BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company to Initiate Phase 2 of its gridSMART Project and to Establish the gridSMART Phase 2 Rider	: : : :	Case No. 13-1939-EL-RDR

POST-HEARING BRIEF

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

Michael DeWine
Ohio Attorney General

William L. Wright
Section Chief

Werner L. Margard
Assistant Attorneys General
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, OH 43215
614.466.4397 (telephone)
614.644.8764 (fax)
werner.margard@ohioattorneygeneral.gov

On behalf of the Staff of
The Public Utilities Commission of Ohio

September 2, 2016

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INTRODUCTION

A. The Commission has endorsed the implementation of gridSMART technologies.

The Ohio Power Company (OPC, the Company, or AEP Ohio) first proposed deployment of gridSMART technologies as part of its first Electric Security Plan (ESP) case in 2008. Although initially targeted at the former Columbus Southern Power Company's territory, the then separate companies proposed a phase-in approach to fully implement gridSMART throughout the combined service areas over the next 7 to 10 years. Although the Commission reduced the level of recovery requested by the Company in that first ESP case, it expressed its strong support for the benefits that gridSMART could ultimately provide to consumers:

> The Commission believes it is important that steps be taken by the electric utilities to explore and implement technologies, such as AMI, that will potentially provide long-term benefits to customers and the electric utility. GridSMART Phase I will provide CSP with beneficial

> information as to implementation, equipment preferences, customer expectations, and customer education requirements. A properly designed AMI system and DA can decrease the scope and duration of electric outages. More reliable service is clearly beneficial to CSP's customers. The Commission strongly supports the implementation of AMI and DA, with HAN [Home Area Network], as we believe these advanced technologies are the foundation for AEP-Ohio providing its customers the ability to better manage their energy usage and reduce their energy costs. Thus, we encourage CSP to be more expedient in its efforts to implement these components of gridSMART.[1]

The Commission granted approval for gridSMART Phase 1, and authorized AEP Ohio to establish the gridSMART Rider, subject to annual true-up and reconciliation.

Two years later, in its second ESP case, the Company proposed to continue its gridSMART program, with some modifications. In its order, the Commission reaffirmed its conviction as to the benefits of the gridSMART project and directed the Company to continue gridSMART Phase 1 and initiate Phase 2 of the gridSMART project.

> The Commission is not wavering in its conviction as to the benefits of gridSMART. Thus, we direct AEP-Ohio to continue the gridSMART Phase 1 project and to complete the review and evaluation of the project. We are approving the Company's request to initiate Phase 2 of the gridSMART project, prior to the March 31, 2014, completion of the evaluation of gridSMART Phase 1, with those technologies that have to-date demonstrated success and are cost-effective. To require the Company to delay any further expansion or installation of gridSMART is unnecessarily restrictive with

[1] In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets, et al. ("ESP I"), Case Nos. 08-917-EL-SSO, et al. (Opinion and Order) (March 18, 2009) at 37.

> respect to the further deployment of successful individual smart grid systems and technologies used in the project.[2]

In the Company's third ESP case, the Commission approved AEP Ohio's request to transfer the remaining gridSMART Phase 1 costs to the Distribution Investment Rider mechanism, and to use the gridSMART rider to track gridSMART Phase 2 costs. In doing so, the Commission noted that it "continues to find significant long-term value and benefit for AEP Ohio and its customers with the implementation of advanced metering infrastructure, distribution automation, and other smart grid technologies."[3]

The Commission's support of gridSMART technologies has been unwavering. The current application is the second phase of AEP Ohio's gridSMART project, and would significantly increase the deployment of those technologies for the benefit of AEP's customers.

B. Background.

On September 13, 2013, AEP Ohio filed the current application to propose its gridSMART Phase 2 expansion, and to establish the gridSMART Phase 2 Rider as the mechanism for recovering project investment beyond Phase 1. The Company proposed installing Advanced Metering Infrastructure ("AMI") for approximately 894,000 customers across urban and suburban areas of the Company's service territory,

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[2] In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan ("ESP II"), Case No. 11-346-EL-SSO, et al. (Opinion and Order) (August 8, 2012) at 62.

