-ATA**

Dear Sir/Madam:

Please find attached the MEMORANDUM CONTRA APPLICATIONS FOR REHEARING BY THE OHIO ENERGY GROUP e-filed today in the above-referenced matters.

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

Respectfully yours,



David F. Boehm, Esq.  
Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.  
Jody Kyler Cohn, Esq.  
**BOEHM, KURTZ & LOWRY**

MLKkew  
Encl.

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In The Matter Of The Application Of Duke Energy Ohio, Inc. For Authority To Establish A Standard Service Offer Pursuant To Section 4928.143, Revised Code, In The Form Of An Electric Security Plan, Accounting Modifications And Tariffs For Generation Service.</b>	<b>: Case No. 14-841-EL-SSO</b> <b>:</b> <b>:</b> <b>:</b> <b>:</b>
<b>In The Matter Of The Application Of Duke Energy Ohio, Inc. For Authority To Amend Its Certified Supplier Tariff, P.U.C.O. No. 20.</b>	<b>: Case No. 14-842-EL-ATA</b> <b>:</b>

---

---

**MEMORANDUM CONTRA APPLICATIONS FOR REHEARING  
BY THE OHIO ENERGY GROUP**

---

The Ohio Energy Group (“OEG”) submits this Memorandum Contra Applications for Rehearing filed by various parties at the Public Utilities Commission of Ohio (“Commission”) on May 4, 2015 in this proceeding. OEG’s decision not to respond to other arguments raised in this proceeding should not be construed as implicit agreement with those arguments.

**I. The Commission Acted Lawfully and Reasonably In Approving the Placeholder Price Stabilization Rider.**

Many parties claim that the Commission erred in approving Duke Energy Ohio, Inc.’s (“Duke” or “Company”) proposed Price Stabilization Rider (“PSR”) as a placeholder and in setting forth a list of factors that utilities seeking to include generation units in a PSR-like mechanism must address in future filings.<sup>1</sup> OEG disagrees. As OEG already set forth in detail in its Brief in this proceeding, a properly designed PSR is consistent with both Ohio and federal law.<sup>2</sup> For the sake of brevity, OEG incorporates by reference its arguments regarding the legality of the PSR here. That other parties may interpret the relevant Ohio statutes (R.C. 4928.143(B)(2)(d),

---

<sup>1</sup> Application for Rehearing by the Office of the Ohio Consumers’ Counsel at 3-42; Application for Rehearing of the City of Cincinnati at 3-4; Application for Rehearing of the Retail Energy Supply Association at 17-27; Application for Rehearing by Constellation NewEnergy, Inc. and Exelon Generation, LLC at 6-18; Application for Rehearing of IGS Energy at 17-30; Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio at 8-57; Application for Rehearing and Memorandum in Support of the Ohio Manufacturer’s Association at 4-13; Ohio Partners for Affordable Energy’s Application for Rehearing and Memorandum in Support at 7-21; Application for Rehearing by the Environmental Law & Policy Center and the Ohio Environmental Council at 3-18; Sierra Club’s Application for Rehearing at 2-18.

<sup>2</sup> Brief of the Ohio Energy Group at 2-5, 11-14.

R.C. 4928.02, etc.) differently is not a sufficient basis for the Commission to second-guess its carefully-reasoned finding that the placeholder PSR can be lawfully adopted in an Electric Security Plan (“ESP”) proceeding.

Any arguments regarding the potential implications of establishing the PSR are premature. Presently, the PSR is merely a placeholder. No costs or credits have yet been approved to flow through that Rider. As the Commission notes, it has established placeholder riders repeatedly in ESP proceedings.<sup>3</sup> Hence, the Commission acted consistent with its past practice when it established the placeholder PSR. And because the PSR is currently set at zero and does not yet flow through the costs or credits associated with any generating unit, there is no harm (or benefit) to customers as a result of merely establishing the Rider in this proceeding.

