

IN THE SUPREME COURT OF OHIO

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.	)	Supreme Court Case No. 13-0521
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---	--------------------------------

In the Matter of the Application of Columbus Southern Power Company and Ohio Power company for Approval of Certain Accounting Authority.	)	Third Appeal from the Public Utilities Commission of Ohio
	)	PUCO Case Nos. 11-346-EL-SSO, 11-348-EL-SSO; 11-349-EL-AAM, and 11-350-EL-AAM.

---

**FIRST MERIT BRIEF  
OF APPELLANT  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

Bruce J. Weston  
Ohio Consumers' Counsel  
(Reg. No. 0016973)

Maureen R. Grady, Counsel of Record  
(Reg. No. 0020847)  
Terry L. Etter  
(Reg. No. 0067445)  
Joseph P. Serio  
(Reg. No. 0036959)  
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-9567 – (Grady)  
(614) 466-7964 – (Etter)  
(614) 466-9565 – (Serio)  
(614) 466-9475 - Facsimile  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)  
[etter@occ.state.oh.us](mailto:etter@occ.state.oh.us)  
[serio@occ.state.oh.us](mailto:serio@occ.state.oh.us)

*Attorneys for Appellant  
Office of the Ohio Consumers' Counsel*

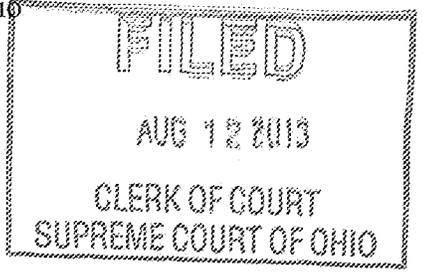
Mike DeWine  
(Reg. No. 0009181)  
Attorney General of Ohio

William L. Wright  
(Reg. No. 0018010)  
Section Chief

Werner L. Margard, III  
(Reg. No. 0024858)  
John H. Jones  
(Reg. No. 0051913)  
Assistant Attorneys General  
Public Utilities Section

Public Utilities Commission of Ohio  
180 East Broad Street, 6th Floor  
Columbus, OH 43215-3793  
(614) 466-4397 - Telephone  
(614) 644-8764 - Facsimile  
[Werner.margard@puc.state.oh.us](mailto:Werner.margard@puc.state.oh.us)  
[John.jones@puc.state.oh.us](mailto:John.jones@puc.state.oh.us)

*Attorneys for Appellee  
Public Utilities Commission of Ohio*



Mark S. Yurick, Counsel of Record  
(Reg. No. 0039176)  
Zachary D. Kravitz  
(Reg. No. 0084238)

Taft Stettinius & Hollister, LLP  
65 E. State Street, Suite 1000  
Columbus, OH 43215-3413  
(614) 334-7197 – (Yurick)  
(614) 334-6117 – (Kravitz)  
(614) 221-2838 - Telephone  
(614) 221-2007 - Facsimile  
[myurick@taftlaw.com](mailto:myurick@taftlaw.com)  
[zkravitz@taftlaw.com](mailto:zkravitz@taftlaw.com)

*Counsel for Appellant, The Kroger Co.*

Mark Hayden  
(Reg. No. 0081077)

FirstEnergy Service Company  
76 South Main Street  
Akron, Ohio 44308  
(330) 761-7735 - Telephone  
(330) 384-3875 - Facsimile  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)

Nathaniel Alexander  
(Reg. No. 0080713)  
James Lang  
(Reg. No. 0059668)

Calfee, Halter & Griswold, LLP  
1405 East Sixth Street  
Cleveland, Ohio 44114  
(216) 622-8200 - Telephone  
(216) 241-0816 - Facsimile  
[jlang@calfee.com](mailto:jlang@calfee.com)  
[tallexander@calfee.com](mailto:tallexander@calfee.com)

David Kutik  
(Reg. No. 0006418)

Jones Day  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
(216) 586-3939 -Telephone  
(216) 579-0212 - Facsimile  
[dakutik@jonesday.com](mailto:dakutik@jonesday.com)

*Counsel for Appellant, FirstEnergy Solutions  
Corp.*

Steven Nourse  
(Reg. No. 0046705)  
Matthew Satterwhite  
(Reg. No. 0071972)

American Electric Power Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, Ohio 43215  
(614) 716-1608 -Telephone  
(614) 716-2950 – Facsimile  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)

Daniel R. Conway  
(Reg. No. 0023058)  
L. Bradfield Hughes  
(Reg. No. 0070997)

Porter Wright Morris & Arthur, LLP  
41 South High Street  
Columbus, Ohio 43215  
(614) 227-2270 -Telephone  
(614) 227-1000 - Facsimile  
[dconway@porterwright.com](mailto:dconway@porterwright.com)  
[bhughes@porterwright.com](mailto:bhughes@porterwright.com)

*Counsel for Appellee/Cross-Appellant, Ohio  
Power Company*

Michael Kurtz  
(Reg. No. 0033350)  
David Boehm  
(Reg. No. 0021881)  
Jody Cohn  
(Reg. No. 0085402)

Boehm, Kurtz & Lowry  
36 East Seventh St., Suite 1510  
Cincinnati, Ohio 45202  
(513) 421-2255 – Telephone  
(513) 421-2764 – Facsimile  
[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com)  
[jkylercohn@BKLawfirm.com](mailto:jkylercohn@BKLawfirm.com)

*Counsel for Appellant, The Ohio Energy  
Group*

Samuel C. Randazzo, Counsel of Record  
(Reg. No. 0016386)  
Frank P. Darr  
(Reg. No. 0025469)  
Joseph E. Olikier  
(Reg. No. 0086088)  
Matthew R. Pritchard  
(Reg. No. 0088070)

McNees Wallace & Nurick LLC  
21 East State Street, 17th Floor  
Columbus, OH 43215  
(614) 469-8000 - Telephone  
(614) 469-4653 - Facsimile  
[sam@wmncmh.com](mailto:sam@wmncmh.com)  
[fdarr@wmncmh.com](mailto:fdarr@wmncmh.com)  
[joliker@mwncmh.com](mailto:joliker@mwncmh.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)

*Counsel for Appellant, Industrial Energy  
Users-Ohio*

**TABLE OF CONTENTS**

	<b>PAGE</b>
I. INTRODUCTION .....	1
II. STANDARD OF REVIEW .....	3
III. STATEMENT OF FACTS .....	4
IV. ARGUMENT.....	7
PROPOSITION OF LAW NO. 1: It is unlawful and unreasonable for the Public Utilities Commission of Ohio to require consumers of retail electric service to pay twice for capacity. ....	7
PROPOSITION OF LAW NO. 2: When the statutory market development period ended the Public Utilities Commission of Ohio became prohibited by R.C. 4928.38 from allowing an electric distribution utility to collect a charge compensating it for revenues lost due to competition. ....	14
PROPOSITION OF LAW NO. 3: The Public Utilities Commission of Ohio erred when it construed R.C. 4928.143(B)(2)(d) to allow an electric distribution utility to collect a rate stability charge.....	19
A. The PUCO erred in finding that the retail stability charge relates to “default service” under R.C. 4928.143(B)(2)(d). ....	21
1. Default service has already been defined under R.C. 4928.14 as provider of last resort service. Since the Utility failed to produce measurable and verifiable evidence of its provider of last resort costs that comprise the rate stability charge, the PUCO erred in approving it. ....	21
2. If statutory construction is necessary, the Court should construe the statute in light of R.C. 1.47 and 1.49. In doing so, it should find that the PUCO erred as a matter of law in equating default service with the standard service offer. ....	25
B. The PUCO erred in finding that the retail stability charge has the effect of stabilizing or providing certainty regarding electric service. ....	28
V. CONCLUSION.....	30

**TABLE OF CONTENTS cont'd.**

**APPENDIX:**

**Appx. Page**

**S.Ct.Prac.R. 16.02(B)(5) Materials**

*In re 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; In re the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority, Pub. Util. Comm. No. 11-346-EL-SSO et al., Opinion and Order (August 8, 2012).....00001*

*In re 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; In re the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority, Pub. Util. Comm. No. 11-346-EL-SSO et al., OCC Application for Rehearing (Sept. 7, 2012) .....00087*

*In re 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; In re the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority, Pub. Util. Comm. No. 11-346-EL-SSO et al., Entry on Rehearing (January 30, 2013) .....00224*

*In re 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; In re the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority, Pub. Util. Comm. No. 11-346-EL-SSO et al., OCC Application for Rehearing (March 1, 2013) .....00290*

*In re 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; In re the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority, Pub. Util. Comm. No. 11-346-EL-SSO et al., Second Entry on Rehearing (March 27, 2013) .....00301*

*In re 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; In re the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority, Pub. Util. Comm. No. 11-346-EL-SSO et al., OCC Notice of Appeal (May 23, 2013).....00309*