[3] 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 ("ESP III"), Case No. 13-2385-EL-SSO, et al. (Opinion and Order) (February 25, 2015) at 51-52.

Distribution Automation Circuit Reconfiguration ("DACR") for approximately 250 priority circuits, and Volt/VAR Optimization ("VVO") for approximately 80 circuits. The rider would operate similarly to the Company's gridSMART rider for Phase 1, with an annual true-up and reconciliation process.

A procedural schedule was established for the filing of comments and replies. Comments were filed by numerous parties, including the Office of the Ohio Consumers' Counsel, the Ohio Hospital Association, the Retail Energy Supply Association, Interstate Gas Supply, Direct Energy Business, LLC and Direct Energy Services, LLC, the Environmental Law & Policy Center, Environmental Defense Fund and Ohio Environmental Council, FirstEnergy Solutions Corp., and the Ohio Partners for Affordable Energy. The Commission Staff also filed comments.

In its comments, Staff raised a number of concerns with the proposal as filed. Despite those concerns, however, Staff did not oppose the application, noting that it was then unable to reach a definitive conclusion as to whether it could support the proposal. The Company responded to numerous data requests, and extended discussions and negotiations were held over the ensuing months.

Those discussions were ultimately put on hold while the Company's ESP III and Purchase Power Agreement (PPA) applications were litigated. At the conclusion of the PPA case, negotiations resumed, in part to accommodate certain provisions from the PPA

stipulation in the stipulation in this case that had already been the subject of considerable compromise.[4]

An agreement was reached, and a number of parties signed it, including the Company, the Ohio Hospital Association, Interstate Gas Supply, Direct Energy Business, LLC and Direct Energy Services, LLC, the Environmental Law & Policy Center, Environmental Defense Fund and Ohio Environmental Council, and Staff. Staff respectfully submits that the stipulation is lawful and reasonable and that it satisfies the Commission's test for reasonableness. The Commission should approve the Stipulation.

DISCUSSION

Rule 4901-1-30, Ohio Adm.Code, authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such agreements are to be accorded substantial weight.[5] The ultimate issue for the Commission's consideration is whether the agreement is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

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[4] In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider, et al., ("AEP-Ohio PPA") Case No. 14-1693-EL-RDR, et al. (Opinion and Order) (March 31, 2016).

[5] *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St, 3d 123 at 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978).

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principle or practice?[6]

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve cases.[7] When the Commission reviews a contested stipulation, as is the case here, the Court has also been clear that the requirement of evidentiary support remains operative. While the Commission "may place substantial weight on the terms of a stipulation," it "must determine, from the evidence, what is just and reasonable."[8]

Staff respectfully submits that the stipulation here satisfies the reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

A. The Stipulation is the product of serious bargaining among capable, knowledgeable parties.

The first criteria that the Commission considers in determining whether a stipulation is reasonable is whether the Stipulation the product of serious bargaining among capable, knowledgeable parties. The Stipulation was the product of serious

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[6] *See, e.g.*, *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (Order on Remand) (Apr. 14, 1994); *Ohio Edison Co*., Case No. 92-1463-GA-AIR, *et al*. (Opinion and Order) (Aug. 26, 1993); *Ohio Edison Co*., Case No. 89-1001-EL-AIR (Order on Remand) (Aug. 19, 1993); *The Cleveland Electric Illumination Co.*, Case No. 88-170-EL-AIR (Opinion and Order) (Jan. 31, 1989); and *Restatement of Accounts and Records (Zimmer Plant)*; Case No, 84-1187-EL-UNC (Opinion and Order) (Nov. 26, 1985).

[7] Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm., 68 Ohio St. 3d 559 (1994), citing, Consumers' Counsel, supra, at 126.

[8] *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992).

bargaining among capable, knowledgeable parties because of the diverse interests represented, and the compromises made by each side.

