

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Commission's)
Investigation of the Financial Impact) Case No. 18-0047-AU-COI
of the Tax Cuts and Jobs Act of 2017)
on Regulated Ohio Utility Companies.)

**DIRECT TESTIMONY OF JOSEPH G. BOWSER
ON BEHALF OF INDUSTRIAL ENERGY USERS-OHIO**

Frank P. Darr (Reg. No. 0025469)
(Counsel of Record)
Matthew R. Pritchard (Reg. No. 0088070)
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH 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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Exhibit JGB-1

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**DIRECT TESTIMONY OF JOSEPH G. BOWSER
ON BEHALF OF INDUSTRIAL ENERGY USERS-OHIO**

1 **I. INTRODUCTION**

2 **Q1. Please state your name and business address.**

3 A1. My name is Joseph G. Bowser, 21 East State Street, 17th Floor, Columbus, Ohio
4 43215.

5 **Q2. By whom are you employed and in what position?**

6 A2. I am a Technical Specialist for McNees Wallace & Nurick LLC (“McNees”),
7 providing testimony on behalf of Industrial Energy Users-Ohio (“IEU-Ohio”).

8 **Q3. Please describe your educational background.**

9 A3. In 1976, I graduated from Clarion State College with a Bachelor of Science degree
10 in Accounting. In 1988, I graduated from Rensselaer Polytechnic Institute with a
11 Master of Science degree in Finance.

12 **Q4. Please describe your professional experience.**

13 A4. I have been employed by McNees since 2005, where I focus on assisting Industrial
14 Energy Users-Ohio (“IEU-Ohio”) members address issues that affect the price and

1 availability of utility services. As part of my responsibilities, I provide IEU-Ohio
2 members assistance as they evaluate and act upon opportunities to secure value
3 for their demand response and other capabilities in the base residual auction
4 (“BRA”) and incremental auctions conducted by PJM Interconnection, L.L.C.
5 (“PJM”) as part of the Reliability Pricing Model (“RPM”). Prior to joining McNees, I
6 worked with the Office of the Ohio Consumers’ Counsel (“OCC”) as Director of
7 Analytical Services. There I managed the analysis of financial, accounting and
8 ratemaking issues associated with utility regulatory filings. I also spent ten years
9 at Northeast Utilities, where I held positions in the Regulatory Planning and
10 Accounting Departments, provided litigation support in regulatory hearings, and
11 assisted in the preparation of the financial/technical documents filed with state and
12 federal regulatory commissions. I began my career with the Federal Energy
13 Regulatory Commission (“FERC”), where I led and conducted audits of gas and
14 electric utilities in the Eastern and Midwestern regions of the United States. I am
15 a Certified Public Accountant (inactive) and am a member of the American Institute
16 of Certified Public Accountants and the Pennsylvania Institute of Certified Public
17 Accountants.

18 **Q5. Have you previously submitted expert testimony before the Public Utilities**
19 **Commission of Ohio (“Commission” or “PUCO”)?**

20 A5. Yes. Since 1996, I have submitted testimony as an expert in numerous cases,
21 including these proceedings. Attached as Exhibit JGB-1 is a listing of past cases
22 in which I have testified.

1 **II. PURPOSE AND SUMMARY OF TESTIMONY**

2 **Q6. What is your understanding of the purpose of this hearing?**

3 A6. The purpose of this hearing is to determine whether certain utilities should be
4 required to establish a deferred tax liability for the estimated reduction in federal
5 income tax resulting from the Tax Cuts and Jobs Act (“TCJA”), effective January 1,
6 2018.

7 **Q7. What have you reviewed to prepare your testimony?**

8 A7. I have reviewed the filings and prefiled testimonies in this proceeding, the 2017
9 Ohio Power and Duke Energy-Ohio FERC Form 1s, and literature setting forth the
10 provisions of the TCJA.