**OHIO REVISED CODE:**

R.C. 1.47 .....00478

R.C. 1.49 .....00479

R.C. 4903.09 .....00480

R.C. 4903.13 .....00481

R.C. 4905.02 .....00482

R.C. 4905.03 .....00484

R.C. 4928.01(B).....00487

R.C. 4928.02(A) .....00488

R.C. 4928.02(H) .....00488

R.C. 4928.05 .....00489

R.C. 4928.06 .....00490

R.C. 4928.14 .....00493

R.C. 4928.141 .....00494

R.C. 4928.142 .....00495

R.C. 4928.143 .....	00499
R.C. 4928.37 .....	00503
R.C. 4928.38 .....	00505
R.C. 4928.39 .....	00506
R.C. 4928.40 .....	00507

**TABLE OF AUTHORITIES**

**PAGE**

**CASES:**

<i>Carter v. Division of Water</i> , 146 Ohio St. 203, 65 N.E.2d 63 (1946) .....	26
<i>Cleveland Electric Illuminating Co. v. Pub. Util. Comm.</i> , 76 Ohio St.3d 521, 668 N.E.2d 889 (1996) .....	3
<i>Cline v. Ohio Bur. of Motor Vehicles</i> , 61 Ohio St.3d 93, 573 N.E.2d 77 (1991) .....	22
<i>Columbus S. Power Co. v. Pub. Util. Comm.</i> , 67 Ohio St.3d 535, 620 N.E.2d 835 (1993) .....	18
<i>Columbus-Suburban Coach Lines, Inc. v. Pub. Util. Comm.</i> , 20 Ohio St.2d 125, 254 N.E.2d 8 (1969) .....	30
<i>Constellation New Energy, Inc. v Pub. Util. Comm.</i> , 104 Ohio St.3d 530, 2004-Ohio-6767, 820 N.E.2d 885, .....	23
<i>Consumers' Counsel v. Pub. Util. Comm.</i> , 67 Ohio St.2d 153, 423 N.E.2d 820 (1981) .....	18
<i>D.A.B.E. Inc. v. Toledo-Lucas County Bd. of Health</i> , 96 Ohio St.3d 250, 2002-Ohio-4172, 773 N.E.2d 536 .....	26
<i>East Ohio Gas Co. v. Pub. Util. Comm.</i> , 39 Ohio St.3d 295, 530 N.E.2d 875 (1988) .....	26,28
<i>Elyria Foundry v. Pub. Util. Comm.</i> , 114 Ohio St.3d 305, 2007-Ohio-4164, 871 N.E.2d 1176 .....	13
<i>Good Samaritan Hospital v. Porterfield</i> , 29 Ohio St.2d 25, 278 N.E.2d 26 (1972) .....	23
<i>In re Application of Columbus Southern Power Company, et al.</i> , 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655 .....	19,22,28
<i>Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.</i> , 68 Ohio St.3d 559, 629 N.E.2d 423 (1994) .....	3

<i>Indus. Energy Users-Ohio v. Pub. Util. Comm.,</i> 117 Ohio St.3d 486, 2008-Ohio-990, 885 N.E.2d 195 .....	22,24
<i>Meeks v. Papadopulos,</i> 62 Ohio St.2d 187, 404 N.E.2d 159(1980) .....	21,25
<i>Muenchenbach v. Preble Cty.,</i> 91 Ohio St.3d 141, 742 N.E.2d 1128 (2001) .....	22
<i>Office of Consumers' Counsel v. Pub. Util. Comm.,</i> 58 Ohio St.2d 108, 388 N.E.2d 1370 (1979) .....	3
<i>Ohio Civil Rights Comm. v. Parklawn Manor,</i> 41 Ohio St.2d 47, 322 N.E.2d 642 (1975) .....	23
<i>Ohio Consumers' Counsel v. Pub. Util. Comm.,</i> 114 Ohio St.3d 340, 2007-Ohio-4276, 872 N.E.2d 269 .....	22,23
<i>Pike Natural Gas Co. v. Pub. Util. Comm.,</i> 68 Ohio St.2d 181, 429 N.E.2d 444 (1981) .....	18
<i>Sears v. Weimer,</i> 143 Ohio St. 312, 55 N.E.2d 413 (1944) .....	21
<i>State ex rel. Bolin v. Ohio Environmental Protection Agency,</i> 82 Ohio App.3d 410, 612 N.E.2d 498 (1992) .....	27
<i>State ex rel. Carmean v. Board of Education,</i> 170 Ohio St. 415, 165 N.E.2d 918 (1960) .....	26
<i>State ex rel. Foster v. Evatt,</i> 144 Ohio St. 65, 56 N.E.2d 265 (1944) .....	30
<i>State v. Elam,</i> 68 Ohio St.3d 585, 629 N.E.2d 442 (1994) .....	30
<i>State v. Taniguchi,</i> 74 Ohio St.3d 154, 656 N.E.2d 1286 (1995) .....	26
<i>State v. Wemer,</i> 112 Ohio App.3d 100, 677 N.E.2d 1258 (1996) .....	3
<i>Stewart v. Trumbull Cty. Bd. of Elections,</i> 34 Ohio St.2d 129, 296 N.E.2d 676 (1973) .....	26

<i>Thompson Elec., Inc. v. Bank One, Akron, N.A.,</i> 37 Ohio St.3d 259, 525 N.E.2d 761 (1988) .....	30
<i>Village of Grafton v. Ohio Edison,</i> 77 Ohio St.3d 102, 671 N.E.2d 241 (1996) .....	3

**ENTRIES AND ORDERS OF THE PUBLIC UTILITIES COMMISSION OF OHIO**

<i>In re the Application of Ohio Edison Companies, the Cleveland Electric Illuminating Companies, and the Toledo Edison Companies for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, Associated with Reconciliation Mechanism, and Tariffs for Generation Service,</i> Pub. Util. Comm. No. 08-936-EL-SSO, Opinion and Order (Nov. 25, 2008).....	13
<i>In re the Commission Review of the Capacity Charge of Ohio Power Company and Columbus Southern Power Company,</i> Pub. Util. Comm. No. 10-2929-EL-UNC, Opinion and Order (July 2, 2012).....	passim
<i>In re 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,</i> Pub. Util. Comm. No. 08-917-EL-SSO, et. al., Order on Remand (Oct. 3, 2011) .....	23,25

**OHIO REVISED CODE:**

R.C. 1.47 .....	25,26,27
R.C. 1.49 .....	22,25,26
R.C. 4903.09 .....	29
R.C. 4903.13 .....	3,30
R.C. Chapter 4905 .....	8,24
R.C. 4905.02 .....	1
R.C. 4905.03 .....	1,28
R.C. Chapter 4909 .....	8,24

R.C. Chapter 4911 .....	1
R.C. 4928.01(B).....	24
R.C. 4928.02(A) .....	3,12
R.C. 4928.02(H) .....	3,12,13
R.C. 4928.05 .....	1
R.C. 4928.06.....	12
R.C. 4928.06(A) .....	13
R.C. 4928.144.....	8
R.C. 4928.14(C).....	23
R.C. 4928.141.....	1,3,12,18,24
R.C. 4928.142.....	16
R.C. 4928.143.....	3,28
R.C. 4928.143(B)(2).....	19,21,27,30
R.C. 4928.143(B)(2)(d) .....	19,20,21,25,29,30
R.C. 4928.37 .....	17
R.C. 4928.38 .....	14,17,18
R.C. 4928.39 .....	17
R.C. 4928.40.....	18
 <b><u>MISCELLANEOUS:</u></b>	
Am.Sub.S.B.221 .....	16
S.B.3, 148 Ohio Laws, Part IV, 7962 .....	16
<i>Black's Law Dictionary</i> 661 (9 <sup>th</sup> Ed.2009).....	29

## I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") submits this brief as the representative<sup>1</sup> of approximately 1.2 million residential utility customers of the Ohio Power Company ("Ohio Power" or "Utility" or "AEP Ohio") who are paying higher electric bills as a result of certain decisions that this Court should reverse on appeal.

The decisions below are from an electric security plan case, which since 2008 has been a major forum for the Public Utilities Commission of Ohio ("PUCO" or "Appellee") to adjudicate electric service issues that are important to customers and utilities. The PUCO's decision included the establishment of the "standard service offer" that Ohio Power<sup>2</sup> will be providing to customers through May 31, 2015. Under R.C. 4928.141 (Appx. 000494), Ohio Power must provide consumers "on a comparable and non-discriminatory basis" a standard service offer of all competitive retail electric services. The standard service offer is provided to customers who choose not to switch to a non-utility generation service provider ("marketer" or "CRES provider"). Ohio law allows the standard service offer price for electric generation service to be set either through an electric security plan or through a market rate offer. Ohio Power chose to establish a standard service offer under an electric security plan.

As part of its electric security plan, Ohio Power received approval to collect, inter alia, a "retail stability rider" charge ("RSR") and a capacity charge. Together these charges permit

---

<sup>1</sup> R.C. Chapter 4911.

<sup>2</sup> Ohio Power is an electric light company as defined by R.C. 4905.03(A)(3) (Appx. 000484), and is a public utility as defined under R.C. 4905.02. (Appx. 000482-000483). Ohio Power is also an electric distribution utility, which, pursuant to R.C. 4928.05 (Appx. 000489), provides noncompetitive electric distribution service.