Parties to Commission cases generally have broad knowledge and extensive experience in public utility matters. All of the parties in this case have long histories of active participation in Commission proceedings. And all of the parties here were represented by experienced counsel with years of regulatory experience. There is no question that the bargaining here occurred among capable, knowledgeable parties.

Opposing parties will argue, however, that the stipulation does not reflect serious bargaining since no residential consumer advocate is a signatory party to it. This argument continues to misrepresent that Commission's test. The test requires that bargaining occur, not that consensus result. Nor does the test require that certain specific interests agree.

There is no doubt that extensive discussion and negotiation went into this stipulation. All of the parties were invited to attend multiple meetings to discuss settlement proposals, and were offered an opportunity to discuss the terms to be included in the stipulation.

Furthermore, the signatory parties represent a wide range of interests, including the Company, consumers (Ohio Hospital Association), competitive suppliers (Direct Energy, Interstate Gas Supply), and environmental advocates (Environmental Defense Fund, Ohio Environmental Council).

The fact that OCC and OPAE did not sign the stipulation is not fatal to a finding of reasonableness. Although OCC and OPAE did not ultimately sign the stipulation, the

interests of residential customers were fully and adequately represented during the settlement negotiations. "The Commission has repeatedly determined that [it] will not require any single party, including OCC, to agree to a stipulation, in order to meet the first prong of the three-prong test."[9]

The fact that Staff signed the stipulation reflects that a balancing of interests, including residential consumers, occurred, as both witness for Staff and the Company acknowledged. Staff represents the lowest income residential consumers, the largest industrial consumers, and everyone in between. AEP Ohio witness Andrea Moore testified that the Staff of the Public Utility Commission of Ohio certainly has a requirement to make sure that all customers are represented, and that would include residential customers."[10] She further opined that part of Staff's responsibility is to "assure that all parties are treated fairly."[11] This view was shared by Staff witness Schweitzer who testified that it Staff's "mission has always been to balance the needs of the Company with the needs of all customer classes, or the concerns of all customer classes, or the interest of all customer classes including residential."[12]

Finally, the compromises made by the parties show that the Stipulation was a product of serious bargaining. Company witness Moore outlines a number of those compromises, including items addressing concerns raised by the non-signatory parties, in

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[9] AEP-Ohio PPA (Opinion and Order) (March 31, 2016) at 52 (citations omitted).

[10] Tr. I at 155-156.

[11] *Id*. at 156.

[12] Tr. III at 570.

her direct testimony.[13] Although the non-signatory parties may disagree about the value and process, Staff believes that the agreement to pass back quantifiable operating benefits, including adjustments resulting from the operational benefits audit, is perhaps that most significant compromise in the stipulation. Witness Moore further testified that "[s]ections eight through eighteen of the stipulation are additional commitments made by the Company through the negotiating process that were not included in the application as filed concluding that the Stipulation provides greater benefits to customers."[14]

The Commission's test does not require assent by any particular party or market sector. It does not even require the assent of the applicant. Serious bargaining did occur among the parties in this case, despite the lack of unanimity, as evidenced by the numerous and significant compromises made by the signatory parties.

B. The Stipulation benefits consumers and the public interest.

1. The record demonstrates that the Stipulation will benefit consumers and the public interest.

The Stipulation benefits consumers and the public interest in many ways. The Company sets forth many of those benefits in its Post-Hearing Brief. Staff witness Schweitzer also testified to the benefits expected from the Stipulation. Specifically, Mr. Schweitzer testified that:

> As a result of the gridSMART Phase 2 project, customers will experience an improvement in reliability of their electric service, a reduction in the number of service outages, and a faster restoration of service. Customers will

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[13] Company Ex. 3, Direct Testimony of Andrea E. Moore, at 7.

[14] *Id*. at 13.