Some of the arguments against the PSR might have validity if Duke had requested approval of a Market Rate Offer. But it did not. The Legislatively-prescribed ESP process empowers the Commission to maintain jurisdiction over certain elements of generation pricing, primarily to provide price stability consistent with R.C. 4928.143(B)(2)(d). And that is what a properly designed PSR can provide. If the right generating units are offered to customers at their average embedded cost plus a reasonable profit margin, and if the transaction is supported by appropriate terms and conditions, then the PSR can be win-win. Customers can benefit by having a state-regulated cost-based hedge against full reliance on volatile FERC/PJM-regulated wholesale pricing. And utility shareholders can benefit by locking in a fixed return on certain generating units, which provides financial stability to them when wholesale prices are low in exchange for agreeing to a price cap when market prices are high.

Since Senate Bill 221 was enacted in 2008, there have been times when legacy generation pricing at average embedded cost has been both higher and lower than the marginal cost based wholesale market. Marginal cost pricing is good for customers during times of surplus, but very costly during times of shortages, when pricing must be high enough on a sustained basis to support new construction. Whether the average embedded cost of a particular generation unit will be higher or lower than the marginal cost of generation across the entire PJM footprint over the long term is debatable. But what is fairly clear is that marginal cost pricing for energy and capacity is more volatile.

---

<sup>3</sup> Opinion & Order (February 25, 2015) (“Order”) at 47.

The potential benefits of a properly structured PPA to the State of Ohio can extend beyond price stability. A properly structured PPA can support economic development consistent with R.C. 4928.02(N) by preserving power plant jobs, retaining state, local and school tax revenue, and utilizing local fuel sources for coal generation. Additionally, maintaining nuclear generation in Ohio can provide environmental benefits and help the State satisfy the requirements of the U.S. EPA's proposed Clean Power Plan since that generation resource is zero carbon-emitting. These are issues that FERC/PJM cannot even lawfully consider as they cannot adopt policies specifically aimed at promoting the economic interests of any particular state.

Duke, AEP Ohio, and FirstEnergy all obviously want to de-risk their generation portfolios by entering into PPAs for some of their units while maintaining the high risk/high reward of market pricing for the remainder of their generation assets. This puts the Commission and its Staff in the favorable position of being able to demand serious concessions to benefit customers. Now is a buyer's market. Although Duke has only limited control over the jointly-owned OVEC units, the Commission can still ensure that the Company and customers are in the same boat by requiring Duke to maintain a certain percentage of the financial interest in OVEC (e.g. 20%). And for non-OVEC units that may be included in Duke's PSR in the future, the authorized return on equity, capital structure, calculation of tax expense and depreciation expense, appropriate ratepayer/shareholder sharing of profits and losses, and the audit and review process are all areas where proposed PPAs can be brought closer into compliance with the Commission's minimum standards for PSR proposals set forth in the Order. If the generation owners are willing to make the necessary concessions to win Commission approval, then customers and the State economy will benefit. But if they are not, then customers will be no worse off than they are now.

The Commission's Order was an important first step to establishing a solid regulatory framework for generation pricing in Ohio and it should not be weakened on rehearing.

Respectfully submitted,



David F. Boehm, Esq.

Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

**BOEHM, KURTZ & LOWRY**

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: (513) 421-2255 Fax: (513) 421-2764

E-Mail: [dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com)

[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)

[kboehm@BKLawfirm.com](mailto:kboehm@BKLawfirm.com)

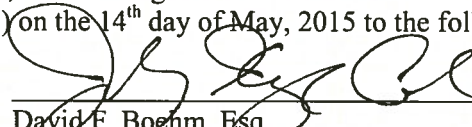
[jkylercohn@BKLawfirm.com](mailto:jkylercohn@BKLawfirm.com)

May 14, 2015

**COUNSEL FOR THE OHIO ENERGY GROUP**

## CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 14<sup>th</sup> day of May, 2015 to the following:



---

David F. Boehm, Esq.  
Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.  
Jody Kyler Cohn, Esq.