11 **Q8. What conclusions and recommendations do you make?**

12 A8. I have concluded that the utilities should be required to establish a deferred tax
13 liability (regulatory liability) for the estimated reduction in federal income tax
14 resulting from the TCJA, effective January 1, 2018. As set forth in more detail
15 below, Ohio Power and Duke Energy-Ohio have in fact recorded estimated
16 regulatory liabilities for the impacts on their accumulated deferred income tax
17 assets and liabilities of the reduction in the federal income tax rate when the TCJA
18 was enacted in 2017. In addition, it appears that both companies have recognized
19 deferrals for the reduction in taxes effective January 1, 2018. See Ohio Power’s
20 initial comments filed on February 15, 2018 at page 7, and Mr. Wathen’s prefiled
21 testimony at page 7. Mr. Wathen acknowledged in his testimony that Duke
22 Energy-Ohio is recording deferrals in 2018, but he opposes the Company being

1 required to make the deferrals without further examination by the Commission.
2 Mr. Allen also opposes Ohio Power being required to defer as a regulatory liability
3 all savings associated with the TCJA per page 4 of his prefiled testimony.

4 **III. RELEVANT EFFECTS OF THE TAX CUTS AND JOBS ACT OF 2017**

5 **Q9. What are the effects of the TCJA relevant to your testimony?**

6 A9. First, the tax rate change in the TCJA reduces the corporate federal income tax
7 rate to a flat 21%, effective January 1, 2018. Pub. L. 115-97, § 13001(a).

8 Second, the reduction in the tax rate under the TCJA affects the level of
9 accumulated deferred income tax liabilities and assets (“ADIT”) that public utilities
10 recognize. This is relevant because utility-related ADIT liabilities are typically
11 treated as rate base reductions for ratemaking purposes while ADIT assets are
12 treated as additions to rate base.

13 Third, the reduction in the tax rate also results in “excess deferred income taxes”
14 as the ADIT liabilities and assets that were established at a 35% tax rate must be
15 reduced to reflect the fact that the ADIT balances must be reflected based on the
16 21% tax rate. The difference between the ADIT amounts calculated at 35% and
17 the amounts calculated at 21% is the excess deferred income taxes. The excess
18 deferred income taxes should then be amortized as a component of rates.

19 Based on the foregoing, both base rates and the rates for riders of the utilities that
20 have a federal income tax component should be adjusted to reflect the TCJA
21 impacts, which were effective January 1, 2018.

1 **Q10. Do accounting standards require public utilities to account for changes in**
2 **the tax law?**

3 A10. Yes.

4 **Q11. What do these standards require public utilities to do?**

5 A11. Under Generally Accepted Accounting Principles (“GAAP”), Accounting Standards
6 Codification (“ASC”) 740 (formerly FAS 109 – Accounting for Income Taxes),
7 companies seeking to comply with GAAP are required to record deferred tax
8 liabilities or assets for the estimated future tax effects attributable to temporary
9 differences, and the measurement of current and deferred tax liabilities and assets
10 is based on provisions of the enacted law. FAS 109 also requires that deferred
11 tax liabilities and assets be adjusted in the period of enactment for the effect of an
12 enacted change in tax laws or rates.

13 The FERC has offered further guidance in AI-93-5-000 – Accounting for Income
14 Taxes, item 8, that an “entity shall adjust its deferred tax liabilities and assets for
15 the effect of the change in tax law or rates in the period that the change is enacted.

16 The adjustment shall be recorded in the proper deferred tax balance sheet
17 accounts. If as a result of action by a regulator it is probable that the future
18 increase or decrease in taxes payable due to the change in tax law or rates will be
19 recovered from or returned to customers through future rates, an asset or liability
20 shall be recognized in Account 182.3, Other Regulatory Assets, or Account 254,
21 Other Regulatory Liabilities, as appropriate, for the probable future revenue or
22 reduction in future revenue.”