> receive the benefit of gains in energy efficiency and demand reduction. Customers will also have the option of selecting a time-of-use rate option, as offered by various customer choice marketers, taking advantage of the information provided by their smart meter to potentially lower their electric bill.
>
> The Stipulation addresses the Rider mechanism by which the costs of the Phase 2 project will be recovered by AEP Ohio, but the customers will receive additional benefits of the gridSMART project through a provision to reduce the Rider by a predetermined amount of operational cost savings.[15]

In sum, there are many benefits that come with the Stipulation. It should be approved.

2. The Stipulation satisfies concerns raised by Staff to the original application.

Staff was among the parties that submitted comments expressing concerns with the Company's original application. As a result of additional information provided by the Company, and compromises made through the negotiation process, many of Staff's concerns have been addressed. Although Staff's concerns have not been completely ameliorated, it believes that the agreement contained in the Stipulation, taken as a whole, is just and reasonable and should be approved.

- **<u>Treatment of Operational Savings</u>**

Staff's primary concern with the original application, as set forth in its comments, was that there was "no plan for netting operational benefits against costs in rates. Staff believes that cost savings that can be reasonably quantified and that accrue directly to the

[15] Staff Ex. 1, Direct Testimony of James W. Schweitzer, at 3.

distribution utility should be recognized as an offset to the costs of the project."[16] The Stipulation provides for a cost offset upon implementation of the rider, and for a sharing of benefits once the project has sufficient operational experience to allow for a meaningful audit.[17]

On this point, Staff believes that it is important to reiterate its understanding of the operational benefits audit. While the language of the Stipulation states that "Staff *may* retain an external consultant to review the Phase 1 and Phase 2 operational benefits of the gridSMART project,"[18] Staff assures the Commission that it intends for this audit to occur, and that it intends to hire a consultant to conduct the audit.[19] This position is shared by all of the signatory parties.

- **<u>Recovery Mechanism</u>**

The benefit offset also satisfies Staff's initial concerns about the proposed recovery mechanism. Staff was concerned that the proposed recovery was based on a budget that was not grounded in any firm plan or cost/benefit analysis.[20] As stipulated, the Company will receive recovery after filing actual plant in service balances, rather than based on forecasts with true ups to actual.[21] This is consistent, as Staff commented that it should be, with the Commission's guidance that Phase 2 Rider recovery should

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16 Staff Comments at 3.

17 Joint Ex. 1, Stipulation, Section IV.6. at 10.

18 *Id*.

19 Tr. III at 594.

20 Staff Comments at 4.

21 Joint Exhibit 1, Stipulation, Section IV.6. at 9; Company Ex. 3, Direct Testimony of Andrea E. Moore, at 7.

"occur only after the equipment is installed, tested, and is in-service."[22] Moreover, the record in this proceeding demonstrates that the Company has performed a thorough and exacting cost/benefit analysis that satisfies Staff's concerns.[23]

- **Business Plan**

Staff expressed concerned that the original business plan provided "insufficient documentation of calculation details and assumptions with regard to the benefits represented, including formulas, methodologies, and work papers."[24] Through data responses, workpapers, and testimony, the Company has further elaborated its business plan. As further informed by the Stipulation, and particular by the added protection of the mid-term operational benefits audit, Staff is satisfied that the business plan is sufficiently detailed.

- **Time Differentiated Rates**

The original application contained no specific proposals to allow customers to take advantage of AMI meters to manage their electric costs. Staff expressed concern that, "until these rate offerings are available in the competitive marketplace, . . . utilities with advanced metering capabilities [should] offer at least one such rate to SSO customers."[25]

The Company agreed to continue offering its pilot programs while upgrading its systems to allow competitive retail electric supplier to enter and offer their own plans.[26]

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22 Staff Comments at 4; ESP II (Opinion and Order) (August 8, 2012) at 63.

