BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the Ohio Development Services Agency for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities.	)))))	Case No. 15-1046-EL-USF

REPLY BRIEF OF
OHIO PARTNERS FOR AFFORDABLE ENERGY

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45840
Telephone: (419) 425-8860
FAX: (419) 425-8862
cmooney@ohiopartners.org
(will accept service by e-mail)

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I. Introduction

Ohio Partners for Affordable Energy ("OPAE") hereby respectfully submits to the Public Utilities Commission of Ohio ("Commission") this reply brief in the matter of the application of the Ohio Development Services Agency ("ODSA") to adjust the Universal Service Fund ("USF") riders of Ohio jurisdictional electric distribution utilities. Herein, OPAE replies to the initial briefs filed by ODSA and the Industrial Energy Users Ohio ("IEU-O").

II. ODSA and IEU-O agreed to the Commission's process to review the USF rate design.

ODSA claims that the Commission's jurisdiction in reviewing USF rider rates is "greatly restricted" and that the Commission is limited to adjusting the USF rider rate by the minimum amount necessary to provide additional revenues. ODSA states that the Commission cannot decrease the rider without the approval of ODSA's director after consultation by the director with the Public Benefits Advisory Board ("PBAB"). ODSA Brief at 4. ODSA claims the Commission has no authority over another state agency. Id. at 5.

This is the rate-design phase of the Commission's process to review ODSA's USF application. There is no issue in the rate-design phase about adjusting the USF rate currently in effect or decreasing the riders. The 2015 riders are in effect and no adjustment to the 2015 riders is being considered. ODSA's statements are irrelevant to this rate-design phase of the 2015 USF proceeding that will set the USF rider rates for 2016.

ODSA emphasizes the Commission's approval of past USF stipulations, but ignores provisions of the stipulations that ODSA signed and the Commission approved. If ODSA believes there is no obligation to honor stipulations that ODSA has signed because ODSA is a "state agency", then ODSA should cease entering into stipulations before the Commission. Because ODSA has entered into USF stipulations before the Commission, ODSA must recognize that its argument about the Commission's "greatly restricted" jurisdiction is both wrong and moot.

Pursuant to the stipulations that ODSA has signed, ODSA is prohibited from arguing that the Commission may not consider the rate design of the USF riders. Since 2001, ODSA has allowed the Commission to approve the rate design. The instant process was set forth in the Stipulation and Recommendation in Case No. 04-1616-EL-UNC (December 1, 2004). The 2004 Stipulation stated that new USF riders must be effective on a bills-rendered basis during the January billing cycle. Therefore, ODSA would file its USF applications no later than October 31 in order to meet this January deadline for the following year. 2004 Stipulation at 6-7. The 2004 Stipulation also stated that the October 31 deadline "may not be sufficient in the event that a party to the proceeding objects to the application and wishes to litigate the issue(s) raised in its objection." Therefore, ODSA agreed that it would file a Notice of Intent ("NOI") to submit its annual USF rider adjustment application and "specify the methodology it intends to employ in calculating the USF rider revenue

requirement and in designing the USF rider rates". 2004 Stipulation at 7. Upon the filing of the NOI, the Commission was to open the USF application and establish a schedule for the filing of objections or comments, responses, testimony, and the commencement of a hearing. Id. at 8.

In claiming that OPAE's testimony on the rate design is an improper "collateral attack" on the Commission's 2014 order on which OPAE sought no rehearing or appeal, ODSA violates the 2004 Stipulation and subsequent USF stipulations that ODSA signed. ODSA Brief at 15. The 2004 Stipulation in Case No. 04-1616-EL-UNC set up the NOI process, which OPAE followed precisely. The process is "sufficient in the event that a party to the proceeding objects to the application and wishes to litigate the issue(s) raised in its objection." 2004 Stipulation at 7. The objections were not simple mathematical issues. Id; Footnote 2 at 7 ("In so stating, the Signatory Parties are referring to an objection relating to something other than the mathematical accuracy of ODOD's calculations, as such an objection can almost certainly be resolved informally in a timely manner under the current process."). The 2004 Stipulation also stated at 5:

> By stipulating to the use of the EDU's October 1999 PIPP charge as a cap on the second block of the rider for purposes of this case, No Signatory Party waives its right to contest the continued use of the October 1999 PIPP charge as a cap on the second block of the rider in any future Section 4928.52(B), Revised Code, proceeding.