Ohio Power to collect over \$1 billion from all of its customers over the next several years.<sup>3</sup>

OCC's appeal challenges the PUCO's authority to approve these two charges.

The retail stability charge allows Ohio Power to collect for profits lost on generation sales (not for any real cost) in the competitive electric generation market in Ohio -- something the law does not allow. This appeal comes at a time when the market for electricity generation is producing low prices. It is unfortunate for Ohio Power's customers that they are made to pay huge sums for above-the-market charges that are created in the regulatory process, such as the charge for "stability."

The capacity charge is how utilities now charge others (on a retail basis to customers or on a wholesale basis to marketers) for making their power plants available to generate the needed amount of electricity. Unfortunately for customers, the PUCO approved a capacity charge that requires retail customers to pay for (subsidize) Ohio Power to sell its wholesale capacity at a discount to marketers. This too is contrary to Ohio law, and will cause certain customers to pay twice for capacity.

Accordingly, the PUCO's Opinion and Order and Rehearing Entries implementing and upholding the Opinion and Order in Case No. 11-346-EL-SSO are unlawful and unreasonable. This Court should, accordingly, reverse the PUCO's decisions. Under the electric competition envisioned by Ohio law, electricity customers are not to be the insurers of the Utility's revenue stream if competition results in reduced revenues for the Utility. But the PUCO's decision makes customers responsible for paying hundreds of millions of dollars for Ohio Power's lost generation revenues. Similarly, Ohio's electric competition law does not allow the PUCO to

---

<sup>3</sup> The retail stability charge will collect \$508 million from customers. See R. 690 at 35. The capacity charge is estimated to collect \$647 million. (Supp. 000133, OCC Rehearing Ex. 1A).

saddle customers with payments to Ohio Power for revenue it loses in offering marketers a discount on wholesale capacity.

## II. STANDARD OF REVIEW

R.C. 4903.13 (Appx. 000481) governs this Court's review of PUCO Orders. It provides in pertinent part: "A final order made by the public utilities commission shall be reversed, vacated, or modified by the supreme court on appeal, if, upon consideration of the record, such court is of the opinion that such order was unlawful or unreasonable \* \* \*." The Court has interpreted this standard as one turning upon whether the issue presents a question of law or a question of fact.

OCC's appeal involves only questions of law, to give customers the protection of Ohio law. OCC's Proposition of Law No. One challenges the decision of the PUCO which will result in some retail customers paying twice for capacity in violation of R.C. 4928.141, 4928.02(A), and 4928.02(H). (Appx. 000494, 000488). OCC's Proposition of Law Nos. Two and Three challenge the PUCO's statutory interpretation of R.C. 4928.143. (Appx. 000499-000502). Statutory interpretation presents a legal issue which is subject to de novo review by the courts, including the Ohio Supreme Court. *State v. Wemer*, 112 Ohio App.3d 100, 103, 677 N.E.2d 1258 (1996).

This Court has complete, independent power of review on questions of law. *Office of Consumers' Counsel v. Pub. Util. Comm.*, 58 Ohio St.2d 108, 110, 388 N.E.2d 1370 (1979). This Court uses a de novo standard of review to decide all matters of law such as those raised in this case. *Village of Grafton v. Ohio Edison*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996); *Cleveland Electric Illuminating Co. v. Pub. Util. Comm.*, 76 Ohio St.3d 521, 523, 668 N.E.2d 889 (1996); *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d

559, 563, 629 N.E.2d 414 (1994). With this standard of review in mind, OCC presents the Court with questions of law to resolve the errors in the PUCO's decision that affects 1.2 million customers.

### III. STATEMENT OF FACTS

Ohio Power filed its original application in these proceedings on January 27, 2011. (R. 1,2). Negotiations took place among the Utility, intervenors, and the PUCO Staff aimed at settling the case. The result was a Stipulation and Recommendation ("Stipulation") among some parties that was filed on September 7, 2011. (R. 216). Those parties not signing the Stipulation included the Office of the Ohio's Consumers' Counsel, FirstEnergy Solutions, and the Industrial Energy Users-Ohio.

The PUCO originally approved the Stipulation, with modifications, on December 14, 2011. (R. 356). On rehearing, and after considerable public outcry about the rate increases resulting from the modified Stipulation, the PUCO rejected the electric security plan contained in the modified Stipulation on February 23, 2012. (R. 427). The PUCO gave Ohio Power thirty days to advise it of its plans to go forward with an electric security plan. (R. 427). Ohio Power, on March 5, 2012, notified the PUCO of its intent to submit a modified electric security plan. (R. 434). On March 30, 2012, Ohio Power filed an application containing the modified electric security plan. (R. 462).

On July 2, 2012, the PUCO issued an order in a related case filed by Ohio Power, the capacity case, Case No. 10-2929-EL-UNC. *In re the Commission Review of the Capacity Charge of Ohio Power Company and Columbus Southern Power Company*, Pub. Util. Comm. No. 10-2929-EL-UNC, Opinion and Order (July 2, 2012). There it determined that the state compensation mechanism for Ohio Power would be PJM's market-based prices. *Id.* at 23.

However, the PUCO found that if the Utility was limited to collecting market-based capacity prices from marketers it would be “insufficient to yield reasonable compensation.” *Id.* Thus, under the PUCO’s finding in that capacity case, Ohio Power was entitled to collect its full embedded cost of capacity, which the PUCO ruled is \$188.88/megawatt-day (“MW-day”) (as opposed to the \$355/MW-day claimed by Ohio Power). *Id.* at 33.

In order to stabilize the market and encourage shopping, the PUCO determined that marketers should get a discount for the wholesale capacity they purchased from the Utility. This discount is to be based on the PJM market-based price.<sup>4</sup> PJM is a regional transmission organization whose area includes Ohio and certain other eastern states. PJM facilitates a regional wholesale electricity market and administers the interstate transmission grid.

The PUCO then authorized Ohio Power to defer the resulting wholesale discount given to marketers and collect it in the future. *Id.* at 23. The PUCO acknowledged that the total discount would depend on the number of customers who shop, or switch to marketers. Finally the PUCO announced that it would address the method for collecting the capacity deferrals in the order in the Utility’s electric security plan case, even though the evidentiary record was closed in the electric security plan case. *Id.*

On August 8, 2012, in the Utility’s electric security plan proceeding, the PUCO issued an Opinion and Order, determining that the rate customers of Ohio Power would be the parties who would pay for the capacity discount. (R. 690 at 37 ). In its decision, the PUCO approved a \$508 million charge called a retail stability charge. The retail stability charge “allows for AEP Ohio to

---

<sup>4</sup> That price varies over the next three years from \$20.01/MW-D in the Planning Year (“PY”) 2012; to \$33.71/MW-D in PY 2013; and to \$153.89/MW-D in PY 2014. *In re the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Pub. Util. Comm. No. 10-2929-EL-UNC, Opinion and Order at 10 (July 2, 2012).

continue to provide certainty and stability for AEP Ohio's SSO plan while competitive markets continue to develop as a result of RPM [Reliability Pricing Model] priced capacity." (Appx. 000039).

The PUCO determined that Ohio Power will be permitted to collect its \$508 million retail stability charge from its customers through a \$3.50/MWh monthly charge, until May 31, 2014. That charge will increase to \$4/MWh from June 1, 2014 to May 31, 2015. (Appx. 000039). Ohio Power was ordered to allocate \$1.00 of the retail stability charge revenue towards recovery of its capacity deferrals ordered in its capacity case. (Appx. 000039).

The PUCO stated that it will determine the ultimate deferred discount to be paid by customers based on Ohio Power's actual shopping statistics and the amount that has been contributed through the retail stability charge. (R. 690 at 36). The PUCO alleged that its decision is in the "best interests of both customers and AEP Ohio." (R. 690 at 36). In this regard, the PUCO opined that the retail stability charge contributes to paying off Ohio Power's capacity deferrals and customers will avoid paying high deferral charges for years into the future. (R. 690 at 36).

On September 7, 2012 OCC filed an application for rehearing of the PUCO's August 8, 2012 Opinion and Order. (R. 696 ). OCC's application was denied in part and granted in part on January 30, 2013. (R. 740 at ¶17). In granting OCC's application for rehearing, the PUCO found, for the first time, that the retail stability charge falls under the "default service" category of the law for electric security plans. On March 1, 2013, OCC filed an application for rehearing based on this new finding of the PUCO. (R. 741). That rehearing was denied. It is from these PUCO decisions that OCC (and others) have filed their Notices of Appeal.

#### IV. ARGUMENT

**PROPOSITION OF LAW NO. 1: It is unlawful and unreasonable for the Public Utilities Commission of Ohio to require consumers of retail electric service to pay twice for capacity.**

The PUCO's decision will result in Ohio Power charging hundreds of millions of dollars to retail customers' bills. By OCC's calculation the discount that retail customers will fund for the marketers will amount to \$647 million. (Supp. 0000133).

