

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Edison Company, The Cleveland Electric	)	
Illuminating Company and The Toledo	)	
Edison Company for Authority to Provide	)	Case No. 14-1297-EL-SSO
for a Standard Service Offer Pursuant to	)	
R.C. 4928.143 in the Form of an Electric	)	
Security Plan.	)	

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**INDUSTRIAL ENERGY USERS-OHIO'S MEMORANDUM CONTRA  
THE APPLICATION FOR REHEARING OF THE OFFICE OF  
THE OHIO CONSUMERS' COUNSEL AND  
NORTHWEST OHIO AGGREGATION COALITION**

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Frank P. Darr (Reg. No. 0025469)  
(Counsel of Record)  
Matthew R. Pritchard (Reg. No. 0088070)  
MCNEES WALLACE & NURICK LLC  
21 East State Street, 17<sup>TH</sup> Floor  
Columbus, OH 43215  
Telephone: (614) 469-8000  
Telecopier: (614) 469-4653  
fdarr@mwncmh.com  
mpritchard@mwncmh.com

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**ATTORNEYS FOR INDUSTRIAL ENERGY USERS-OHIO**

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The Office of the Ohio Consumers’ Counsel (“OCC”) and the Northwest Ohio Aggregation Coalition (“NOAC”) have sought rehearing of the Public Utilities Commission of Ohio’s (“Commission”) May 25, 2016 Finding and Order approving the electric security plan (“ESP”) compliance tariffs submitted by the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy”).<sup>1</sup>

OCC and NOAC present three assignments of error in their Application for Rehearing. Initially, OCC and NOAC argue that the Commission approved tariff sheets for Rider RRS that are inconsistent with the Commission’s approval of Rider RRS in its

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<sup>1</sup> OCC and NOAC’s Application for Rehearing repeats the arguments they previously advanced in an interlocutory appeal filed with the Commission on May 16, 2016, in this proceeding. OCC and NOAC’s interlocutory appeal has not been certified or otherwise ruled upon by the Commission. However, subsequent to advancing arguments in the interlocutory appeal that are similar to those raised in their Application for Rehearing, the Commission issued a decision accepting the compliance tariff sheets.

March 31, 2016 Opinion and Order. Based on the premise that the approved tariff sheets do not conform to the Commission's Opinion and Order, OCC and NOAC argue that there has been no finding that the version of Rider RRS reflected in the approved tariff sheets satisfies the requirements of R.C. 4928.143(B)(2)(d). Finally, they argue that the approval of tariff sheets alleged to be inconsistent with the Commission's Opinion and Order violates R.C. 4928.141(B). As relief, OCC and NOAC request that the Commission reject the entirety of FirstEnergy's ESP, order FirstEnergy to refile its prior ESP tariffs, and direct FirstEnergy to file an application proposing a new ESP.

As discussed below, OCC and NOAC's arguments are without merit. The approved Rider RRS tariff sheets are not inconsistent with the Commission's Opinion and Order. Additionally, the relief OCC and NOAC seek is not an appropriate remedy. The Commission's Finding and Order was limited to the approval of compliance tariffs. If OCC and NOAC were correct that the Rider RRS tariff sheets were inconsistent with the Commission's order, the proper remedy would be for the Commission to order FirstEnergy to file a compliant tariff sheet.

Regardless of the merits of OCC and NOAC's Application for Rehearing, neither OCC nor NOAC suffers any harm from the May 25, 2016 Finding and Order. The Rider RRS rates are effectively set to zero and will remain so unless ordered otherwise by the Commission. On the other hand, the relief that OCC and NOAC seek would work an irreparable hardship on those customers that have sought to enter new contractual relationships with FirstEnergy and competitive retail electric service ("CRES") providers in reliance on the Opinion and Order and the compliance tariff sheets approved in the

Finding and Order. Accordingly, the Commission should deny the Application for Rehearing.