1 **Q12. Have you reviewed financial reports for the Ohio electric distribution utilities**
2 **for disclosure of their compliance with these standards?**

3 A12. Yes. I reviewed the 2017 FERC Form 1 reports for Ohio Power and Duke Energy-
4 Ohio.

5 **Q13. What have Duke Energy Ohio and Ohio Power (AEP-Ohio) reflected in their**
6 **financial statements for changes in federal income tax law resulting from the**
7 **TCJA?**

8 A13. The two companies have recorded deferred liabilities (regulatory liabilities) for the
9 estimated impact of the TCJA. For example, Ohio Power had recorded a
10 regulatory liability of \$665.7 million as of December 31, 2017 in FERC Account
11 254 – Regulatory Liabilities, which is reported on page 278 of the FERC Form 1.
12 Duke Energy-Ohio had recorded a net regulatory liability of \$688 million as of
13 December 31, 2017, as reported on page 123.43 of its 2017 FERC Form 1.

14 **Q14. Do the notes to the FERC Form 1 financial statements explain the purpose**
15 **for the recognition of the regulatory liability?**

16 A14. Yes, for Duke Energy-Ohio, it reported in its 2017 FERC Form 1 at page 123.156
17 that “as a result of the Tax Act, Duke Energy revalued its existing deferred tax
18 assets and deferred tax liabilities as of December 31, 2017, to account for the
19 estimated future impact of lower corporate tax rates on these deferred tax
20 amounts. For Duke Energy’s regulated operations, where the reduction in the net
21 accumulated deferred income tax (“ADIT”) liability is expected to be returned to

1 customers in future rates, the net re-measurement has been deferred as a
2 regulatory liability.”

3 For Ohio Power, it reported on page 123.59 of its 2017 FERC Form 1 that “changes
4 in the Code due to Tax Reform had a material impact on OPCo’s 2017 financial
5 statements. In accordance with accounting guidance for ‘Income Taxes’, the effect
6 of a change in tax law must be recognized at the date of enactment. The
7 accounting guidance for ‘Income Taxes’ also requires deferred tax assets and
8 liabilities to be measured at the enacted tax rate expected to apply when temporary
9 differences will be realized or settled. As a result, OPCo’s deferred tax assets and
10 liabilities were re-measured using the newly enacted tax rate of 21% in December
11 2017. This re-measurement resulted in a significant reduction in OPCo’s net
12 accumulated deferred income tax liability. ... OPCo reflected a decrease in
13 Deferred Income Tax Liabilities of \$743 million and resulted [S/C] in an increase in
14 income tax related Regulatory Liabilities of \$666 million, a decrease in income tax
15 related Regulatory Assets of \$63 million and a decrease to Income Tax Expense
16 of \$14 million.”

17 **IV ADJUSTMENTS FOR BASE RATES AND RIDERS**

18 **Q15. You noted previously that the TCJA impacts, including the reduction in the**
19 **federal income tax rate from 35% to 21% will impact the calculation of base**
20 **rates and some of the riders.**

21 A15. Yes, that is correct.

1 **Q16. Have the rate regulated utilities addressed the reduction in the tax rate in**
2 **riders?**

3 A16. Yes, some riders have been adjusted for the reduction in the tax rate. For example,
4 Duke Energy-Ohio has reduced its Rider DR-IM in Case No. 17-1403-EL-RDR for
5 rates that were effective April 1, 2018 to reflect the federal income tax rate of 21%
6 in the calculation of the grossed-up rate of return.

7 **Q17. How have rate regulated utilities addressed the tax rate reduction in base**
8 **rates?**

9 A17. To my knowledge, most of the regulated utilities have not yet reflected the tax rate
10 reduction in base rates. However, in *In the Matter of the Application of Ohio Gas*
11 *Company for an Increase in Gas Distribution Rates*, Case Nos. 17-1139-GA-AIR,
12 *et al.*, Joint Stipulation and Recommendation (Jan. 26, 2018), the reduction in the
13 federal income tax rate from 35% to 21% was reflected in the stipulated revenue
14 requirement. In addition, in the pending stipulation in Case No. 15-1830-EL-AIR
15 for The Dayton Power and Light Company, it is my understanding that the
16 reduction in the federal income tax rate from 35% to 21% was reflected in the
17 stipulated revenue requirement.