In the Ohio Power capacity charge case, the PUCO determined that Ohio Power must charge marketers the prevailing PJM market rate in effect during the remainder of Ohio Power's electric security plan term. *In re the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Pub. Util. Comm. No. 10-2929-EL-UNC, Opinion and Order at 23 (July 2, 2012). Under the PUCO's Order in the Ohio Power capacity case from June 2012 to June 2013, marketers will pay \$20/MW-day. From June 2013 to June 2014, marketers will pay \$33/MW-day. Marketers will pay \$153 /MW-day for June 2014 through June 2015. *Id.* at 10. All these market-based charges to the marketers are below what the PUCO determined to be Ohio Power's cost for the capacity; hence, the marketers are buying the capacity from Ohio Power at a discount from what the PUCO found to be Ohio Power's cost. And the PUCO is requiring retail customers to pay Ohio Power for its discount to the marketers.

The PUCO also permitted Ohio Power to defer capacity costs, based on the difference between Ohio Power's embedded capacity cost (\$188.88/MW-day) and the PJM market rate. *Id.* at 23. The amounts being "deferred" are recorded on the accounting books of Ohio Power for later collection from retail customers. The deferral itself was created out of the notion that the prevailing PJM market rate "would be insufficient to yield reasonable compensation for AEP-Ohio's provision of capacity to CRES providers in fulfillment of its FRR capacity obligations."

*Id.* The PUCO claimed authority for its deferral actions under the traditional ratemaking provisions of Chapter 4905 and 4909 of the Revised Code. *Id.* at 23.

The PUCO also authorized the Utility to collect carrying charges on such deferrals. The carrying charges are intended to protect the time value of Ohio Power's money that is being recorded (deferred) on its books, since Ohio Power is not being allowed to immediately collect the money from customers. The carrying charges that customers will be charged, in addition to being charged the principal recorded on Ohio Power's books, will be based on Ohio Power's weighted average cost of capital "until such time as a recovery mechanism is approved in 11-346." *Id.* at 23-24. "Thereafter, AEP-Ohio should be authorized to collect carrying charges at its long-term cost of debt." *Id.* at 24. The PUCO advised that it would "establish an appropriate recovery mechanism for such deferred costs and address any additional financial considerations in the 11-346 proceeding." *Id.*

In authorizing the capacity costs to be deferred, the PUCO set the stage for Ohio Power to collect what the PUCO determined were "wholesale capacity costs"<sup>5</sup> from retail customers under the Ohio Power electric security plan. Indeed, the PUCO then imported the deferrals into Ohio Power's electric security plan proceeding after the evidentiary record in that case had closed.<sup>6</sup> The PUCO approved the recovery of the capacity deferrals from retail customers "as part of the RSR." (Appx. 000054). The PUCO asserted that it could arrange for the deferrals because nothing in R.C. 4928.144 limits its authority to modify an electric security plan to include deferrals on its own motion. (Appx. 000055).

---

<sup>5</sup> *Id.* at 13.

<sup>6</sup> The PUCO determined on July 2, 2012 that it would create deferrals and address a recovery mechanism for the deferrals in Ohio Power's yet to be decided electric security plan case. At the time- July 2, 2012, the evidentiary record in the electric security plan case was closed and initial briefs had been filed.

But the PUCO's decision was not unanimous. Commissioner Roberto dissented. *In re the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Pub. Util. Comm. No. 10-2929-EL-UNC, Opinion and Order (July 2, 2012). Commissioner Roberto described the discount as a PUCO intervention in the market which provides a "significant no-strings attached, unearned benefit" to marketers. *Id.* at 13. The parties who benefit from this are principally marketers. The marketers will receive the capacity they need at a discount. This discount for the marketers is a subsidy from those retail customers who are obliged to pay for it. The PUCO is making retail customers pay Ohio Power to fund the discount to marketers. As stated above, the PUCO's decision will result in hundreds of millions of dollars being added to retail customers' bills. By OCC's calculation the wholesale capacity discount will amount to \$647 million. (Supp. 000133). The unfortunate irony for customers is that, at a time when the market is producing low energy prices, the PUCO is requiring retail customers to pay higher prices to prop-up the Utility (Ohio Power) and its competitors.

The discount to marketers will be paid by both standard service offer customers and choice customers who purchase generation from marketers ("shopping customers"). And yet, standard service offer customers<sup>7</sup> are already paying Ohio Power for its capacity through standard service offer generation rates. Those generation rates are designed to cover both Ohio

---

<sup>7</sup> Statistically, the majority of those customers that are likely to pay standard service offer rates are the residential customers. This is because residential customers have generally not shopped, but have chosen to stay with the standard service offer. Indeed the latest shopping levels reported in the record of the case below show residential shopping at 15.57 %, which is much less than the robust level of shopping for industrial and commercial customers. Commercial customer shopping data over the same time frame (as of May 31, 2012) shows 48.69% shopping while industrial customers shopping is at 33%. Overall, total shopping for Ohio Power is 32.4%. (R. 627 at 10).

Power's energy and capacity charges for serving standard service offer customers. In fact, Ohio Power acknowledged that standard service offer generation rates produce revenues that cover its fully embedded cost of capacity—which Ohio Power contends is \$355/MW-day.<sup>8</sup> (Supp. 000065, 000030). Thus, standard service offer customers pay nearly double the PUCO-determined fully embedded cost rate for Ohio Power's capacity -- \$188.88/MW-day. *Id.*

Unfortunately for standard service offer generation customers, the PUCO ignored the fact that these non-shopping customers are already paying Ohio Power for capacity. Consequently, the PUCO did not reduce the standard service offer rate (as OCC requested in its Reply Brief, R. 660). So under the PUCO approved capacity deferral plan, Ohio Power's standard service customers will be required to pay twice for capacity -- once, through the standard service offer rate they pay, and the second time as they pay Ohio Power for the deferred capacity costs (with interest). This result is unjust and unreasonable for non-shopping customers (being customers who have remained with Ohio Power's service and have not switched to a marketer).

In this regard, dissenting Commissioner Roberto foresaw a similar result unfolding also for shopping customers. Commissioner Roberto concluded (in her dissent) that shopping customers may indeed bear the burden of paying for the discount or subsidy, provided to marketers as a result of the Ohio Power capacity Order. She explained that shopping customers

---

<sup>8</sup> *In re the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Pub. Util. Comm. No. 10-2929-EL-UNC, Opinion and Order at 25 (July 2, 2012), citing to Ohio Power Witness Allen's Rebuttal testimony at 19-20, where he presented graphs illustrating that Ohio Power's base generation rates are essentially equivalent to its full embedded cost of capacity rate (\$355/MW-day). The capacity charge Order also cites to Tr. II at 304 and 350, where Ohio Power Witness Pearce, while being cross examined, stated that the implicit capacity rate charged to standard service offer customers is equivalent to the \$355/MW-day rate Ohio Power proposed for capacity.

may pay twice for the capacity unless the marketers directly pass through PJM market-based prices:

If the retail providers do not pass along the entirety of the discount, **then consumers will certainly and inevitably pay twice for the discount today granted to the retail suppliers.** To be clear, unless every retail provider disgorges 100 percent of the discount to consumers in the form of lower prices, shopping consumers will pay more for Fixed Resource Requirements service than the retail provider did. This represents the first payment by the consumer for the service. Then the deferral, with carrying costs, will come due and the consumer will pay for it all over again -- plus interest.<sup>9</sup>

To amplify the Commissioner's point, there is no requirement for the marketers to pass through to their customers (the shopping customers) any of the discount that they receive for purchasing capacity. Nor could there be a requirement for the marketers to pass through the discount to their customers, because the PUCO lacks the jurisdiction under Ohio's deregulatory law to control the marketer's pricing.

The PUCO stated in the Ohio Power capacity case that it had the "intention of adopting a state compensation mechanism that achieves a reasonable outcome for all stakeholders." *In re the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Pub. Util. Comm. No. 10-2929-EL-UNC, Opinion and Order at 23. There is no scenario under which customers paying twice is a reasonable outcome. Moreover, there is no provision in the Ohio Revised Code that permits an electric distribution utility to charge customers twice for the same service. This result is unjust and unreasonable.

---

<sup>9</sup> *In re the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Pub. Util. Comm. No. 10-2929-EL-UNC, Opinion and Order, Concurring and Dissenting Opinion of Commissioner Cheryl L. Roberto at 4 (July 2, 2012). (Emphasis added).

Additionally, charging standard service offer customers twice for the deferred capacity discount is also unlawful under R.C. 4928.02(A), 4928.141, and 4928.02(H). Under R.C. 4928.02(A) (Appx. 000488) it is the policy of the state to ensure that “non-discriminatory” and “reasonably priced retail electric service” is made available to consumers. Likewise, under R.C. 4928.141 (Appx. 000494) a utility must provide retail electric service on a “comparable and non-discriminatory basis.” Under R.C. 4928.02(H), the PUCO is to ensure effective competition by avoiding anti-competitive subsidies. Yet these provisions in the code were violated under the capacity pricing scheme adopted by the PUCO.

The capacity that Ohio Power provides to marketers is a similar service that it provides as well to its standard service offer customers. And the service is provided under substantially the same circumstances and conditions. Capacity is capacity whether it is supplied (on a wholesale basis) to marketers or supplied (on a retail basis) to non-shopping standard service offer customers.