A party's right to challenge the second block of the rate design and the cap on the second block is explicitly set forth in the 2004 Stipulation and subsequent stipulations. The challenge occurs in the NOI phase of the USF process before ODSA files its application by October 31, 2015 to set the rates to take effect in January 2016. Pursuant to the 2004 Stipulation, a challenge to the rate design in

this 2015 case for the rates to take effect in 2016 would necessarily be based on the current 2015 USF rates approved in the 2014 case. No data was available for the 2015 USF rates when the Commission considered the 2015 rate design. No data for the 2016 USF rates will be available until October 2015. This NOI phase is the phase of the proceeding in which the rate design must be challenged.

Obviously, pursuant to the stipulations, by the time the 2015 application is filed before October 31, 2015, the rate design phase of the 2015 application will have been decided. ODSA will have already gotten its Commission order approving the rate design for 2016 before the October 2015 application for the 2016 USF rates is filed. If OPAE (or any other party) had waited until the October 31 application is made, ODSA-IEU-O would have cried that the rate design has already been approved in the NOI phase. This is absurd. Their argument about a "collateral attack" violates the stipulations they signed.

The 2004 Stipulation included the standard language that the Stipulation may be used in subsequent proceedings "as may be necessary to enforce the terms of the Stipulation." 2004 Stipulation at 2. ODSA (then ODOD) signed the 2004 Stipulation. IEU-O signed the 2004 Stipulation. OPAE signed the 2004 Stipulation. Case No. 04-1616-EL-UNC Stipulation (December 1, 2004) at 9. The Commission approved the 2004 Stipulation. Opinion and Order (December 8, 2004). OPAE complied with the terms of the 2004 Stipulation and subsequent USF stipulations. There is no justification for ODSA-IEU-O's argument that OPAE's testimony is a "collateral attack" on the 2014 Opinion and Order.

The "collateral attack" nonsense is not the only mistake about the process that ODSA and IEU-O advance. Both are confused about the burden in this case of proving that the Stipulation meets the Commission's three-prong test. ODSA argues that OPAE "did not file reply testimony", did not address the three-prong

test, and "failed to show a violation of R.C. 4928.52(C)". ODSA Brief at 12, 15. IEU-O argues that OPAE's testimony does not address the stipulation, fails to demonstrate that the stipulation is unreasonable, and fails to show how a uniform per kWh rate design is lawful. IEU-O Brief at 10.

ODSA-IEU-O seek approval of the Stipulation and are obliged to demonstrate to the Commission that the Stipulation meets the Commission's three-prong test for the reasonableness of stipulations. OPAE witness Rinebolt has no obligation to address the Stipulation in his testimony. He testified that nothing in the Stipulation would have changed his testimony. Tr. at 95-96. ODSA needed to file credible testimony supporting the Stipulation but utterly failed to do so. The cross examination of ODSA's witness demonstrated that she does not understand the rate design. Tr. at 15-21; 43, 49. She did not know who benefits from the rate design and who is harmed by it. She did not look at the contribution from customer classes. Tr. at 19. She did not look at the cost shift among customer classes. Tr. at 41. ODSA does not understand the administrative process established by the stipulations that ODSA has signed. The lack of evidence in support of the Stipulation is the problem here, and it is ODSA's problem, not OPAE's.

III. The Stipulation is not the product of serious bargaining among capable, knowledgeable parties.

The first prong of the Commission's three-part test for the reasonableness of stipulations is whether the stipulation is the product of serious bargaining among capable, knowledgeable parties. ODSA claims the settlement is the production of serious bargaining because the parties represent a diversity of interests. ODSA claims that it represents the interests of all customers, residential, commercial, and industrial who must pay the USF rider. ODSA Brief at 5.

Apparently ODSA believes it could be the only signatory party to a stipulation and represent a diversity of interests. This is not credible. Unlike the Office of the Ohio Consumers' Counsel, ODSA is not charged with representing the interests of the public before the Commission. One might argue that PBAB, which reviews and provides recommendations to ODSA related to the USF, represents the public, but there is no evidence in the record that PBAB ever reviewed or approved the two-step rate included in this filing.