### **Constellation NewEnergy, Inc. and Exelon Generation Company, LLC**

M. Howard Petricoff  
Michael J. Settineri  
Gretchen L. Petrucci  
Vorys, Sater, Seymour And Pease Llp  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
[mhpretricroff@vorys.com](mailto:mhpretricroff@vorys.com)  
[misettineri@vorys.com](mailto:misettineri@vorys.com)  
[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)

### **Office of the Ohio Consumers' Counsel**

Maureen R. Grady  
Joseph P. Serio  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
[maureen.gradv@occ.ohio.gov](mailto:maureen.gradv@occ.ohio.gov)  
[ioseph.serio@occ.ohio.gov](mailto:ioseph.serio@occ.ohio.gov)

Dane Stinson  
Dylan F. Borchers  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[dstinson@bricker.com](mailto:dstinson@bricker.com)  
[dborchers@bricker.com](mailto:dborchers@bricker.com)

### **Duke Energy Ohio, Inc.**

Amy B. Spiller  
Rocco O. D'Ascenzo  
Jeanne W. Kingery  
Elizabeth H. Watts  
139 E. Fourth Street, 1303-Main  
P.O. Box 961  
Cincinnati, OH 45201-0960  
[amv.spiller@duke-energy.com](mailto:amv.spiller@duke-energy.com)  
[rocco.dascenzo@duke-energy.com](mailto:rocco.dascenzo@duke-energy.com)  
[elizabeth.watts@duke-energy.com](mailto:elizabeth.watts@duke-energy.com)  
[ianne.kingerv@duke-energy.com](mailto:ianne.kingerv@duke-energy.com)

### **FirstEnergy Solutions Corp.**

Mark A. Hayden  
Jacob A. McDermott  
Scott J. Casto  
FirstEnergy Service Company  
76 S. Main Street  
Akron, OH 44308  
[havdenm@firstenergycorp.com](mailto:havdenm@firstenergycorp.com)  
[imcdermott@firstenergycorp.com](mailto:imcdermott@firstenergycorp.com)  
[scasto@firstenergycorp.com](mailto:scasto@firstenergycorp.com)

### **IGS Energy**

Joseph Olikier  
6100 Emerald Parkway  
Dublin, Ohio 43016  
[ioliker@igsenergy.com](mailto:ioliker@igsenergy.com)

### **Ohio Manufacturers' Association**

Kimberly W. Bojko  
Jonathan Allison  
Carpenter Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus OH 43215  
[boiko@carpenterlipps.com](mailto:boiko@carpenterlipps.com)  
[allison@carpenterlipDS.com](mailto:allison@carpenterlipDS.com)

### **The Dayton Power and Light Company**

Judi L. Sobecki  
1065 Woodman Drive  
Dayton, OH 45432  
[iudi.sobecki@aes.com](mailto:iudi.sobecki@aes.com)

### **The Energy Professionals of Ohio**

Kevin R. Schmidt  
88 East Broad Street, Suite 1770  
Columbus, OH 43215  
[schmidt@sppgrp.com](mailto:schmidt@sppgrp.com)

**Direct Energy Services. LLC and Direct Energy Business. LLC**

Joseph M. Clark  
21 East State Street, 19th Floor  
Columbus, Ohio 43215  
[joseph.clark@directenergy.com](mailto:joseph.clark@directenergy.com)

Gerit F. Hull  
Eckert Seamans Cherin & Mellott, LLC  
1717 Pennsylvania Ave., N.W., 12th Floor  
Washington, DC 20006  
[ghull@eckertseamans.com](mailto:ghull@eckertseamans.com)

**Staff of the Public Utilities Commission of Ohio**

Steven Beeler  
Thomas Lindgren  
Ryan O'Rourke  
Attorney General's Section  
Public Utilities Commission of Ohio  
180 E. Broad St, 6th Floor  
Columbus, OH 43215  
[steven.beeler@puc.state.oh.us](mailto:steven.beeler@puc.state.oh.us)  
[thomas.lindgren@puc.state.oh.us](mailto:thomas.lindgren@puc.state.oh.us)  
[rvan.orourke@puc.state.oh.us](mailto:rvan.orourke@puc.state.oh.us)

**Ohio Power Company**

Steven T. Nourse  
Matthew J. Satterwhite  
Yazen Alami  
American Electric Power Service Corp.  
1 Riverside Plaza 29th Floor  
Columbus, Ohio 43215  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[misatterwhite@aep.com](mailto:misatterwhite@aep.com)  
[valami@aep.com](mailto:valami@aep.com)

**Industrial Energy Users-Ohio**

Samuel C. Randazzo  
Frank P. Darr  
Matthew R. Pritchard  
McNees Wallace & Nurick  
21 East State Street 17th Floor  
Columbus, OH 43215  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)