18 It is my understanding that Duke Energy-Ohio has also adjusted the grossed-up
19 rate of return for its Distribution Capital Investment rider (“DCI”) to reflect the 21%
20 federal income tax rate. In the prefiled testimony of Staff witness Lipthrott filed on
21 June 25, 2018 in support of the Stipulation in Case No. 17-32-EL-AIR, *et al.*,
22 Mr. Lipthrott stated that the TCJA was accounted for in the Stipulation by reducing
23 the revenue requirement associated with the reduction to the federal income tax

1 rate in Rider DCI. Mr. Lipthrott stated that accounting for the tax reduction in the
2 DCI captures 75% of the value of what the reduction to the revenue requirement
3 would have been had it instead been captured in base rates.

4 **Q18. Did you review the related calculations that Mr. Lipthrott referenced in his**
5 **testimony?**

6 A18. No. However, the important point is that not all of the impacts of the TCJA have
7 yet been captured in Duke Energy Ohio's rates. According to the stipulation in the
8 consolidated cases, additional tax issues have been reserved for this case or
9 another one.

10 **Q19. Do you believe that the Commission should direct rate regulated utilities to**
11 **establish a regulatory liability for the amounts being collected through base**
12 **rates?**

13 A19. Yes, to the extent that utilities have not already recognized regulatory liabilities for
14 amounts being collected through base rates, they should be directed by the
15 Commission to do so.

16 **Q20. Why should the utilities be required to set a regulatory liability?**

17 A20. Utilities that have rates set by the Commission have traditionally recovered in rates
18 their tax obligations, based on the tax rates that are in effect. As I discussed above,
19 an accounting adjustment to recognize a deferred liability is justified in those
20 instances when it is probable that the regulatory body will adjust rates to account
21 for amounts that may be returned to customers. As the Commission noted at
22 page 6 of its Second Entry on Rehearing dated April 25, 2018 in this case, "the

1 Commission intends that all tax impacts resulting from the TCJA will be returned
2 to customers, whether through this proceeding or through a case-by-case
3 determination for each affected utility.” Based on the premise that federal income
4 tax impacts may be returned to customers, the deferral should be established and
5 will permit tracking of amounts so that the Commission can have the needed
6 information for addressing each company’s situation for its TCJA related rate
7 adjustments and the amounts to be returned to customers.

8 **V. CONCLUSION**

9 **Q21. Does that conclude your testimony?**

10 A21. Yes, however I reserve the right to update this testimony for any outstanding
11 discovery responses or additional information that is submitted by other parties in
12 this case.

13

CASES IN WHICH JOSEPH G. BOWSER HAS SUBMITTED TESTIMONY

In the Matter of the Application of The East Ohio Gas Company for Authority to Implement Two New Transportation Services, for Approval of a New Pooling Agreement, and for Approval of a Revised Transportation Migration Rider, Case No. 96-1019-GA-ATA.

In the Matter of the Applications of Columbus Southern Power Company and Ohio Power Company for Approval of Their Electric Transition Plans and for Receipt of Transition Revenues, Case Nos. 99-1729-EL-ETP, et al.

In the Matter of the Commission's Investigation Into the Policies and Procedures of Ohio Power Company, Columbus Southern Power Company, The Cleveland Electric Illuminating Company, Ohio Edison Company, The Toledo Edison Company and Monongahela Power Company Regarding the Installation of New Line Extensions, Case Nos. 01-2708-EL-COI, et al.

In the Matter of the Application of Columbus Southern Power Company to Adjust its Power Acquisition Rider Pursuant to Its Post-Market Development Period Rate Stabilization Plan, Case No. 07-333-EL-UNC.

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices and for Tariff Approvals, Case Nos. 07-551-EL-AIR, et al.

In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan, and the Sale or Transfer of Certain Generating Assets, Case Nos. 08-917-EL-SSO, et al., including the remand phase of this proceeding.

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Case No. 08-935-EL-SSO.

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan, Case Nos. 08-1094-EL-SSO, et al.

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company, Case No. 10-2929-EL-UNC.

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 §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan, Case Nos. 11-346-EL-SSO, et al.

In the Matter of the Application of Akron Thermal, Limited Partnership for an Emergency Increase in its Rates And Charges for Steam and Hot Water Service, Case Nos. 09-453-HT-AEM, et al.

In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan, Case Nos. 12-426-EL-SSO, et al.