23 Company Ex. 1, Direct Testimony of Scott Osterholt at 4-5.

24 Staff Comments at 4-5.

25 Staff Comments at 5.

26 Joint Ex. 1, Stipulation, Section IV.5. at 7-9.

Teresa Ringenbach, testifying on behalf of Direct Energy, a signatory CRES provider, confirmed Direct Energy intends to fill the current void in the market both by offering programs "very similar to the programs AEP Ohio currently offers"[27] and by "development and offering of new energy products and services that rely on smart meter technology."[28]

- **Accounting Issues**

Staff commented that there was no basis for the Company's proposed 7-year accounting life for meter equipment. It also expressed concern about the recovery of stranded costs for the removal of existing electro-mechanical meters.[29] The Stipulation provides that the "accounting life of all AMI meters will be 15 years instead of 7 years."[30] The same provision fully explains, to Staff's satisfaction, the cost recovery accounting for existing meters retired by the deployment of AMI meters.

- **Distribution Automation / Circuit Reconfiguration**

The Company has agreed to deploy Distribution Automation / Circuit Reconfiguration (DACR) on 250 circuits. While this is fewer circuits than Staff would have preferred to see improved with DACR technology, the Company has agreed to perform a feasibility study on all of its circuits to determine where cost-justified DACR deployments may be appropriate in the future.[31]

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27 Direct Energy Ex. 1.0, Direct Testimony of Teresa Ringenbach, at 2.

28 *Id*. at 4.

29 Staff Comments at 6.

30 Joint Ex. 1, Stipulation, Section IV.7. at 10.

31 Joint Ex. 1, Stipulation, Section IV.1.D. at 5.

Staff also expressed concern about the absence of a deployment plan, and the lack of a commitment to deploy DACR on those circuits most likely to result in reliability improvement.[32] But the Company agreed to consider prioritizing the worst performing circuits, and committed to work with Staff to determine a deployment schedule.[33]

In addition, the Company has committed to achieve SAIFI improvements on circuits with DACR technology. Staff is satisfied that the commitments to improvement standards and to work with Staff to achieve them adequately address their concerns.

- **<u>Cybersecurity</u>**

Staff indicated that the Company needed to demonstrate how expansion of the gridSMART project would address cybersecurity considerations.[34] The Company's commitment to brief the Commission and key Staff members on cybersecurity issues annually[35] satisfies Staff's concerns.

C. The Stipulation does not violate any important regulatory principle or practice.

Far from violating any regulatory principle or practice, the Stipulation furthers many important goals. Company witness Moore set forth a number of ways in which the compromise advances state policies expressed in Rev. Code Sec. 4928.02.[36] These include:

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32 Staff Comments at 9.

33 Joint Ex. 1, Stipulation, Section IV.1.C.i.b. at 5.

34 Staff Comments at 10.

35 Joint Ex. 1, Stipulation, Section IV.8. at 11.

36 Company Ex. 3, Direct Testimony of Andrea E. Moore, at 8-12.

- Providing adequate, reliable, safe, efficient, nondiscriminatory, and reasonable priced retail electric service through cost-effective technologies that allow for quicker restoration of lost service and lower energy use while passing operational benefits back to customers.
- Providing customers with greater options for unbundled and comparable retail electric services by providing usage management data, allowing, among other things, CRES providers to offer time of use rates and services.
- Providing incentives for environmental improvements.

Moreover, the Stipulation does not violate any important regulatory principle or practice. Both Company witness Moore and Staff witness Schweitzer testified that, based on their years of experience, the Stipulation was consistent with all important and relevant regulatory principles and practices.[37]

The third prong of the test is easily met.

[37] Company Ex. 3, Direct Testimony of Andrea E. Moore, at 8; Staff Ex. 1, Direct Testimony of James W. Schweitzer, at 3.

CONCLUSION

The Stipulation meets all prongs of the three-part test. It is the product of serious bargaining among knowledgeable, capable parties; it benefits consumers and the public interest; and it does not violate any important regulatory principle or practice. Therefore, the Commission should approve the Stipulation in this case.

Respectfully submitted,

Michael DeWine
Ohio Attorney General

William L. Wright
Section Chief

/s/ Werner L. Margard
Werner L. Margard
Assistant Attorneys General
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, OH 43215
614.466.4397 (telephone)
614.644.8764 (fax)
werner.margard@ohioattorneygeneral.gov

On behalf of the Staff of
The Public Utilities Commission of Ohio

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following Parties of Record, this 2nd day of September, 2016.