Non-shopping or standard service offer customers pay capacity charges that enable the Utility to collect its “embedded costs” of \$355/MW-day. Yet, under the PUCO’s decision in the Ohio Power capacity charge case, marketers will pay capacity rates at RPM pricing, which is much lower than the \$355/MW-day. And marketers will then be able to serve shopping customers, using much lower capacity charge pricing, based on receiving capacity at market-based prices. That discriminates against standard service offer customers in favor of marketers and customers who have exercised choice.

Discriminatory pricing of capacity violates the policies of the state under R.C. 4928.02(A) and is inconsistent with R.C. 4928.141. Under R.C. 4928.06 (Appx. 000490), the policies specified in R.C. 4928.02 are more than statements of general policy objectives.

Section 4928.06(A) imposes a specific duty upon the PUCO to ensure the policy specified in R.C. 4928.02 is effectuated.<sup>10</sup> And as this Court has observed, the PUCO may not approve a rate plan that violates the policy provisions of R.C. 4928.02. *Elyria Foundry v. Pub. Util. Comm.*, 114 Ohio St.3d 305, 2007-Ohio-4164, 871 N.E.2d 1176, ¶58.

The PUCO has also created an unlawful subsidy. All retail customers will pay increased retail rates so that marketers receive a discount for wholesale capacity. The PUCO determined in the capacity case that the Utility's cost of providing wholesale capacity service was \$188.88/MW-day—a price reflecting the Utility's fully embedded cost of providing the capacity. *In re the Commission Review of the Capacity Charge of Ohio Power Company and Columbus Southern Power Company*, Pub. Util. Comm. No. 10-2929-EL-UNC, Opinion and Order at 33 (July 2, 2012). Yet marketers are charged a rate for wholesale capacity that is below the Utility's cost to provide the service (the PJM market-based price). This below-cost pricing for wholesale capacity service is an anti-competitive practice whereby retail customers unequivocally subsidize marketers. This violates Ohio law. The noncompetitive retail electric service—capacity service—will provide a subsidy to underwrite the competitive retail services provided by marketers—sale of retail capacity and energy to customers. Consequently, the PUCO's decision is unlawful and inconsistent with R.C. 4928.02(H).

In order to prevent unjust, unreasonable, and unlawful consequences, the Court should reverse the PUCO. Otherwise the customers of Ohio Power, non-shoppers in particular, will end

---

<sup>10</sup> See, e.g., *In re the Application of Ohio Edison Companies, the Cleveland Electric Illuminating Companies, and the Toledo Edison Companies for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, Associated with Reconciliation Mechanism, and Tariffs for Generation Service*, Pub. Util. Comm. No. 08-936-EL-SSO, Opinion and Order at 5. (Nov. 25, 2008).

up paying twice for capacity, a result that is unjust, unreasonable, and violates the statutes that require electric service in the state to be provided in a non-discriminatory manner and without anti-competitive subsidies.

**PROPOSITION OF LAW NO. 2: When the statutory market development period ended the Public Utilities Commission of Ohio became prohibited by R.C. 4928.38 from allowing an electric distribution utility to collect a charge compensating it for revenues lost due to competition.**

In the proceeding below, the PUCO authorized Ohio Power to charge \$508 million<sup>11</sup> to customers over the term of its electric security plan.<sup>12</sup> This charge is called the “retail stability rider.” The retail stability rider is a non-bypassable charge, meaning all customers pay Ohio Power for this charge, even if a customer is purchasing electric generation service from a marketer, and not through Ohio Power’s standard service offer. The retail stability charge **guarantees**<sup>13</sup> the Utility will collect \$826 million from customers in non-fuel revenues, on an annual basis, during the term of the electric security plan.<sup>14</sup> (App. 000036). The \$826 million guarantee is premised on permitting the utility the opportunity to earn a 9% return on equity. (R. 690 at 33). This revenue guarantee is mathematically calculated based on what the Utility charges marketers for its wholesale capacity. (R. 690 at 50).

Ohio Power described the revenue guarantee as a means to “provide financial stability” for it. (Supp. 000069-70). According to Ohio Power, its financial stability can be assured if it

---

<sup>11</sup> \$508 million in charges are to be collected over the following period: Planning year 2012/13 \$189 million; planning year 2013/14 \$251 million; planning year 2014/15 \$68 million.

<sup>12</sup> The term of the plan runs from the effective date of the PUCO Order through May 31, 2015.

<sup>13</sup> OCC Witness Duann described the guarantee to collect revenues as inconsistent with regulatory principles of providing an opportunity, not a guarantee, for a regulated utility to earn a return on invested capital. (Supp. 000023-000026).

<sup>14</sup> “Non-fuel revenues” are defined as base generation revenues, environmental investment carrying cost rider revenues, and CRES capacity revenues. (R. 460). (Emphasis added).

is compensated for generation revenues it will lose under its electric security plan. (Supp. 000070). According to Ohio Power, the need for a financial stability charge pertains in large part to Ohio Power's "transition to competition." But according to the General Assembly, Ohio Power's transition to competition was to have been completed well before now.

Under the electric security plan by 2015 Ohio Power will be supplying standard service to its customers that is completely procured by auction. (Appx. 000042). In the 2015 auction, 100% of the standard service load will be procured through a competitive bid process where marketers compete to supply the standard service load. (Appx. 000042). Prior to 2015, Ohio Power will be conducting yearly auctions that will supply increasing percentages of standard service load. (Appx. 000042-000043). And as part of its transition to competition Ohio Power will be providing marketers with wholesale capacity at a discounted price, as the PUCO ruled in the Utility's capacity case.<sup>15</sup>

Utility Witness Allen acknowledged that one of the objectives of the retail stability charge is to replace a portion of revenue lost when the Utility provides capacity pricing at a discount to marketers who serve increasing percentages of the Utility's load. (Supp. 000069). Mr. Allen testified that "[i]n exchange for the integrated package of terms and conditions of the modified electric security plan, including providing capacity to CRES providers at a price well below the Company's cost associated with this capacity and the resultant loss of generation revenues, the Company is proposing a Retail Stability charge that will replace a portion of this

---

<sup>15</sup> See *In re the Commission Review of the Capacity Charge of Ohio Power Company and Columbus Southern Power Company*, Pub. Util. Comm. No. 10-2929-EL-UNC, Opinion and Order at 23 (July 2, 2012). This case is currently under appeal to the Ohio Supreme Court. See S.Ct. Case No. 2012-2098.

lost revenue.” (Supp. at 000069). Ohio Power defines discounted capacity as anything short of its fully embedded cost of capacity, which it calculates to be \$355 MW/day. (Supp. 000002-03).

Ohio Power Witness Powers also acknowledged that the retail stability charge is designed to compensate it for revenues that, it loses from the “early”<sup>16</sup> competitive auctions under the electric security plan. (Supp.000002-00007). Ohio Power will lose revenues from conducting early auctions because it will lose the ability to charge its fully embedded cost of capacity through its tariffed standard service rate. Instead the standard service customers’ load will be satisfied through auctions, leaving Ohio Power with less revenue.

It should be understood that what Ohio Power sought and what the PUCO gave it is a guarantee of revenues. The Utility is being made whole for revenues that, in its view, it loses as a result of generation competition (the competition that began with electric deregulation in Ohio fourteen years ago). This result turns Ohio law (and market pricing) upside down.

When the PUCO approved the retail stability charge it compensated the Utility for its generation revenue loss. The retail stability compensation will also reduce the electric distribution utility’s regulatory risk in Ohio, according to Ohio Power Witness Dias. (Supp. 00009-00011). The retail stability revenues will be collected from all customers -- standard offer customers and customers who have chosen an alternate generation supplier.

But, the PUCO has no authority to make customers pay Ohio Power for what it views as lost revenues. Nor does the PUCO have authority to approve customer funding of charges that reduce an electric distribution utility’s risk in the competitive generation market. S.B. 221 (and S.B. 3) does not guarantee that electric distribution utilities such as Ohio Power will be forever

---

<sup>16</sup> “Early” auctions is a reference to the fact that AEP Ohio in its ESP proposed to conduct auctions for a competitively bid standard service sooner (or earlier) than that required under a market rate offer scenario under R.C. 4928.142.

made whole for sales of generation lost to marketers. What was supposed to happen under Ohio law is that utility customers were to be given competitive prices for electric generation service. What is happening is very different for Ohio Power's customers. Those customers are being denied the current benefit of the law, which should deliver the low prices of the current energy market to their electric bills. Instead, under the PUCO's Order, customers are paying make-whole charges and revenue guarantees to protect Ohio Power from competitors and from low market prices.

R.C. 4928.38 (Appx. 000505) permitted the electric utilities the opportunity to collect "transition revenues,"<sup>17</sup> But that door has closed. Under R.C. 4928.37, (Appx. 000503-000504), a utility is provided the opportunity to receive transition revenues to "assist it in making the transition to a fully competitive retail electric generation market." That opportunity (the transition) is defined under statute as the "market development period." The market development period ended three years ago, in 2010. When the market development period ended, the PUCO's authority to allow transition revenues (and the Utility's ability to collect transition revenues) ended. But the PUCO did not recognize the end to its authority in this regard and in doing so it violated the law.