ODSA's Susan Moser is the only witness in support of the Stipulation. She testified that the Stipulation represents a product of serious bargaining among capable, knowledgeable parties. ODSA Ex. 2 at 5. To support this, she testified that the parties to the case have been actively participating in the USF proceedings and other Commission proceedings for several years and have been signatories to prior NOI stipulations. Id. Active participation in past cases is irrelevant to the issue whether the Stipulation is a product of serious bargaining among the parties in this case. Stating that the parties to this case have been actively participating in Commission proceedings does not demonstrate that serious bargaining among the parties took place in this case. Yet this is the only record evidence in support of the first part of the three-part test.

The only signatories to the Stipulation are ODSA, IEU-O, the FirstEnergy operating companies, and The Dayton Power and Light Company. None of the signatory parties to the Stipulation filed objections or comments on the NOI. They had no issues to negotiate. There is no indication on the record that any bargaining took place among the signatory parties to the Stipulation.

Two parties filed objections to the NOI: OPAE and Ohio Power Company ("AEP Ohio"). Neither of these parties signed the Stipulation. AEP Ohio filed testimony stating that no serious bargaining occurred. AEP Ohio Ex. 2 at 1. OPAE

participated in no settlement negotiations and was unaware of any settlement negotiations taking place among any of the parties.

The Stipulation does not satisfy the first part of the Commission's three-part test. There is no evidence that the Stipulation is the product of any bargaining, let alone serious bargaining. Ms. Moser's testimony refers to no bargaining and can only lead to the conclusion that no bargaining took place to reach the Stipulation.

IV. The Stipulation, as a package, does not benefit customers and the public interest.

ODSA-IEU-O does not address the question whether the Stipulation benefits customers. ODSA presented no evidence to support a finding that its rate-design methodology provides a reasonable contribution by all customer classes to the USF revenue requirement. The record is totally devoid of information about the customer classes of the electric distribution utilities, including what those classes are, and what those classes contribute to the revenue requirement. In fact, ODSA's witness stated that ODSA did not actually consider the contribution by any particular customer class of any particular electric distribution utility in claiming that the methodology provided a reasonable contribution by all customer classes to the USF revenue requirement. Tr. at 15-19. ODSA did not look at the contribution from the residential class. Tr. at 19.

When asked what customer class she was referring to in her testimony, ODSA Ex. 2 at 6, Ms. Moser stated that for the purpose of USF ratemaking, there are two divisions of customers, those who use over 833,000 kWh a month, and then everyone else. Tr. at 16. When asked what customer classes she looked at, she ignored the question and stated that ODSA was "using the same methodology that was - - has been approved by the Public Utilities Commission in all the last ratemaking since 2001, so this is the same procedure that we have done where

anybody who is using less than 833,000 kilowatt hours for the sake of the USF rider is charged one rate, and anyone over 833 is charged a different rate". Tr. at 16. However, she also recognized that there is no customer class defined by usage of less than 833,000 monthly kWh or over 833,000 monthly kWh. Tr. at 21.

Ms. Moser also testified that a uniform kWh rate as recommended by OPAE would potentially lead to very large and abrupt increases in USF charges for some customers. She was asked what customers would have a very large and abrupt increase in USF charges under a uniform kWh rate. She testified that the rate for customers using 833,000 kWh monthly was based on 1999 rates and "they have stayed the same, where the rates for the rest of the rate classes has increased, so that there could be some abrupt charges for the other rate class." Tr. at 43, 49. She believed that customers using 833,000 kWh monthly have USF rates that "have stayed the same". Id.

Ms. Moser is wrong. The first block of the rate design has increased since 2001 and **all** customers have usage in the first block. Customers using 833,000 a month (10,000,000 annually) have **all** of their usage in the first block. Customers using 833,000 a month would experience a USF rate **decrease** if the rate were changed to a per kWh basis.