## **I. BACKGROUND**

The Commission issued its Opinion and Order in this matter on March 31, 2016. In the Opinion and Order, the Commission modified and approved an application for an ESP to be effective June 1, 2016 and directed FirstEnergy to file tariff sheets in compliance with the Commission's decision. Opinion and Order at 121 (March 31, 2016). After the Commission issued its Opinion and Order, the Federal Energy Regulatory Commission ("FERC") issued a decision suspending the waiver of its affiliate standards as applied to the purchase power agreement ("PPA") and directed that the PPA be submitted for a review in accordance with 18 C.F.R. § 35.39(b). *Electric Power Supply Association v. FirstEnergy Solutions*, FERC Docket No. EL16-34, Order Granting Complaint at ¶ 53 (Apr. 27, 2016) ("*ESPA*"). FirstEnergy sought rehearing of the Opinion and Order and proposed an alternative to the approved version of Rider RRS. Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Application for Rehearing ("FirstEnergy Application for Rehearing") (May 2, 2016). Other intervenors also sought rehearing and opposed the alternative proposal submitted by FirstEnergy. In response to the applications for rehearing, the Commission granted rehearing for further consideration of the applications for rehearing. Entry on Rehearing (May 11, 2016).

While the matters discussed above were transpiring, FirstEnergy sought an extension of the order to file tariff sheets that complied with the Opinion and Order. FirstEnergy Motion for Extension of Time to File Tariffs (Apr. 29, 2016). On May 10, 2016,

the Attorney Examiner directed FirstEnergy to file tariff sheets that complied with the Commission's Opinion and Order by May 13, 2016. Entry (May 10, 2016).

FirstEnergy made the compliance filing on May 13, 2016. The filing contains tariff sheets for Rider RRS. No rate is stated for Rider RRS for any customer class. Letter from Eileen Mikkelsen to Barcy McNeal on Behalf of the Ohio Edison Company, Attachment 2, Tariff Sheet 127 (May 13, 2016). (Similar filings were made on behalf of the other two electric distribution utilities.) The tariff filing also contained sheets that would implement other terms and conditions such as the expansion of the interruptible load program and the non-market based transmission pilot. *Id.*

On May 20, 2016, the Staff of the Commission filed a letter stating that it had reviewed the tariff sheets filed by FirstEnergy and concluded that the sheets appear to be in compliance with the Commission's Opinion and Order. Letter from Tamara Turkenton and David Lipthratt to Docketing Division (May 20, 2016).

On May 16, 2016, OCC and NOAC filed an Interlocutory Appeal of the Attorney Examiner's Entry. OCC and NOAC assert that it was an error to require FirstEnergy to file tariff sheets that otherwise cannot be implemented due to the recent ruling of FERC. Joint Interlocutory Appeal, Request for Certification to Full Commission and Application for Review and Comments on Tariffs by Northwest Ohio Aggregation Coalition and the Office of the Ohio Consumers' Counsel at 2 ("Interlocutory Appeal") (May 16, 2016). The Attorney Examiner has not certified the appeal to the Commission or otherwise taken action on the interlocutory appeal.

On May 25, 2016, the Commission issued a Finding and Order regarding FirstEnergy's compliance tariff filing. In its Finding and Order, the Commission noted that

Staff had conducted a review of the compliance tariff filing and determined that the tariffs were in compliance with the Commission's Opinion and Order. Finding and Order at 3 (May 25, 2016). The Commission also indicated that it had reviewed the compliance tariffs and found that the proposed tariffs were consistent with the Commission's Opinion and Order. *Id.* at 4. Accordingly, the Commission approved the compliance tariffs. *Id.*

Additionally, the Commission noted that its approval of FirstEnergy's ESP and grant of rehearing was irrespective of "FERC's action rescinding the waiver of FirstEnergy Solutions' affiliate power sales restrictions." *Id.* In apparent recognition of the lack of injury from the Rider RRS tariff sheets, the Commission noted that FirstEnergy did not include "any proposed charges or credits in their retail rate stability rider (RRS)." *Id.*

## **II. ARGUMENT**

### **A. OCC and NOAC fail to demonstrate that the Rider RRS tariff sheets are inconsistent with the Opinion and Order**

OCC and NOAC argue that the Commission should grant rehearing and reverse its May 25, 2016 Finding and Order because the approved Rider RRS tariff sheets are inconsistent with the Commission's Opinion and Order. Specifically, OCC and NOAC argue that the approved Rider RRS tariff sheets implement the alternative to the approved Rider RRS that FirstEnergy proposed on rehearing. See Application for Rehearing by the Office of the Ohio Consumers' Counsel and Northwest Ohio Aggregation Coalition ("OCC/NOAC Application for Rehearing") at 6-7 (May 31, 2016). Their claim is incorrect.