There are key provisions in the law that protects customers from their present plight of paying these charges. A utility such as Ohio Power is to be "wholly responsible for whether it is in a competitive position after the market development period" under R.C. 4928.38. (Appx. 000505). And with the termination of the transition revenues, "the utility shall be fully on its own in the competitive market." *Id.* In fact, R.C. 4928.38 prohibits the PUCO from authorizing the transition revenues or "any equivalent revenues" except as provided by statute. And if it

---

<sup>17</sup> "Transition revenues" are defined under R.C. 4928.39. (Appx. 000506).

were not clear enough, R. C. 4928.141 (Appx. 000494) also explicitly declares that a standard service offer “shall exclude any previously authorized allowances for transition costs.”

Under the statute, Ohio Power’s market development period was to end no later than December 31, 2010. *See* R.C. 4928.40. (Appx. 000507-000508). After that time there can be no further collection of transition revenue or “any equivalent revenues” from customers. The PUCO is expressly prohibited from authorizing such. But, as IEU Witness Hess testified, the PUCO’s authorization of a retail stability charge is allowing Ohio Power to charge customers for transition revenue beyond the end date set by law. (Supp. 00094).

The so-called lost revenues the PUCO authorized Ohio Power to collect are attributable to generation competition and are “equivalent” revenues, which like transition revenues, must cease when the market development period expires. They are revenues that insulate Ohio Power from the rigors of generation competition. The revenues are not recoverable in the competitive market. These charges are intended to make customers the guarantors of Ohio Power’s financial stability in the competitive environment. What Ohio Power views as its continuing transition to competition includes being made whole for selling discounted capacity and holding early auctions.

But the PUCO must work within the confines of the law. Here the law is R.C. 4928.38. For the PUCO is a creature of statute and may only exercise the authority given to it by the General Assembly. *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 620 N.E.2d 835 (1993); *Pike Natural Gas Co. v. Pub. Util. Comm.*, 68 Ohio St.2d 181, 429 N.E.2d 444 (1981); *Consumers Counsel v. Pub. Util. Comm.*, 67 Ohio St.2d 153, 423 N.E.2d 820 (1981). The PUCO exceeded its authority in permitting Ohio Power to collect from customers the generation revenues that it loses to competitive forces.

These hundreds of millions of dollars are transition revenues (or the equivalent of transition revenues) that the PUCO cannot impose on customers after the end of the statutory market development period. The market development period ended on December 31, 2010. On January 1, 2011, at the latest, the Ohio General Assembly proclaimed that Ohioans are protected from paying make-whole charges and revenue guarantees to their electric utilities for generation service. The PUCO's Order should be reversed.

**PROPOSITION OF LAW NO. 3: The Public Utilities Commission of Ohio erred when it construed R.C. 4928.143(B)(2)(d) to allow an electric distribution utility to collect a rate stability charge.**

R.C. 4928.143(B)(2) (Appx. 000499) permits an electric distribution utility to include certain enumerated provisions in its electric service plan as part of its standard service offer. This Court has ruled that electric security plans can only contain provisions that fit within one of the categories listed following R.C. 4928.143(B)(2). *In re: Application of Columbus Southern Power Company*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 32. The question presented in this appeal is whether the PUCO erred in construing R.C. 4928.143(B)(2)(d) to allow the utility's \$508 million retail stability charge.

Under subsection (d), a utility may include in its electric security plan:

\* \* \*

Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service.

In its Opinion and Order, the PUCO found that the Utility's retail stability charge "meets the criteria of Section 4928.143(B)(2)(d) as it promotes stable retail electric service prices and ensures customer certainty regarding retail electric service." (R. 690 at 31). The PUCO also determined that the charge "also provides rate stability and certainty through CRES services,

which clearly fall under the classification of retail electric service, by allowing customers the opportunity to mitigate any SSO increases through increased shopping opportunities \* \* \*.” (R. 690 at 31). The PUCO declared that the retail stability charge “freezes any non-fuel generation rate increase that might not [sic] otherwise occur absent the retail stability charge, allowing current customer rates to remain stable throughout the term of the modified electric security plan.” (R. 690 at 31).

In its application for rehearing OCC argued that the PUCO had erred in its statutory analysis. (R. 696, Appx. 000143-000146). In its application OCC explained that the PUCO had ignored the parameters that had to be met in order for a provision to be part of a utility’s electric security plan under R.C. 4928.143(B)(2)(d). Those parameters establish a three step analysis. (R. 696, Appx. 000143-000146).

First, the provision must be a term, condition, or charge. Second, the provision must relate to one of the following categories: limitations on customer shopping for rate electric generation service bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals. Third, the provision must also “have the effect of stabilizing or providing certainty regarding retail electric service.” OCC requested rehearing, *inter alia*, on the ground that the PUCO bypassed the second step of the analysis, and in doing so failed to give effect to all the words in R.C. 4928.143(B)(2)(d). (Appx. 000500).

In its January 30 Entry on Rehearing, the PUCO granted OCC’s application for rehearing on this issue and for the first time explained the specific statutory basis for finding the retail stability charge is lawful. (Appx. 000237-000239). It determined that the charge “clearly falls within the default service category, as set forth in Section 4928.143(B)(2)(d), Revised

Code.” (Appx .000238). The PUCO then explained that the stability charge “freezes non-fuel generation rates throughout the term of the ESP, allowing all standard service offer customers to have rate certainty through the term of the ESP that would not have occurred absent the RSR.” (Appx. 000238). The PUCO then reasoned that since the standard service offer is the default service plan for customers who choose not to shop, the retail stability charge “provides a charge related to default service.” (Appx. 000238).

But as explained below, the PUCO has misconstrued the statute and the evidence in this case. Consequently the Court should reverse the PUCO’s legal determination that R.C. 4928.143(B)(2)(d) permits electric security plans to include a retail stability charge.

**A. The PUCO erred in finding that the retail stability charge relates to “default service” under R.C. 4928.143(B)(2)(d).**

The PUCO concluded that “default service” as used in subsection (d) of R.C. 4928.143(B)(2) is merely a reference to the standard service offer because if customers choose not to shop, they “default” to standard service. (Appx. 000238). Thus, under the PUCO’s logic, the retail stability charge relates to default service. But it is wrong for the PUCO to engage in statutory construction when there is a clear and definite meaning to the term “default service.”

**1. Default service has already been defined under R.C. 4928.14 as provider of last resort service. Since the Utility failed to produce measurable and verifiable evidence of its provider of last resort costs that comprise the rate stability charge, the PUCO erred in approving it.**

It is well settled that where the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no need to apply rules of statutory construction. *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d. 413 (1944), ¶5, syllabus). An unambiguous statute is to be applied, not interpreted. *Meeks v. Papadopoulos*, 62 Ohio St.2d 187, 190, 404 N.E.2d 159 (1980). “In such a case, we do not resort to rules of interpretation in an attempt to

discern what the General Assembly could have conclusively meant or intended in \* \* \* a particular statute--we rely only on what the General Assembly has actually said.”

*Muenchenbach v. Preble Cty.*, 91 Ohio St.3d 141, 149, 742 N.E.2d 1128 (2001) (Moyer, C.J., dissenting). Thus, legislative intent may be inquired into only if the statute is ambiguous on its face.<sup>18</sup>

Here, there is no ambiguity in the law. “Default service” is legislatively defined. Under R.C. 4928.14, “default service” is defined as the provision of service by the utility where the non-utility supplier (marketer) fails to provide service to customers. According to the statute, if a supplier fails to provide electric service to customers within the utility’s service territory, the customers of the supplier default to the utility’s standard service offer until the customer chooses an alternative supplier.

This Court has on a number of occasions addressed the default service requirements of R.C. 4928.14 (Appx. 000483). *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 2008-Ohio-990, 885 N.E.2d 195, *In re Application of Columbus Southern Power Company, et al.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶¶22-30, *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 114 Ohio St.3d 340, 2007-Ohio-4276, 872 N.E.2d 269, ¶¶18-26. This Court has recognized that “default service” is related to a utility’s provider of

---

<sup>18</sup> See *Cline v. Ohio Bur. of Motor Vehicles*, 61 Ohio St.3d 93, 96-97, 573 N.E.2d 77 (1991), where this Court summarized the rules of statutory construction as follows: “Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to apply rules of statutory interpretation \* \* \*. However, where a statute is found to be subject to various interpretations, a court called upon to interpret its provisions may invoke rules of statutory construction in order to arrive at legislative intent \* \* \*. The primary rule in statutory construction is to give effect to the legislature’s intention \* \* \*. Legislative intent must be determined from the language of the statute itself \* \* \*, as well as from other matters, see R.C. 1.49. In determining intent, it is the duty of the court to give effect to the words used, not to delete words used or insert words not used.” (Citations omitted).

last resort obligations. For instance, the Court explained that provider of last resort costs are “charges incurred by an incumbent electric distribution utility for risks associated with its statutory obligation under R.C. 4928.14(C), as the *default provider*, or provider of last resort, for customers who opt for another provider who then fails to provide service.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 114 Ohio St.3d 340, 2007-Ohio-4276, 872 N.E.2d 269, ¶4, footnote 2 (citation omitted).<sup>19</sup>

Even the PUCO itself has determined that the default service requirements under R.C. 4928.14 relate to provider of last resort obligations. (Appx. 000493). The PUCO made this finding just a few years ago in another AEP case.<sup>20</sup> The law has not changed since the PUCO last applied the default service language to mean provider of last resort. Since the law is unchanged, the PUCO’s application of the law should not have changed.