/s/ Werner L. Margard
Werner L. Margard
Assistant Attorney General

Parties of Record:

Steven T. Nourse
Matthew S. McKenzie
American Electric Power Service Corp.
Legal Department, 29th Floor
1 Riverside Plaza
Columbus, OH 43215-2373
Tel: (614) 716-1608
Fax: (614) 716-2950
stnourse@aep.com
msmckenzie@aep.com

Attorneys for Ohio Power Company

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793
Tel: (614) 488-5739
Fax: (419) 425-8862
cmooney@ohiopartners.org

Attorneys for Ohio Partners for Affordable Energy

Jennifer L. Lause
21 E. State St. Suite 1950
Columbus, OH 43215
Tel. (614) 220- 4369 ext. 221
Fax (614) 220-4674
jennifer.lause@directenergy.com

Mark A. Whitt
Andrew J. Campbell
Rebekah J. Glover
Whitt Sturtevent LLP
88 E. Broad St., Suite 1590
Columbus, OH 43215
Tel: (614) 224-3911
Fax: (614) 224-3960
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
glover@whitt-sturtevant.com

Attorneys for Direct Energy Services, LLC and Direct Energy Business, LLC

John J. Finnigan, Jr.
Senior Regulatory Attorney
Environmental Defense Fund
128 Winding Brook Lane
Terrace Park, OH 45174
Tel: (513) 226-9558
jfinnigan@edf.org

Attorney for the Environmental Defense Fund

Madeline Fleisher
Environmental Law & Policy Center
21 W. Broad St., Suite 500
Columbus, OH 43215
Tel: 614-670-5586
Fax: 312-795-3730
mfleisher@elpc.org

Attorney for the Environmental Law & Policy Center

Mark A. Hayden
Associate General Counsel
Scott J. Casto
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
Tel: (330) 761-7735
Fax: (330) 384-3875
haydenm@firstenergycorp.com
scasto@firstenergycorp.com

Attorneys for FirstEnergy Solutions Corp.

Matthew S. White
Interstate Gas Supply, Inc.
6100 Emerald parkway
Dublin, OH 43016
Tel: (614) 659-5000
Fax: (614) 659-5073
mswhite@igsenergy.com

Mark A. Whitt
Andrew J. Campbell
Rebekah J. Glover
Whitt Sturtevent LLP
88 E. Broad St., Suite 1590
Columbus, OH 43215
Tel: (614) 224-3911
Fax: (614) 224-3960
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
glover@whitt-sturtevant.com

Attorneys for Interstate Gas Supply, Inc.

Kimberly W. Bojko
Carpenter, Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, OH 43215
Tel: (614) 365-4100
Fax: (614) 365-9145
bojko@carpenterlipps.com

Terry L. Etter
Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Tel: (614) 466-1291
Fax: (614) 466-9475
etter@occ.ohio.gov

Attorneys for the Office of the Ohio Consumers' Counsel

Trent A. Dougherty
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
(614) 487-7506 - Telephone
(614) 487-7510 - Fax
TDougherty@theOEC.org

Attorney for the Ohio Environmental Council

Richard L. Sites
General Counsel & Senior Director of Health Policy
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
Tel: (614) 221-7614
Fax: (614) 221-4771
ricks@ohanet.org

Matthew W. Warnock
Dylan F. Borchers
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215
Tel: (614) 227-2388
Fax: (614) 227-2390
mwarnock@bricker.com
dborchers@bricker.com

Attorneys for Ohio Hospital Association

Michael J. Settineri
Gretchen L. Petrucci
Vorys, Sater, Seymour & Pease LLP
52 E. Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
Tel.: (614) 464-5462
Fax: (614) 719-5146
mjsettineri@vorys.com
gipetrucci@vorys.com

Attorneys for the Retail Energy Supply Association

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