Initially, OCC and NOAC advance several claims as to the ultimate fate of a PPA between FirstEnergy and FirstEnergy Solutions Corp. ("FES") in light of FERC's decision withdrawing the affiliate waivers. OCC/NOAC Application for Rehearing at 4-5 (May 31, 2016). Parties have already briefed the Commission on the effect of that FERC decision

in their May 2, 2016 applications for rehearing, which are currently pending on a grant of rehearing before the Commission. See, e.g., Application for Rehearing by the Office of the Ohio Consumers' Counsel and Northwest Ohio Aggregation Coalition at 72-77 (May 2, 2016); Entry on Rehearing at 3 (May 11, 2016).

Additionally, OCC and NOAC assert that the approved Rider RRS tariff sheets are inconsistent with the Opinion and Order because they implement FirstEnergy's proposed alternative to Rider RRS and not the approved Rider RRS. OCC/NOAC Application for Rehearing at 6-7 (May 31, 2016). However, OCC and NOAC fail to point to anything specific in the approved tariff sheets that reflects the approval of the alternate proposal and not the version approved in the Commission's Opinion and Order. See OCC/NOAC Application for Rehearing at 5-6 (May 31, 2016). Accordingly, the claim that the approved tariff sheets implement the pending alternate proposal for Rider RRS is incorrect.

All three of OCC and NOAC's assignments of error are premised on the fact that the approved Rider RRS tariff sheets are inconsistent with the Commission's Opinion and Order. Because there has been no demonstration that the approved Rider RRS tariff sheets are inconsistent with the Commission's Opinion and Order, OCC and NOAC's Application for Rehearing should be denied.

**B. OCC and NOAC's requested relief should be denied because it is beyond the scope of the available relief and incorrectly assumes FirstEnergy has refused to accept the Commission's modifications to the proposed ESP**

Based upon the argument that the Rider RRS tariff sheets reflect FirstEnergy's alternate proposal, OCC and NOAC assert that FirstEnergy has refused to accept the modifications to the proposed ESP ordered by the Commission. See, e.g., OCC/NOAC Application for Rehearing at 5 (May 31, 2016) ("FirstEnergy's filing rejected what the

PUCO has approved and modified”). Pursuant to R.C. 4928.143(C)(2), OCC and NOAC argue that this refusal should be treated as FirstEnergy’s withdrawal from the modified ESP, requiring the Commission to order FirstEnergy to refile its prior ESP tariffs. The argument is without merit.

The Commission’s Finding and Order only approved compliance tariffs (which the Staff and the Commission have both found to be consistent with the Commission’s Opinion and Order). If OCC and NOAC were correct that the Rider RRS tariff sheets were inconsistent with the Commission’s Opinion and Order, the proper remedy would be to require FirstEnergy to file compliant tariff sheets. Unless FirstEnergy withdraws from the ESP, there is no basis to order FirstEnergy to withdraw its current ESP tariff sheets and to refile its prior ESP tariffs under R.C. 4928.143(C)(2).

**C. OCC and NOAC do not suffer any harm from a zero-rate Rider RRS, while other customers would suffer harm from the withdrawal of the current ESP tariffs and reversion to the prior ESP tariffs**

As filed, the Rider RRS tariff sheets do not state any rate for any customer class, and the rates will remain at zero until the Commission authorizes some other rate. R.C. 4905.22 and 4905.32. If, as OCC and NOAC argue, no Rider RRS rate may ever be approved, then OCC and NOAC will suffer no injury from the Commission’s current authorization of the Rider RRS tariff sheets. Accordingly, OCC and NOAC fail to demonstrate any harm from continuation of the currently authorized Rider RRS tariff sheets.

While OCC and NOAC fail to demonstrate harm from the status quo, many of FirstEnergy’s customers would suffer injury from the relief sought by OCC and NOAC in their Application for Rehearing. The ESP that became effective on June 1, 2016 contains provisions expanding the interruptible program and a transmission pilot that will offer the