As indicated, R.C. 4928.14 clearly defines default service as pertaining to the need to serve returning customers. Definitions provided by the General Assembly are to be given great deference in deciding the scope of particular terms. *Good Samaritan Hospital v. Porterfield*, 29 Ohio St.2d 25, 30, 278 N.E.2d 26 (1972). Indeed, this Court has noted that “the General Assembly’s own construction of its language, as provided in definitions, controls in the application of a statute.\* \* \*.” *Ohio Civil Rights Comm. v. Parklawn Manor*, 41 Ohio St.2d 47, 50, 322 N.E.2d 642 (1975).

---

<sup>19</sup> See also *Constellation New Energy, Inc. v Pub. Util. Comm.*, 104 Ohio St.3d 530, 2004-Ohio-6767, 820 N.E.2d 885, ¶39, footnote 5 (describing POLR cost as costs incurred by the electric distribution utility for risks associated with its legal obligation as the default provider for customers who shop and then return to the electric distribution utility for generation service.)

<sup>20</sup> See, e.g., *In re 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*, Pub. Util. Comm. No. 08-917-EL-SSO, Order on Remand at 18 (Oct. 3, 2011).

“Default service” as defined by the General Assembly, the Ohio Supreme Court, and the PUCO means service provided by the electric distribution company that must be offered if suppliers are unable to continue to serve customers who have switched from the utility to a supplier. No more and no less.

A standard service offer can only consist of “competitive” components of retail electric service, while default service (provider of last resort) can have competitive and non-competitive components.<sup>21</sup> In R.C. 4928.141 (Appx. 000494 ) the General Assembly, defines the standard service offer in broad terms as “all *competitive* retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.” (R.C. 4928.141, Appx. 000494 ). For a component of retail electric service to be deemed “competitive” there must be a declaration by the Revised Code or the PUCO that the service component is competitive. (R.C. 4928.01(B), Appx. 000487).

Thus, this Court should conclude that there is no need for statutory construction of “default service” because it is clearly defined under R.C.4928.14. (Appx.000494). And as defined in that statute, “default service” means provider of last resort. Default service does not mean standard service. In this regard, Ohio Power did not produce measurable and verifiable

---

<sup>21</sup> *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 492, 2008-Ohio-990, 885 N.E.2d 195, ¶27(Court found that rate base recovery to build and operate a generation facility was an allowable non-competitive cost associated with POLR, and determined that the PUCO’s approval must be given under R.C. Chapters 4905 and 4909).

evidence<sup>22</sup> of its provider of last resort costs, as the PUCO has ruled it must, to justify a rate stability charge as POLR.

Thus, the PUCO violated the law when it allowed Ohio Power to charge customers more than a half billion dollars for rate stability, on a premise that the standard service offer equates to default service under the statute. (Appx. 000500). There is no statutory justification for approving the retail stability charge under R.C. 4928.143(B)(2)(d). The Court's inquiry then must come to an end, and the Court should reverse the PUCO.

2. **If statutory construction is necessary, the Court should construe the statute in light of R.C. 1.47 and 1.49. In doing so, it should find that the PUCO erred as a matter of law in equating default service with the standard service offer.**

As explained above, the term "default service" has meant a service related to the utility's obligation as the provider of last resort. The term was defined this way by the General Assembly. It has been applied this way by the Court. And, prior to this case, it has been applied this way by the PUCO. Thus, there is no need for this Court to interpret the term "default service."

If, however, the Court determines that "default service" as used in the context of R.C. 4928.143(B)(2)(d) (Appx.000500) requires further interpretation, it should look to the rules of statutory construction in Ohio. Those standards of construction include R.C. 1.47 (Appx.000478) and 1.49 (Appx.000479).<sup>23</sup>

---

<sup>22</sup> See *In re 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*, Pub. Util. Comm. No. 08-917-EL-SSO, et. al. Order on Remand at 29 (Oct. 3, 2011) (holding that POLR costs should be readily measurable and verifiable).

<sup>23</sup> *Meeks v. Papadopoulos*, 62 Ohio St. 2d 187, 190, 404 N.E.2d 159 (1980) (Where a statute is found to be subject to various interpretations, a court called upon to interpret its provisions may invoke the rules of statutory construction to arrive at the legislative intent).

In statutory construction, the primary rule is to give effect to the Legislature's intention. *Carter v. Division of Water*, 146 Ohio St. 203, 65 N.E.2d 63, syllabus (1946). To ascertain the Legislature's intent, courts rely upon ordinary principles of statutory construction<sup>24</sup> including those principles set forth in the Ohio Revised Code. Although there are many rules of statutory construction, for purposes of this case, the Court should focus here on two standards in particular: R.C. 1.47 and 1.49. (Appx. 000478-000479).

Under R.C. 1.47 (Appx.000478), when a statute is enacted it is presumed, inter alia, that the entire statute is intended to be effective and a just and reasonable result is intended. This Court has construed this statutory construction rule to mean that "words in statutes should not be construed to be redundant, nor should any words be ignored." *East Ohio Gas Co. v. Pub. Util. Comm.*, 39 Ohio St.3d 295, 299, 530 N.E.2d 875 (1988).

Further this Court has acknowledged that words in the statute do not exist in a vacuum. *D.A.B.E. Inc. v. Toledo-Lucas County Bd. Of Health*, 96 Ohio St.3d 250, 255, 2002-Ohio-4172, 773 N.E.2d 536. Indeed the Court has noted that it is "axiomatic in statutory construction that words are not inserted into an act without some purpose." *State ex rel. Carmean v. Board of Education*, 170 Ohio St. 415, 422, 165 N.E.2d 918 (1960). Accordingly Courts must give effect to the words expressly used in a statute rather than deleting words used, or inserting words not used, in order to interpret an ambiguous statute. *State v. Taniguchi*, 74 Ohio St.3d 154, 156, 656 N.E.2d 1286 (1995).

R.C. 1.49 (Appx. 000479) provides that when a statute is ambiguous, a court may consider, inter alia, the consequences of a particular construction in determining the intent of the

---

<sup>24</sup> *Stewart v. Trumbull Cty. Bd. of Elections*, 34 Ohio St.2d 129,130, 296 N.E.2d 676 (1973).

legislature. If the construction of the statute produces unreasonable or absurd results it should be avoided. *State ex rel. Bolin v. Ohio Environmental Protection Agency*, 82 Ohio App.3d 410, 413, 612 N.E.2d 498 (1992) (holding that a strong presumption exists in favor of statutory construction which avoids absurd results).

Under these rules of statutory construction it is evident that the PUCO's statutory analysis is in error. If "default service" merely means standard service offer then the General Assembly would have used "standard service offer" instead of "default service." Under R.C. 1.47 (B) (App. 000478), one must presume that the General Assembly specifically chose the term "default service" for a purpose. Instead of inserting a new term -- standard service -- for the original term "default service" the Court must leave the statute intact. Otherwise, the meaning of the statute changes and the legislative intent is disregarded.

Additionally, if one were to accept the PUCO's legal analysis -- whereby "default service" means "standard service offer," then absurd results could be expected. For instance, if default service means standard service offer, any electric security plan provision related to standard service would be permissible under subsection (d). That type of interpretation virtually renders subsection (d) and the entirety of R.C. 4928.143(B)(2) meaningless. Here is why. If the electric security plan may include charges simply relating to the standard service offer (in lieu of "default service") then there is no limitation imposed on charges that comprise subsection (d), other than that the charges have the effect of stabilizing or providing certainty. And under an electric security plan, all provisions are by definition related to the standard offer. Thus, the PUCO's interpretation if accepted would open the floodgates to all sorts of charges, contrary to the General Assembly's express intent limiting the provisions of an electric security plan. The Court's precedent is to limit the electric security plan provisions to the express terms contained

in the law. *In re Application of Columbus Southern Power Company, et al.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 32.

Thus, the Court should find that “default service” as used in R.C. 4928.143 is not synonymous with “standard offer service.” It should reject the PUCO’s interpretation and find as a matter of law that the PUCO erred in equating default service with standard service.<sup>25</sup>

**B. The PUCO erred in finding that the retail stability charge has the effect of stabilizing or providing certainty regarding electric service.**

As stated above, the PUCO erred in finding that the retail stability charge fits as “default service” under the statute. Thus, the second part of the three part analysis – determining that the charge fits within the categories enumerated in the statute – was not met.

But the PUCO also erred in the third part of the analysis—in examining the charge to determine if it has the effect of stabilizing or providing certainty regarding retail electric service. The PUCO summarily declared that the retail stability charge “promotes stable retail electric service prices and ensures customer certainty regarding retail electric service.” (Appx. 000035).