In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company and Related Matters for 2010, Case Nos. 10-268-EL-FAC, et al.

In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to 4928.143, Revised Code, in the Form of an Electric Security Plan, Case Nos. 13-2385-EL-SSO, et al.

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Recover Costs Associated with the Construction and Ultimate Operation of an Integrated Gasification Combined Cycle Electric Generating Facility, Case No. 05-376-EL-UNC.

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

In the Matter of the Petition of Jersey Central Power & Light Company Concerning a Proposal for an Economic Stimulus Infrastructure Investment Program and Associated Cost Recovery Mechanism, NJBPU Docket Nos. EO09010049, et al.

In the Matter of the Verified Petition of Jersey Central Power & Light Company for an Economic Stimulus Demand Response and Energy Efficiency Program and Associated Cost Recovery Mechanism, NJBPU Docket No. EO09010062.

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan, Case Nos. 16-395-EL-SSO, et al.

In the Matter of the Application of Ohio Gas Company for an Increase in Gas Distribution Rates, Case Nos. 17-1139-GA-AIR, et al.

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 *Direct Testimony of Joseph G. Bowser on Behalf of Industrial Energy Users-Ohio* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 29th day of June 2018, *via* electronic transmission.

/s/ Frank P. Darr

Frank P. Darr

PARTIES LISTED ON E-FILE SYSTEM:

Rebekah Glover
Brian Dressel
Cheryl McDonald
Thomas Hays
Colleen Mooney
Teresa Orahoad
Christen Blend
Scott Elisar
Frank Darr
Miranda Leppla
Jamie Williams
Kimberly Bojko
Mary Fischer
Joseph Olikier
Dane Stinson
Michael Kurtz
Steven Nourse
Tyler Teuscher
Carys Cochern
Carrie Dunn Lucco
Christopher Healey

PARTIES SERVED BY E-MAIL:

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

Christopher Healey (0086027)

(Counsel of Record)

Kevin F. Moore (0089228)

Zachary E. Woltz (0096669)

Bryce McKenney (0088203)

Amy Botschner-O'Brien (0074423)

65 E. State Street, Suite 700

Columbus, OH 43215

christopher.healey@occ.ohio.gov

kevin.moore@occ.ohio.gov

zachary.woltz@occ.ohio.gov

bryce.mckenney@occ.ohio.gov

amy.botschner.obrien@occ.ohio.gov

OFFICE OF THE OHIO CONSUMERS' COUNSEL

Steven T. Nourse (0046705)

(Counsel of Record)

Christen M. Blend (0086881)

AMERICAN ELECTRIC POWER SERVICE
CORPORATION

1 Riverside Plaza, 29th Floor

Columbus, OH 43215

stnourse@aep.com

cblend@aep.com

COUNSEL FOR OHIO POWER COMPANY

Rocco O. D'Ascenzo (0077651)
(Counsel of Record)
Jeanne W. Kingery (0012172)
DUKE ENERGY BUSINESS SERVICES LLC
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
rocco.dascenzo@duke-energy.com
jeanne.kingery@duke-energy.com

COUNSEL FOR DUKE ENERGY OHIO, INC.

Carrie M. Dunn-Lucco (0076952)
(Counsel of Record)
FIRSTENERGY SERVICE COMPANY
76 S. Main Street
Akron, OH 44308
cdunn@firstenergycorp.com

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

Michael J. Schuler (0082390)
(Counsel of Record)
THE DAYTON POWER AND LIGHT COMPANY
1065 Woodman Drive
Dayton, OH 45432
michael.schuler@aes.com

**COUNSEL FOR THE DAYTON POWER AND
LIGHT COMPANY**

Michael S.J. Lozich
SECURUS TECHNOLOGIES, INC.
4000 International Parkway
Carrollton, TX 75007
Mlozich@securustechologies.com

COUNSEL FOR SECURUS TECHNOLOGIES, INC.