opportunity for some customers to reduce their total energy bills by managing their demand levels. These programs that have the effect of reducing system demand during peak periods have the potential to benefit all customers, including those served by OCC and NOAC. For example, the benefits of the interruptible program include increased system reliability and stability, the prevention of load shedding (*i.e.*, rolling blackouts) during emergency events, and job retention. See citations to transcript in the Post-Hearing Brief of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company at 108 and n. 521-23 (Feb. 16, 2016) (“FirstEnergy Initial Brief”); Post-Hearing Brief of the Ohio Energy Group at 24-25 (Feb. 16, 2016) (“OEG Initial Brief”); and Initial Brief in Support of ESP IV Stipulation by Nucor Steel Marion, Inc. at 12-15 (“Nucor Initial Brief”). By providing eligible customers a means of reducing their electric generation expenses, continuation of a modified interruptible program also furthers Ohio industrial companies’ effectiveness in the global economy. FirstEnergy Initial Brief at 148. As the record demonstrates, an interruptible rate program advances “numerous benefits, including the promotion of economic development and the retention of manufacturing jobs.” *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO, *et al.*, Opinion and Order at 40 (Feb. 25, 2015). Thus, although OCC and NOAC cannot demonstrate any prejudice from the Commission’s approval of the Rider RRS tariff sheets, granting the relief OCC and NOAC seek will harm not only large energy users, but all customers of FirstEnergy generally.

### III. CONCLUSION

For the foregoing reasons, the Commission should deny OCC and NOAC's May 31, 2016 Application for Rehearing in this matter.

Respectfully submitted,

/s/ Matthew R. Pritchard

Frank P. Darr (Reg. No. 0025469)  
Matthew R. Pritchard (Reg. No. 0088070)  
MCNEES WALLACE & NURICK LLC  
21 East State Street, 17<sup>TH</sup> Floor  
Columbus, OH 43215  
Telephone: (614) 469-8000  
Telecopier: (614) 469-4653  
fdarr@mwncmh.com  
mpritchard@mwncmh.com

**Attorneys for Industrial Energy Users-  
Ohio**

## **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 upon the following parties." In addition, I hereby certify that a service copy of the foregoing *Industrial Energy Users-Ohio's Memorandum Contra the Application for Rehearing of the Office of the Ohio Consumers' Counsel and Northwest Ohio Aggregation Coalition* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio, to the following parties of record this 9<sup>th</sup> day of June 2016, *via* electronic transmission.

/s/ Matthew R. Pritchard

Matthew R. Pritchard

James W. Burk  
(Counsel of Record)  
Carrie M. Dunn  
FIRSTENERGY SERVICE COMPANY  
76 South Main Street  
Akron, Ohio 44308  
burkj@firstenergycorp.com  
cdunn@firstenergycorp.com

James F. Lang  
N. Trevor Alexander  
CALFEE, HALTER & GRISWOLD LLP  
The Calfee Building  
1405 East Sixth Street  
Cleveland, Ohio 44114  
jlang@calfee.com  
tallexander@calfee.com

David A. Kutik  
JONES DAY  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
dakutik@jonesday.com

**COUNSEL FOR OHIO EDISON  
COMPANY, THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY  
THE TOLEDO EDISON COMPANY**

Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.  
Jody Kyler Cohn, Esq.  
BOEHM, KURTZ & LOWRY  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
mkurtz@BKLawfirm.com  
kboehm@BKLawfirm.com  
jkylercohn@BKLawfirm.com

### **COUNSEL FOR THE OHIO ENERGY GROUP**

Steven T. Nourse  
Matthew J. Satterwhite  
Yazen Alami  
American Electric Power Service  
Corporation  
1 Riverside Plaza 29<sup>th</sup> Floor  
Columbus, Ohio 43215  
stnourse@aep.com  
mjsatterwhite@aep.com  
yalami@aep.com

### **COUNSEL FOR OHIO POWER COMPANY**

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

Larry S. Sauer  
(Counsel of Record)  
Maureen R. Willis  
Kevin F. Moore  
Ajay K. Kumar  
William J. Michael  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
10 West Broad Street – Suite 1800  
Columbus, Ohio 43215  
Larry.sauer@occ.ohio.gov  
maureen.willis@occ.ohio.gov  
William.Michael@occ.ohio.gov  
Kevin.moore@occ.ohio.gov  
Ajay.kumar@occ.ohio.gov

**COUNSEL FOR THE OFFICE OF THE  
OHIO CONSUMERS' COUNSEL**

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

Adrian Thompson  
Taft Stettinius & Hollister LLP  
200 Public Square, Suite 3500  
Cleveland, Ohio 44114  
athompson@taftlaw.com