OPAE witness Rinebolt's data demonstrates that customers using 833,000 a month for all utilities would see a USF rate decrease if a per kWh rate were used. OPAE Exhibit 3, Attachment 1. An Ohio Power customer using 10,000,000 kWh per year (833,000 kWh a month) is paying $19,377.25 more annually under the two-block USF rider in 2015 than if a uniform kWh rate had been in place. OPAE Ex. 3 at 10. The very customer that ODSA thinks would experience an abrupt rate increase if the rate were a per kWh charge is the customer that actually is paying much higher USF rates every month under ODSA's rate design and would pay a

much lower USF rate every month if a per kWh rate design were used. The customer using 833,000 a month is harmed by ODSA's rate design because all its usage is in the ever-increasing first block. ODSA's rate design harms nearly all customers, but it harms large users using 10,000,000 kWh annually the most. This is the evolution of the ODSA rate design over the course of fifteen years. The first block must increase unreasonably because the second block is fixed at the 1999 rate. Any customer with all or practically all its usage in the first block is harmed. This harm to customers using 833,000 kWh monthly is contrary to the purpose of the two-block rate as originally approved.

As the years go by, only the very highest use customers with very high usage in the fixed second block benefit. The ODSA rate design is now benefiting only a very small subset of extremely large users in the industrial class. In Ohio Power, a customer using 120,000,000 kWh per year (10,000,000 a month) saves $429,098 per year under the two-block rate when compared to the uniform kWh rate. OPAE Ex. 3 at 10. How many customers of Ohio Power have usage as high as 120,000,000 kWh per year and benefit by $429,098 per year under the rate? ODSA has no idea how many extremely large-use customers are benefiting from its rate design. OPAE Ex. 1. A customer using 120,000,000 kWh per year in Columbus Southern Power's service territory saves $427,095 per year under the two-block rate. OPAE Ex. 3 at 10. How many Columbus Southern Power customers use 120,000,000 kWh per year and each save $427,095 per year under the two-block rate? ODSA has no idea how many extremely large-use customers are benefiting from its rate design. OPAE Ex. 2. Therefore, it is not possible that ODSA knows whether the rate design benefits customers and the public interest. The benefits to these very high users come at the expense of all other users, residential, commercial, and industrial customers using 10,000,000 kWh per year who must pick

up the shortfall. ODSA has no idea of the impact of the rate design, what industrial customers are benefiting and what industrial customers pay more.

ODSA does not understand the changes that have taken place since its rate design methodology was instituted in 2001. ODSA witness Moser stated that she has been doing the rate case based on the prior methodology that has been established over the last 15 years, that she did not look at it in terms of what would it be if we did it a different way, and that she did not consider whether one class is paying more than another. Tr. at 41.

There is no justification for the continued use of the legacy 1999 PIPP rider rates in effect in October 1999 as the second block of the USF rate design. The USF program has grown in size since 1999, and the 1999 rates have no relationship to the costs of the USF program as it exists today. OPAE Ex. 3 at 7-8. The 1999 PIPP rates were the rates of the unbundled electric utilities including generation, distribution, and transmission costs. There was no competition and no market-based pricing for generation in 1999. Even the utility companies have changed. Columbus Southern Power Company absorbed Monongahela Power Company, and now Columbus Southern Power Company has merged with Ohio Power Company. Distribution rates have increased. Nearly everything has changed since 1999, but the 1999 legacy PIPP rate is still being used as a second block for the USF rider.

Using the 16-year old PIPP rider rate as a second block simply cannot be justified. Customers using 10,000,000 kWh per year are paying in 2015 rider rates that are higher than the rates they would have paid if there were a uniform kWh rate in place. Nearly every Ohio electric utility customer is harmed by ODSA's rate design. The rider design should return to the original uniform kWh model.

V. The Stipulation violates important regulatory principles and practice.

The third part of the three-part test for the reasonableness of stipulations is whether the stipulation violates important regulatory principles and practices. ODSA witness Moser testified that the Stipulation does not violate any important regulatory principles and practices. ODSA Ex. 2 at 7. Her only support for this statement is that the Commission has approved the stipulations adopting the two-step block rate design since 2001 and the Commission has found in approving the stipulations that the two-block rate design does not violate R.C. 4928.52(C). Id. ODSA Brief at 12. ODSA also argues that the Commission approved the rate design in the 2014 NOI and found that it was insufficient to constitute a material shift among customers or to violate R.C. 4928.52(C). These arguments are irrelevant to the instant proceeding where the rate design for 2016 is the issue.