**Sierra Club**

Christopher J. Allwein  
Kegler Brown Hill & Ritter Co. LPA  
65 E. State Street, Suite 1800  
Columbus, Ohio 43215-4295  
[callwein@keglerbrown.com](mailto:callwein@keglerbrown.com)

**People Working Cooperatively. Inc.**

Andrew J. Sonderman  
Margeaux Kimbrough  
Kegler Brown Hill & Ritter LPA  
65 East State Street  
Columbus, Ohio 43215-4294  
[asonderman@keglerbrown.com](mailto:asonderman@keglerbrown.com)  
[mkinhrough@keglerbrown.com](mailto:mkinhrough@keglerbrown.com)

**The Greater Cincinnati Health Council**

Douglas E. Hart  
441 Vine Street Suite 4192  
Cincinnati, OH 45202  
[dhart@douglasshart.com](mailto:dhart@douglasshart.com)

**Ohio Environmental Council**

Trent Dougherty  
1207 Grandview Avenue, Suite 201  
Columbus, Ohio 43212-3449  
[tdougherty@theOEC.Org](mailto:tdougherty@theOEC.Org)

**Ohio Partners for Affordable Energy**

Colleen L. Mooney  
231 West Lima Street  
Findlay, OH 45839-1793  
[einoonev@ohionartners.org](mailto:einoonev@ohionartners.org)

**The Kroger Company**

Rebecca L. Hussey  
Carpenter Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus OH 43215  
[hussev@carpenterlipps.com](mailto:hussev@carpenterlipps.com)

**Wal-Mart Stores East LP and Sam's East Inc.**

Donald L. Mason  
Michael R. Traven  
Roetzel & Andress LPA  
155 East Broad Street, 12th Floor  
Columbus, Ohio 43215  
[dmason@ralaw.com](mailto:dmason@ralaw.com)  
[mtraven@ralaw.com](mailto:mtraven@ralaw.com)

Rick D. Chamberlain  
Behrens, Wheeler & Chamberlain  
6 N.E. 63rd, Suite 400  
Oklahoma City, OK 73105  
[rdclaw@swbell.net](mailto:rdclaw@swbell.net)

**Constellation NewEnergy Inc. and Exelon Generation Company LLC**

David I. Fein  
Exelon Corporation  
10 South Dearborn Street, 47th Floor  
Chicago, IL 60603  
[david.fein@exeloncorp.com](mailto:david.fein@exeloncorp.com)

Cynthia Fonner Brady  
Exelon Business Services Company  
4300 Winfield Road  
Warrenville, IL 60555  
[cvnthia.brady@constellation.com](mailto:cvnthia.brady@constellation.com)

Lael Campbell  
Exelon  
101 Constitution Avenue, NW  
Washington, DC 20001  
[lael.campbell@constellation.com](mailto:lael.campbell@constellation.com)

**EnerNOC, Inc.**

Gregory J. Poulos  
471 E. Broad St., Suite 1520  
Columbus, OH 43054  
[gpoulos@enemoc.com](mailto:gpoulos@enemoc.com)

Joel E. Sechler  
Carpenter Lipps & Leland LLP  
280 North High Street- Suite 1300  
Columbus, OH 43215  
[Sechler@carpenterlipps.com](mailto:Sechler@carpenterlipps.com)

**Natural Resources Defense Council**

Samantha Williams  
20 N Wacker Drive, Suite 1600  
Chicago, IL 60606  
[swilliams@nrdc.org](mailto:swilliams@nrdc.org)

**Environmental Law & Policy Center**

Justin Vickers  
33 East Wacker Drive, Suite 1600  
Chicago, IL 60601  
[jvickers@elpc.org](mailto:jvickers@elpc.org)

**City of Cincinnati**

Thomas J. O'Brien  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[tobrien@bricker.com](mailto:tobrien@bricker.com)

**Ohio Development Services Agency**

Dane Stinson  
Dylan Borchers  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[dstinson@bricker.com](mailto:dstinson@bricker.com)  
[dborchers@bricker.com](mailto:dborchers@bricker.com)



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**5/14/2015 2:47:19 PM**

**in**

**Case No(s). 14-0841-EL-SSO, 14-0842-EL-ATA**

Summary: Memorandum Ohio Energy Group (OEG) Memorandum Contra Applications for Rehearing electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group