**COUNSEL FOR CLEVELAND MUNICIPAL  
SCHOOL DISTRICT**

Marilyn L. Widman  
Widman & Franklin, LLC  
405 Madison Ave., Suite 1550  
Toledo, Ohio 43604  
Marilyn@wflawfirm.com

**COUNSEL FOR IBEW LOCAL 245**

Richard C. Sahli (0007360)  
Richard Sahli Law Office, LLC  
981 Pinewood Lane  
Columbus, OH 43230-3662  
rsahli@columbus.rr.com

Michael Soules  
Earthjustice  
1625 Massachusetts Ave. NW,  
Suite #702  
Washington, DC 20036  
msoules@earthjustice.org

Shannon Fisk  
(Counsel of Record)  
Earthjustice  
1617 John F. Kennedy Blvd.,  
Suite #1675  
Philadelphia, PA 19103  
sfisk@earthjustice.org

Tony G. Mendoza  
Kristin Henry  
Sierra Club  
85 Second Street, Second Floor  
San Francisco, CA 94105-3459  
tony.mendoza@sierraclub.org  
kristin.henry@sierraclub.org

**COUNSEL FOR THE SIERRA CLUB**

Jennifer L. Spinosi (0089162)  
(Counsel of Record)  
Direct Energy  
21 East State Street, 19<sup>th</sup> Floor  
Columbus, Ohio 43215  
jennifer.spinosi@directenergy.com

Scott R. Dismukes, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
U.S. Steel Tower  
600 Grant Street, 44<sup>th</sup> Floor  
Pittsburgh, PA 15219  
sdismukes@eckertseamans.com

Daniel Clearfield, Esq.  
Sarah Stoner, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
dclearfield@eckertseamans.com  
sstoner@eckertseamans.com

**COUNSEL FOR DIRECT ENERGY  
SERVICES, LLC, DIRECT ENERGY  
BUSINESS, LLC AND DIRECT ENERGY  
BUSINESS MARKETING, LLC**

Colleen L. Mooney  
(Counsel of Record)  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Findlay, Ohio 45839-1793  
cmooney@ohiopartners.org

**COUNSEL FOR OHIO PARTNERS FOR  
AFFORDABLE ENERGY**

Joseph E. Olier  
(Counsel of Record)  
IGS Energy  
6100 Emerald Parkway  
Dublin, Ohio 43016  
joliker@igsenergy.com

**COUNSEL FOR IGS ENERGY**

Celia M. Kilgard  
Devin D. Parram  
Taft Stettinius & Hollister LLP  
65 East State Street, Suite 1000  
Columbus, Ohio 43215  
ckilgard@taftlaw.com  
dparram@taftlaw.com

**COUNSEL FOR THE KROGER CO.**

Richard L. Sites  
Ohio Hospital Association  
155 East Broad Street, 15<sup>th</sup>  
Columbus, Ohio 43215  
ricks@ohanet.org

Dane Stinson  
Dylan F. Borchers  
Bricker & Eckler LLP  
100 S. Third Street  
Columbus, OH 43215  
dstinson@bricker.com  
dborchers@bricker.com

**COUNSEL FOR THE OHIO HOSPITAL  
ASSOCIATION**

Michael K. Lavanga  
Garrett A. Stone  
Stone Mattheis Xenopoulos & Brew, P.C.  
1025 Thomas Jefferson Street, N.W.  
8<sup>th</sup> Floor, West Tower  
Washington, D.C. 20007-5201  
mkl@smxblaw.com  
gas@smxblaw.com

**COUNSEL FOR NUCOR STEEL MARION,  
INC.**

Barbara A. Langhenry  
Harold A. Madorsky  
Kate E. Ryan (Counsel of Record)  
City of Cleveland  
601 Lakeside Avenue – Room 106  
Cleveland, Ohio 44114  
blanghenry@city.cleveland.oh.us  
hmadorsky@city.cleveland.oh.us  
kryan@city.cleveland.oh.us

**COUNSEL FOR THE CITY OF  
CLEVELAND**

Kimberly W. Bojko  
Danielle M. Ghiloni  
Carpenter Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, Ohio 43215  
Bojko@carpenterlipps.com  
ghiloni@carpenterlipps.com

**COUNSEL FOR OMAEG**

Lisa M. Hawrot  
Spilman Thomas & Battle, PLLC  
Century Centre Building  
1233 Main Street, Suite 4000  
Wheeling, West Virginia 26003  
lhawrot@spilmanlaw.com