Looking to the next passage of the PUCO’s Order, it appears that this conclusion is reached on the basis that the retail stability charge *enables* other provisions of the electric security plan to be implemented. For instance, the PUCO notes that the retail stability charge is connected to marketer services that, according to the PUCO, allow customers to “mitigate any SSO increases through increased shopping opportunities that will become available as a result of the Commission’s decision in the Capacity Case.” (Appx. 00034). And the retail stability charge

---

<sup>25</sup> See, e.g., *E. Ohio Gas Co. v. Pub. Util. Comm.*, 39 Ohio St.3d 295,299,530 N.E.2d 875 (1988) (where the Court found that the PUCO erred in construing R.C.4905.03(A)(6) when it treated the phrase “affiliated with” as synonymous with “under the control of.”)

allows<sup>26</sup> “freezes” to any non-fuel generation rate increase that might otherwise not occur absent the charge. Thus, the PUCO’s analysis hinges upon an indirect effect the retail stability rider has on the electric security plan as a whole.

But R.C. 4928.143(B)(2)(d), (Appx. 000500) requires more than an indirect stabilizing for retail electric service. The words of the statute state that the “terms, conditions, or charges must “have the effect of stabilizing or providing certainty regarding retail electric service.” But the PUCO reads the language to allow any provision that enables other provisions to be implemented. In other words, as long as the provision indirectly stabilizes or provides certainty for rates, it is permissible. Such a liberal construction of the statute conflicts with the Ohio rules of statutory construction.

Had the General Assembly wanted to allow more permissive structuring of an electric security plan, it would have inserted language to that effect. For instance the statute would have been written with the phraseology “which provision enables other charges that” “have the effect of stabilizing or providing certainty regarding rate electric service.” But the statute is not written in such an indirect manner. The doctrine of *expressio unius est exclusio alterius*, provides that to express or include one thing implies the exclusion of the other or of the alternative. *Black’s Law Dictionary* 661 (9<sup>th</sup> Ed.2009). Under that doctrine, the General Assembly’s provision of authority to the PUCO to approve specific provisions that promote stability and certainty means that the PUCO lacks the authority to approve a provision that “enables” other provisions. The PUCO cannot rewrite the law.

---

<sup>26</sup> The PUCO states that the “RSR freezes any non-fuel generation rate increase\*\*\*.” (Appx. 000034). This statement is incorrect and not supported by the record, violating R.C. 4903.09, as the provisions of the retail stability rider do not in of themselves require freezes to any non-fuel generation rate increases. Rather, as explained above, they enable the rate freezes.

According to the Supreme Court of Ohio, where the statute is clear and unambiguous, as is the provision of R.C. 4928.143(B)(2)(d), “[the] only task is to give effect to the words used[,]”<sup>27</sup> and “not to delete words used or to insert words not used.”<sup>28</sup> “To construe or interpret what is already plain is not interpretation but legislation, which is not the function of the courts.” *Thompson Elec., Inc. v. Bank One, Akron, N.A.*, 37 Ohio St.3d 259, 264, 525 N.E.2d 761 (1988) (remaining citation omitted). R.C. 4928.143(B)(2)(d) is clear and unambiguous with regard to the questions of law presented to the Court on this issue.

The PUCO’s attempt, in essence, to add words to the statute to provide a spot for the retail stability charge under R.C. 4928.143(B)(2) is unlawful and unreasonable. The Court should reverse the PUCO in this regard.

## V. CONCLUSION

R.C. 4903.13 provides for the Court to reverse, vacate, or modify a PUCO order, if the “court is of the opinion that such order was unlawful or unreasonable.” The PUCO’s Order and its Entries implementing and upholding the PUCO’s Order in Case No. 11-346-EL-SSO are unlawful and unreasonable. The Court should reverse, vacate and modify the PUCO’s rulings consistent with the propositions of law in this brief. That result will give 1.2 million AEP Ohio customers the protection of the law, as intended by the Ohio General Assembly, with the benefit of lower electric bills.

---

<sup>27</sup> *State v. Elam*, 68 Ohio St.3d 585, 587, 629 N.E.2d 442 (1993).

<sup>28</sup> *Columbus-Suburban Coach Lines, Inc. v. Pub. Util. Comm.*, 20 Ohio St.2d 125, 127, 254 N.E.2d 8 (1969). *See also State ex rel. Foster v. Evatt*, 144 Ohio St. 65, syllabus (8), 56 N.E.2d 265 (1944) (no authority under any rule of statutory construction to add to, enlarge, supply, expand, extend, or improve the provisions of the statute to meet a situation not provided for).

Respectfully submitted,

Bruce J. Weston  
Ohio Consumers' Counsel  
(Reg. No. 0016973)

By:   
Maureen R. Grady, Counsel of Record  
(Reg. No. 0020847)

Terry L. Etter  
(Reg. No. 0067445)  
Joseph P. Serio  
(Reg. No. 0036959)  
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-9567 – (Grady)  
(614) 466-7964 – (Etter)  
(614) 466-9565 – (Serio)  
(614) 466-9475 - Facsimile  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)  
[etter@occ.state.oh.us](mailto:etter@occ.state.oh.us)  
[serio@occ.state.oh.us](mailto:serio@occ.state.oh.us)

*Attorneys for Appellant  
Office of the Ohio Consumers' Counsel*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing First Merit Brief of Appellant the Office of the Ohio Consumers' Counsel was served upon all parties of record via electronic transmission this 12<sup>th</sup> day of August 2013.



Maureen R. Grady  
Assistant Consumers' Counsel

**PARTIES OF RECORD**

Mark Hayden (0081077)  
FirstEnergy Service Company  
76 South Main Street  
Akron, Ohio 44308  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)

Nathaniel Alexander (0080713)  
James Lang (0059668)  
Calfee, Halter & Griswold, LLP  
1405 East Sixth Street  
Cleveland, Ohio 44114  
[jlang@calfee.com](mailto:jlang@calfee.com)  
[talexander@calfee.com](mailto:talexander@calfee.com)

David Kutik (0006418)  
Jones Day  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
[dakutik@jonesday.com](mailto:dakutik@jonesday.com)

*Counsel for Appellant, FirstEnergy Solutions Corp.*

Mike DeWine  
(Reg. No. 0009181)  
Attorney General of Ohio

William L. Wright  
(Reg. No. 0018010)  
Section Chief  
Werner L. Margard, III  
(Reg. No. 0024858)  
John H. Jones  
(Reg. No. 0051913)  
Assistant Attorneys General  
Public Utilities Section  
Public Utilities Commission of Ohio  
180 East Broad Street, 6th Floor  
Columbus, OH 43215-3793  
[Werner.margard@puc.state.oh.us](mailto:Werner.margard@puc.state.oh.us)  
[John.jones@puc.state.oh.us](mailto:John.jones@puc.state.oh.us)

*Attorneys for Appellee  
Public Utilities Commission of Ohio*

Steven Nourse (0046705)  
Matthew Satterwhite (0071972)  
American Electric Power Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, Ohio 43215  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)

Daniel R. Conway (0023058)  
L. Bradfield Hughes (0070997)  
Porter Wright Morris & Arthur, LLP  
41 South High Street Columbus, Ohio 43215  
[dconway@porterwright.com](mailto:dconway@porterwright.com)  
[bhughes@porterwright.com](mailto:bhughes@porterwright.com)

*Counsel for Appellee/Cross-Appellant, Ohio  
Power Company*

Mark S. Yurick, Counsel of Record  
(0039176)  
Zachary D. Kravitz  
(0084238)  
Yurick – (614) 334-7197  
Kravitz – (614) 334-6117  
Taft Stettinius & Hollister, LLP  
65 E. State Street, Suite 1000  
Columbus, OH 43215-3413  
(614) 221-2838 -Telephone  
(614) 221-2007 -Facsimile  
[myurick@taftlaw.com](mailto:myurick@taftlaw.com)  
[zkravitz@taftlaw.com](mailto:zkravitz@taftlaw.com)

*Counsel for Appellant, The Kroger Co.*

Michael Kurtz (0033350)  
David Boehm (0021881)  
Jody Cohn (0085402)  
Boehm, Kurtz & Lowry  
36 East Seventh St., Ste. 1510  
Cincinnati, Ohio 45202  
[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com)  
[jkylerncohn@BKLawfirm.com](mailto:jkylerncohn@BKLawfirm.com)

*Counsel for Appellant, The Ohio Energy  
Group*

Samuel C. Randazzo, Counsel of Record  
(Reg. No. 0016386)  
Frank P. Darr (Reg. No. 0025469)  
Joseph E. Oliker (Reg. No. 0086088)  
Matthew R. Pritchard (Reg. 0088070)  
McNees Wallace & Nurick LLC  
21 East State Street, 17th Floor  
Columbus, OH 43215  
Telephone: (614) 469-8000  
Facsimile: (614) 469-4653  
[sam@wmncmh.com](mailto:sam@wmncmh.com)  
[fdarr@wmncmh.com](mailto:fdarr@wmncmh.com)  
[joliker@mwncmh.com](mailto:joliker@mwncmh.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)

*Counsel for Appellant, Industrial Energy  
Users-Ohio*