R.C. 4928.52(C) prohibits a shift among customer classes of the cost of funding low-income customer assistance programs. The PIPP riders in effect at the time of the enactment of R.C. 4928.52(C) were uniform for all kWh. The initial USF riders, which were established in the electric transition plan cases of the electric distribution utilities, were uniform for all kWh consistent with the practice before deregulation. In the first USF rider case filed by ODSA in 2001, the two-block rate design was established. In 2001, the two-block rate for Ohio Power resulted in a transfer of $2,037,245 of the revenue requirement from the second block to the first block and was considered de minimus. Subsequent stipulations in the annual USF rider cases have stated that the cost shift is "well within the range of estimation error inherent in any customer class cost-of-service analysis and does not violate the Section 4928.52(C), Revised Code, prohibition against shifting the costs of funding low-income customer assistance programs among customer classes." See, for

example, Stipulation and Recommendation in Case No. 02-2868-EL-UNC (January 13, 2003) at 5; Stipulation and Recommendation in Case No. 06-751-EL-UNC (December 1, 2006) at 6; Stipulation and Recommendation in Case No. 10-725-EL-USF (December 7, 2010) at 5; Stipulation and Recommendation in Case No. 12-1719-EL-USF (September 4, 2012) at 5. The law specifies that there should be no cost shift at all. The cost shift that is "within the range of estimation error" or "de minimus" is still an unlawful cost shift. Past stipulations have consistently been approved with the unlawful two-block rate design buttressed by the dubious "estimation error" or "de minimus" defense.

As the years go by, the cost shift is no longer "within the range of estimation error" as the stipulating parties have alleged. The USF riders in effect in 2015 show a large shift in responsibility for the cost of the program. The total revenue shift in 2015 is $28.5 million. Case No. 14-1002-EL-USF, Supplemental Testimony of Susan M. Moser at SMM-30.

ODSA-IEU-O attack OPAE's analysis. ODSA argues that OPAE's analysis does not show a shift in costs among customer classes, but only a variation of customer bills based upon usages so that OPAE failed to show a violation of R.C. 4928.52(C). ODSA Brief at 15. IEU-O also claims that OPAE does not identify any funding responsibility or shift among the customer classes as that term is regularly understood (residential, commercial, and industrial classes). Nor does Mr. Rinebolt's testimony identify any shift in funding responsibility by utility rate schedule. IEU-O at 9.

OPAE asked ODSA to provide information for Ohio Power and Columbus Southern Power that would have allowed a closer customer class analysis, but ODSA does not have that information. OPAE Exs. 1 and 2. It is ODSA-IEU-O that needs to show that the Stipulation meets the Commission's three-part test for the

reasonableness of stipulations, and ODSA-IEU-O has shown nothing at all about the contribution from customer classes or the shift in costs among customer classes. OPAE's showing of the variation of customer bills based on usage is the only showing in evidence in this proceeding. OPAE's showing is that the cost shifts are no longer "de minimus" or within the range of "estimation error". OPAE Ex. 3, Attachment 1.

IEU-O argues that OPAE witness Rinebolt "has no expertise in this area". IEU-O Brief at 6. IEU-O filed no testimony, but its brief shows no expertise at all. IEU-O believes that a uniform per kWh rate design is not reasonable when the underlying cost it distributes to customers is unrelated to kWh consumption. IEU-O at 6. IEU-O also argues that the Commission has issued orders for recovery of gas utility fixed distribution costs through a straight-fixed variable rate design which recovers most of the fixed costs through a flat monthly charge. IEU-O argues that the Commission has found it is inappropriate to collect fixed costs through volumetric charges because the costs were unrelated to consumption. IEU-O at 8.

IEU-O's arguments against a per kWh charge are ridiculous. The straight-fixed variable rate design sets a customer charge. A customer charge is fixed and recovers fixed charges. A customer charge has no relevance to this proceeding. Somehow, IEU-O has completely forgotten to notice a rate that is exactly on point to this USF proceeding, the gas PIPP rate design. The Commission sets the PIPP rates of natural gas distribution utilities. For example, in the case of Duke Energy Ohio, the current amount of PIPP arrearages for recovery is a plus $0.0257 per 100 cubic feet. *Duke Energy Ohio*, Case No. 15-418-GA-PIP, Tariff approved 45-days after filing application (July 24, 2015). In the case of Dominion East Ohio, the current amount of PIPP arrearages for recovery is $(0.1304) per thousand cubic feet and is applied to all volumes sold each month. *East Ohio Gas Company*, Case No.