Derrick Price Williamson  
Spilman Thomas & Battle, PLLC  
1100 Bent Creek Blvd., Suite 101  
Mechanicsburg, Pennsylvania 17050  
dwilliamson@spilmanlaw.com

Carrie M. Harris  
Spilman Thomas & Battle, PLLC  
310 First Street, Suite 1100  
Roanoke, Virginia 24002-0090  
charris@spilmanlaw.com

**COUNSEL FOR WAL-MART STORES  
EAST, LP AND SAM'S EAST, INC.**

Joseph P. Meissner  
Attorney at Law  
1223 W. 6<sup>th</sup> Street – 4<sup>th</sup> Floor  
Cleveland, Ohio 44113  
meissnerjoseph@yahoo.com

**COUNSEL FOR CITIZENS COALITION,  
CONSUMER PROTECTION  
ASSOCIATION, CLEVELAND HOUSING  
NETWORK, AND THE COUNCIL FOR  
ECONOMIC OPPORTUNITIES IN  
GREATER CLEVELAND**

Thomas R. Hays  
8355 Island Lane  
Maineville, Ohio 45039  
trhayslaw@gmail.com

**COUNSEL FOR LUCAS COUNTY  
BOARD OF COMMISSIONERS**

Leslie Kovacic  
Counsel for the City of Toledo  
420 Madison Avenue  
Toledo, Ohio 43604  
lesliekovacic@toledo.oh.gov

**COUNSEL FOR THE CITY OF TOLEDO**

Glenn S. Krassen  
(Counsel of Record)  
Bricker & Eckler LLP  
1001 Lakeside Ave., Suite 1350  
Cleveland, Ohio 44114  
gkrassen@bricker.com

Dane Stinson  
Dylan Borchers  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215  
dstinson@bricker.com  
dborchers@bricker.com

**COUNSEL FOR NORTHEAST OHIO  
PUBLIC ENERGY COUNCIL; OHIO  
SCHOOLS COUNCIL; AND,  
POWER4SCHOOLS**

Michael J. Settineri (0073369)  
Gretchen L. Petrucci (0046608)  
Vorys, Sater, Seymour and Pease LLP  
52 E. Gay Street  
Columbus, Ohio 43215  
mjsettineri@vorys.com  
glpetrucci@vorys.com

**COUNSEL FOR DYNEGY INC.**

Matthew R. Cox  
Matthew Cox Law, Ltd.  
88 East Broad Street, Suite 1560  
Columbus, Ohio 43215  
matt@matthewcoxlaw.com

**COUNSEL FOR THE COUNCIL OF  
SMALLER ENTERPRISES**

Madeline Fleisher  
Staff Attorney  
Environmental Law & Policy Center  
21 W. Broad St., Suite 500  
Columbus, OH 43215  
mfleisher@elpc.org

**COUNSEL FOR THE ENVIRONMENTAL  
LAW & POLICY CENTER**

Trent Dougherty  
1145 Chesapeake Avenue, Suite I  
Columbus, OH 43212  
tdougherty@theOEC.org

John Finnigan  
128 Winding Brook Lane  
Terrace Park, Ohio 45174  
jfinnigan@edf.org

**COUNSEL FOR THE OHIO  
ENVIRONMENTAL COUNCIL AND  
ENVIRONMENTAL DEFENSE FUND**

Michael J. Settineri  
Gretchen L. Petrucci  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
Columbus, Ohio 43216-1008  
mjsettineri@vorys.com  
glpetrucci@vorys.com

Cynthia Brady  
Exelon Business Services  
4300 Winfield Rd.  
Warrenville, Illinois 60555  
Cynthia.brady@exeloncorp.com

David I. Fein  
Exelon Corporation  
10 South Dearborn Street – 47<sup>th</sup> Fl.  
Chicago, Illinois 60603  
David.fein@exeloncorp.com

Lael E. Campbell  
Constellation NewEnergy, Inc. and Exelon  
Corporation  
101 Constitution Ave., NW  
Washington, DC 20001  
Lael.campbell@exeloncorp.com

**COUNSEL FOR EXELON GENERATION  
COMPANY, LLC AND CONSTELLATION  
NEWENERGY, INC.; PJM POWER  
PROVIDERS GROUP; THE ELECTRIC  
POWER SUPPLY ASSOCIATION; AND,  
RETAIL ENERGY SUPPLY ASSOCIATION**

Glen Thomas  
1060 First Avenue, Suite 400  
King of Prussia, Pennsylvania 19406  
gthomas@gtpowergroup.com

Laura Chappelle  
201 North Washington Square - #910  
Lansing, Michigan 48933  
laurac@chappelleconsulting.net

**ON BEHALF OF PJM POWER  
PROVIDERS GROUP**

Christopher J. Allwein  
Kegler Brown Hill and Ritter LPA  
65 East State Street – 1800  
Columbus, Ohio 43215  
callwein@keglerbrown.com

**COUNSEL FOR HARDIN WIND LLC,  
CHAMPAIGN WIND LLC AND BUCKEYE  
WIND LLC**

Todd M. Williams  
Shindler, Neff, Holmes, Worline & Muhler,  
LLP  
300 Madison Avenue  
1200 Edison Plaza  
Toledo, Ohio 43604  
twilliams@snhslaw.com

Jeffrey W. Mayes  
Monitoring Analytics, LLC  
2621 Van Buren Avenue, Suite 160  
Valley Forge Corporate Center  
Eagleville, Pennsylvania 19403  
Jeffrey.mayes@monitoringanalytics.com

**COUNSEL FOR INDEPENDENT MARKET  
MONITOR FOR PJM**

Sharon Theodore  
Electric Power Supply Association  
1401 New York Ave. NW 11<sup>th</sup> fl.  
Washington, DC 20001  
stheodore@epsa.org

**ON BEHALF OF THE ELECTRIC POWER  
SUPPLY ASSOCIATION**

Kevin R. Schmidt  
Energy Professionals of Ohio  
88 East Broad Street, Suite 1770  
Columbus, Ohio 43215  
Schmidt@sppgrp.com

**COUNSEL FOR THE ENERGY  
PROFESSIONALS OF OHIO**

Christopher L. Miller  
Gregory H. Dunn  
Jeremy M. Grayem  
Ice Miller LLP  
250 West Street  
Columbus, Ohio 43215  
Christopher.miller@icemiller.com  
Gregory.dunn@icemiller.com  
Jeremy.grayem@icemiller.com

**COUNSEL FOR THE ASSOCIATION OF  
INDEPENDENT COLLEGES AND  
UNIVERSITIES OF OHIO**

Craig I. Smith  
Material Sciences Corporation  
15700 Van Aken Blvd. – Suite 26  
Shaker Heights, Ohio 44120  
wtppmlc@aol.com

**COUNSEL FOR MATERIAL SCIENCES  
CORPORATION**

Joel E. Sechler  
Carpenter Lipps & Leland  
280 N. High Street, Suite 1300  
Columbus, Ohio 43215  
sechler@carpenterlipps.com

Gregory J. Poulos  
EnerNOC, Inc.  
471 E. Broad Street – Suite 1520  
Columbus, Ohio 43054  
gpoulos@enernoc.com

**COUNSEL FOR ENERNOC, INC.**

David J. Folk  
Assistant Director of Law  
City of Akron  
161 S. High Street - Suite 202  
Akron, OH 44308  
dfolk@Akronohio.Gov

**COUNSEL FOR THE CITY OF AKRON**

Daniel W. Wolff  
Richard Lehfeldt  
Crowell & Moring LLP  
1001 Pennsylvania Ave., N.W.  
Washington, DC 20004  
dwolff@crowell.com  
rlehfeldt@crowell.com

**COUNSEL FOR CPV SHORE, LLC**

Thomas McNamee  
Thomas Lindgren  
Attorney General's Office  
Public Utilities Commission of Ohio  
30 E. Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215-3793  
thomas.mcnamee@ohioattorneygeneral.gov  
thomas.lindgren@ohioattorneygeneral.gov

**COUNSEL FOR THE STAFF OF THE  
PUBLIC UTILITIES COMMISSION OF  
OHIO**

Gregory Price  
Mandy Willey Chiles  
Attorney Examiner  
Public Utilities Commission of Ohio  
180 E. Broad Street  
Columbus, Ohio 43215  
Gregory.price@puc.state.oh.us  
Mandy.chiles@puc.state.oh.us

**ATTORNEY EXAMINERS**



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