Marty K. Whelan
5640 Lancaster-Newark Road, NE
Pleasantville, Ohio 43148
mwhelan@egas.net

**ON BEHALF OF NORTHEAST OHIO NATURAL GAS
CORPORATION, ORWELL NATURAL GAS COMPANY,
BRAINARD GAS CORPORATION, AND SPELMAN
PIPELINE HOLDINGS, INC.**

Stephen B. Seiple (0003809)
Joseph M. Clark (0080711)
COLUMBIA GAS OF OHIO, INC.
290 W. Nationwide Blvd.
P.O. Box 117
Columbus, OH 43216-0017
sseiple@nisource.com
josephclark@nisource.com

COUNSEL FOR COLUMBIA GAS OF OHIO, INC.

John Finnigan
6735 Hidden Hills Drive
Cincinnati, Ohio 45230
jfinnigan@edf.org

COUNSEL FOR ENVIRONMENTAL DEFENSE FUND

Madeline Fleisher
21 W. Broad Street, 8th Floor
Columbus, OH 43215
mfleisher@elpc.org

**COUNSEL FOR ENVIRONMENTAL
LAW & POLICY CENTER**

Daniel Sawmiller
2432 Edgevale Road
Columbus, OH 43221
dsawmiller@nrdc.org

**OHIO ENERGY POLICY DIRECTOR FOR NATURAL
RESOURCES DEFENSE COUNCIL**

Neil Waggoner
131 N. High Street, Suite 605
Columbus, OH 43215
neil.waggoner@sierraclub.org

**OHIO BEYOND COAL CAMPAIGN REPRESENTATIVE,
SIERRA CLUB**

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

COUNSEL FOR THE OHIO ENERGY GROUP

Thomas R. Hays (0054062)
COUNSEL FOR LUCAS COUNTY AND NOAC
8355 Island Lane
Maineville, OH 45039
trhayslaw@gmail.com

Leslie Kovacik (0070157)
COUNSEL FOR THE CITY OF TOLEDO AND NOAC
420 Madison Avenue, Fourth Floor
Toledo, OH 43604
leslie.kovacik@toledo.oh.gov

**COUNSEL FOR THE NORTHWEST OHIO AGGREGATION
COALITION, THE LUCAS COUNTY BOARD OF
COMMISSIONS, LAKE TOWNSHIP, PERRYSBURG
TOWNSHIP, THE CITY OF TOLEDO, THE CITY OF
PERRYSBURG, THE CITY OF MAUMEE, THE CITY OF
OREGON, THE CITY OF NORTHWOOD, THE CITY OF
WALTERVILLE, THE CITY OF SYLVANIA, THE CITY OF
ROSSFORD, THE VILLAGE OF DELTA, THE VILLAGE OF
OTTAWA HILLS, THE VILLAGE OF HOLLAND AND THE
VILLAGE OF WALBRIDGE**

Kimberly W. Bojko (0069402)
Brian W. Dressel (0097163)
CARPENTER LIPPS & LELAND LLP
280 North High Street, Suite 1300
Columbus, OH 43215
bojko@carpenterlipps.com
dressel@carpenterlipps.com

**COUNSEL FOR OHIO MANUFACTURERS' ASSOCIATION
ENERGY GROUP**

Angela Paul Whitfield (0068774)
CARPENTER LIPPS & LELAND LLP
280 North High Street, Suite 1300
Columbus, OH 43215
paul@carpenterlipps.com

COUNSEL FOR THE KROGER Co.

Gretchen L. Petrucci (0046608)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
Tel. (614) 464-5407
glpetrucci@vorys.com

**ATTORNEYS FOR THE OHIO CABLE
TELECOMMUNICATIONS ASSOCIATION**

William Wright
ATTORNEY GENERAL'S OFFICE
30 East Broad St., 16th Fl.
Columbus, OH 43215
william.wright@ohioattorneygeneral.gov

Megan Addison
PUBLIC UTILITIES COMMISSION OF OHIO
180 East Broad Street, 12th Floor
Columbus, OH 43215
megan.addison@puco.ohio.gov

ATTORNEY EXAMINER

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Summary: Testimony Direct Testimony of Joseph G. Bowser on Behalf of Industrial Energy Users-Ohio electronically filed by Mr. Frank P Darr on behalf of Industrial Energy Users-Ohio