15-419-GA-PIP, Tariff approved 45 days after filing (July 13, 2015). For the gas PIPP, the Commission approves per cubic feet charges applied to all volumes sold each month. The per kWh charge would be the equivalent of the per cubic feet charge. Given that only a per kWh charge avoids a cost shift among customer classes as required by R.C. 4928.52(C) and that the Commission uses a per cubic feet charge to recover gas PIPP arrearages, there is no lawful or reasonable foundation for ODSA's fifteen-year old rate design for USF riders.

Finally, AEP Ohio's witness Gill testified that the Stipulation violates important regulatory principles and practices by maintaining inefficiencies that are not prudent. AEP Ohio Ex. 2 at 5. The Commission should ensure that the USF system is managed efficiently and that the approved mechanism does not require electric utilities to provide outdated information or report in an inefficient manner. The Stipulation violates the practice of prudence within the operations of AEP Ohio and within the operations of ODSA and the Commission. Id. In addition, if the rate design were based on a per kWh charge for all customers, none of the information supporting the two-block rate design would be needed. A distribution utility would only need to provide two numbers, the revenue requirement of the program and the number of kWh used. Tr. at 198-199. Given that the Commission should adopt the merged Ohio Power rate in this case, the Commission should take the opportunity to adopt the rational and efficient per kWh rate for all electric distribution utilities.

VI. Conclusion

No evidence in this case supports a finding that the Stipulation meets the Commission's three-part test for the reasonableness of Stipulations. The only witness supporting the Stipulation merely repeated the three parts of the test and claimed they were met. There is not sufficient evidence upon which the Commission

can base a finding that the Stipulation meets the test when objections to the rate design were filed and the Stipulation ignored the objections.

There is no evidence that any bargaining led to the Stipulation. The Commission cannot find that the Stipulation is the product of serious bargaining.

There is no evidence that the Stipulation benefits customers. OPAE's testimony demonstrates that ODSA's rate design benefits only a small subset of very large industrial customers and harms all other customers including customers using 10,000,000 kWh annually. ODSA did not know this. ODSA did not show that the Stipulation benefits customers and the public interest.

There is no evidence that the Stipulation conforms to the law. The Stipulation violates Ohio law at Revised Code Section 4928.56(C) by shifting costs from one customer class to another. ODSA did not consider the cost shift in the Stipulation.

The Stipulation and Recommendation fails the Commission's three-part test for the reasonableness of stipulations and should not be approved. The Commission should reject the Stipulation and rationalize the USF rates by eliminating the two-block rate design. The USF rates should be per kWh rates for all customers of Ohio's six electric distribution utilities, Ohio Edison Company, Toledo Edison Company, The Cleveland Electric Illuminating Company, Duke Energy Ohio, The Dayton Power and Light Company, and Ohio Power Company. A single AEP Ohio USF rate structure should be approved for Ohio Power.

Respectfully submitted,

Colleen L. Mooney

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45840
Telephone: (419) 425-8860
FAX: (419) 425-8862
cmooney@ohiopartners.org
(will accept service by e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief was served electronically upon the following persons identified below in this case on this 9th day of September 2015.

/s/Colleen L. Mooney
Colleen L. Mooney

SERVICE LIST

Dane Stinson
Bricker & Eckler LLP
100 S. Third Street
Columbus, Ohio 43215
dstinson@bricker.com

Carrie Dunn
FirstEnergy Corp.
76 South Main Street
Akron, Ohio 44308
cdunn@firstenergycorp.com

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

Randall V. Griffin
Judi L. Sobecki
The Dayton Power & Light Company
1065 Woodman Avenue
Dayton, Ohio 45432
randall.griffin@dplinc.com
judi.sobecki@dplinc.com

Elizabeth H. Watts
Duke Energy Ohio
155 East Broad Street, 21st Floor
Columbus, Ohio 43215-3620
Elizabeth.Watts@duke-energy.com

Matthew R. Pritchard
Samuel C. Randazzo
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, Ohio 43215
mpritchard@mwncmh.com
sam@mwncmh.com

John Jones
Assistant Attorney General
Public Utilities Section
180 East Broad
Columbus, Ohio 43215
John.Jones@puc.state.oh.us

Joseph P. Serio
Office of Ohio Consumers' Counsel
10 West Broad Street, 18th Floor
Columbus, Ohio 43215
Joseph.Serio@occ.ohio.gov

Summary: Reply Brief electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy