

ORIGINAL

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

) Third Appeal from the Public Utilities Commission of Ohio

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority.) PUCO Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-349-EL-AAM, and 11-350-EL-AAM.

THIRD MERIT BRIEF AND APPENDIX 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 etter@occ.state.oh.us serio@occ.state.oh.us

Attorneys for Appellant Office of the Ohio Consumers' Counsel

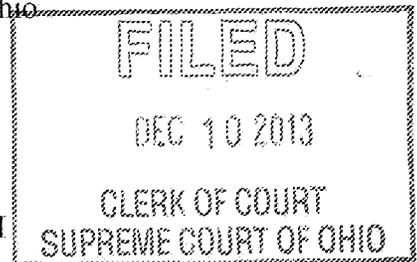
Mike DeWine (Reg. No. 0009181) Attorney General of Ohio

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 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
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

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
tallexander@calfee.com

Charles J. Faruki (0010417)
(Counsel of Record)
Jeffrey S. Sharkey (0067892)

Faruki Ireland & Cox P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, Ohio 4540
(937) 227-3705 - Telephone
(937) 227-3717 - Facsimile
cfaruki@ficlaw.com
jsharkey@ficlaw.com

*Counsel for Amicus Curiae,
The Dayton Power and Light Company*

David Kutik
(Reg. No. 0006418)

Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114
(216) 586-3939 -Telephone
(216) 579-0212 - Facsimile
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
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
bhughes@porterwright.com

Jeffrey A. Lamken
Martin V. Totaro
MoloLamken LLP
The Watergate, Suite 660
600 New Hampshire Ave., NW
Washington, D.C. 20037
(202) 556-2000 - Telephone
(202) 556-2001 - Fax
jlamken@mololamken.com
mtotaro@mololamken.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
dboehm@BKLawfirm.com
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
fdarr@wmncmh.com
joliker@mwncmh.com
mpritchard@mwncmh.com

*Counsel for Appellant, Industrial Energy
Users-Ohio*

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. ARGUMENT.....	1
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.	1
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.	7
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 retail stability charge.....	13
1. The PUCO erred in finding that the retail stability charge relates to “default service” under R.C. 4828.143(B)(2)(d).	14
2. The PUCO erred in finding that the retail stability charge has the effect of stabilizing or providing certainty regarding electric service.	17
III. CONCLUSION.....	19

TABLE OF CONTENTS cont'd.

<u>APPENDIX:</u>	Appx. Page
R.C. 1.52(A)	00509
R.C. 1.52(B).....	00509

<u>OHIO REVISED CODE:</u>	Page
R.C. 1.47	15
R.C. 1.52(A)	11
R.C. 1.52(B).....	11,12
R.C. 4903.13	19
R.C. Chapter 4905	4
R.C. 4905.04	4
R.C. 4905.05	4
R.C. 4905.06	4
R.C. Chapter 4909	4
R.C. Chapter 4911	1
R.C. Chapter 4928	4,5
R.C. 4928.02(H)	12
R.C. 4928.14	13,14,15,18
R.C. 4928.141	2,14,15,18
R.C. 4928.143	1,2,12
R.C. 4928.143(B)(2)	passim

TABLE OF CONTENTS cont'd.

R.C. 4928.143(B)(2)(d)	passim
R.C. 4928.144	2,4
R.C. 4928.38	7,8,9,10,11,12
R.C. 4928.39	8,10
R.C. 4928.39(B).....	10

TABLE OF AUTHORITIES

PAGE

CASES:

<i>Cleveland Electric Illum. Co. v. Cleveland</i> , 37 Ohio St.3d 50, 524 N.E.2d 441 (1988)	15
<i>East Ohio Gas Co. v. Pub. Util. Comm.</i> , 39 Ohio St.3d 295, 530 N.E.2d 875 (1988)	15
<i>In re: Application of Columbus Southern Power Company</i> , 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655	6,13,17
<i>Kimble Clay & Limestone v. McAvoy</i> , 59 Ohio St.2d 94, 391 N.E.2d 1030 (1979)	15
<i>State ex rel. Bohan v. Industrial Com.</i> , 147 Ohio St. 249, 70 N.E.2d 888 (1946)	15
<i>State ex rel. Bolin v. Ohio Environmental Protection Agency</i> , 82 Ohio App.3d 410, 612 N.E.2d 498 (1992)	17
<i>State ex rel. Foster v. Evatt</i> , 144 Ohio St. 65, 56 N.E.2d 265 (1944)	16

ENTRIES AND ORDERS OF THE PUBLIC UTILITIES COMMISSION OF OHIO

<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)	3,8,11
<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)	13
<i>In re: Application of Ohio Power Company to Establish a Competitive Bidding Process for Procurement of Energy to Support its Standard Service Offer</i> , Pub. Util. Comm. No. 12-3254-EL-UNC, Opinion and Order (Nov. 13, 2013)	19

TABLE OF AUTHORITIES cont'd.

PAGE

OHIO REVISED CODE:

R.C. 1.47	15
R.C. 1.52(A)	11
R.C. 1.52(B)	11,12
R.C. 4903.13	19
R.C. Chapter 4905	4
R.C. 4905.04	4
R.C. 4905.05	4
R.C. 4905.06	4
R.C. Chapter 4909	4
R.C. Chapter 4911	1
R.C. Chapter 4928	4,5
R.C. 4928.02(H)	12
R.C. 4928.14	13,14,15,18
R.C. 4928.141	2,14,15,18
R.C. 4928.143	1,2,12
R.C. 4928.143(B)(2)	passim
R.C. 4928.143(B)(2)(d)	passim
R.C. 4928.144	2,4
R.C. 4928.38	7,8,9,10,11,12

TABLE OF AUTHORITIES cont'd.

	<u>PAGE</u>
R.C. 4928.39	8,10
R.C. 4928.39(B).....	10
 <u>MISCELLANEOUS:</u>	
Am.Sub.S.B.221	5,6,11,12
Merriam-Webster Dictionary	10

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") submits this brief as the representative¹ of 1.2 million residential utility customers of the Ohio Power Company ("Ohio Power" or "Utility" or "AEP Ohio"). These customers are paying higher electric bills because of certain decisions by the Public Utilities Commission of Ohio ("PUCO") that this Court should reverse on appeal.

Under the PUCO's decisions, Ohio Power received approval to collect, inter alia, a "retail stability rider" ("RSR") charge and a capacity charge. Together these charges permit Ohio Power to collect over \$1 billion from all of its customers over the next several years.² OCC's appeal challenges the PUCO's authority to approve these two charges.

II. 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.

Under the PUCO's Order,³ marketers are buying wholesale capacity from Ohio Power at a discount from what the PUCO found to be Ohio Power's cost. The PUCO is also requiring retail customers to pay Ohio Power for the wholesale discount to the marketers.⁴ The wholesale

¹ R.C. Chapter 4911.

² 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).

³ *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 12, 2012).

⁴ *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).

discount that retail customers will fund for the marketers will amount to \$647 million. (Supp. 0000133).

The PUCO approved the collection of the wholesale discount from retail customers “as part of the RSR.” (Appx. 000054). The PUCO asserted that it had authority to do so through R.C. 4928.144. R.C. 4928.144 allows any rate or price *established under R.C. 4928.141 to 4928.143* to be phased-in. (PUCO Appx. 24).

The bulk of the wholesale capacity discount will be collected from customers over a three year period, starting June 1, 2015. (Appx. 36). Presently only a small portion of the wholesale capacity discount⁵ is being collected from customers through the retail stability rider. That charge ends on May 31, 2015, and yet the wholesale capacity discount will continue to be collected from retail customers through 2018. (Appx. 36).

The wholesale capacity discount to marketers will be paid by all retail customers -- both standard service offer (“SSO”) customers and choice customers -- who purchase generation from marketers (“shopping customers”). And yet at the same time, standard service offer customers⁶ are already paying Ohio Power for capacity through standard service offer retail generation rates.

⁵ \$1/MWh of the RSR customers pay will be used to offset the capacity deferrals that are to be collected from customers beginning June 1, 2015. A \$3.50/MWh RSR is being charged to customers through May 31, 2014, and a \$4.00/MWh RSR is to be charged from June 2014 through May 2015. (R. 690 at 35).

⁶ 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 for generation, but have chosen to stay with the standard service offer for generation service. 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).

Those generation rates are designed to cover both Ohio Power's energy charges and capacity charges for providing retail service to standard service offer customers.⁷

But the PUCO ignored the fact that non-shopping (i.e. standard service offer) customers are already paying retail generation rates that fully compensate Ohio Power for its capacity. Indeed standard service offer customers pay retail rates which allow Ohio Power to collect almost twice its cost of providing capacity!⁸ Under the PUCO-approved capacity discount, Ohio Power's standard service customers will be required to pay twice for capacity -- once, through the standard service offer rate they have to pay to get generation service, and the second time as they pay Ohio Power for the wholesale capacity discount given to marketers (through the existing RSR and the deferred capacity charge to be collected starting June 1, 2015).

This result is unjust and unreasonable for non-shopping customers. There is no provision in the Ohio Revised Code that permits an electric distribution utility to charge customers twice for the same service. A customer paying twice for capacity for competition's sake is simply an unjust and unreasonable result.

Both the PUCO and Ohio Power mistakenly conflate two separate arguments in an attempt to respond to OCC's double payment argument. The PUCO and Ohio Power allege that the capacity payment made through the RSR is separate from the capacity charge customers pay under retail standard service offer rates and thus, there is no double payment.⁹

⁷ Embedded in the standard service offer rate is capacity charge of approximately \$355/MWH. The PUCO determined that Ohio Power's cost of capacity was \$188/MWH. *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 at 33 (July 2, 2012). This case is currently under appeal to the Ohio Supreme Court. See S.Ct. Case No. 2012-2098.

⁸ *Id.*

⁹ See Entry on Rehearing at 23 (Jan. 30, 2013); Ohio Power Merit Brief at 18-19.

Such an argument elevates form over substance. Just because the PUCO characterizes the wholesale capacity payments by customers during 2013 through 2015 as “part of the RSR” does not change the essential nature of the charge being paid to Ohio Power. The wholesale capacity discount was created in another case -- the Ohio Power Capacity Case. In the Ohio Power Capacity Case, the PUCO established the wholesale capacity discount and Ohio Power’s right to collect that wholesale discount under its general supervisory authority (R.C. 4905.04, 4905.05, 4905.06) and its traditional rate base/rate of return regulation authority (Chapter 4909).¹⁰ In doing so the PUCO ruled that Chapter 4928 did not apply because the capacity at issue was a wholesale rather than a retail service.¹¹

The Ohio Power Capacity Order, if valid, directly contradicts the PUCO’s later pronouncements that this \$647 million discount is “part of the RSR” (under R.C. 4928.143(B)(2)(d)) and was created by the PUCO under R.C. 4928.144. It cannot be a charge created under both Chapter 4905/4909 and Chapter 4928. Those chapters of the Revised Code are mutually exclusive. Each addresses different functions of an electric distribution utility. Chapters 4905 and 4909 pertain to the distribution function of an electric distribution utility, while Chapter 4928 pertains to the generation function of an electric distribution utility. There is little if any convergence between these chapters of the Ohio Revised Code.

The double payment issue has little to do with the RSR or what the RSR is intended for. It comes from the capacity discount determined in Ohio Power’s Capacity Case. Non-shopping customers are paying twice for capacity -- once through standard service offer retail generation rates, and the second time through the deferred capacity mechanism, with the bulk of the

¹⁰ See Opinion and Order, Case No. 10-2929-EL-UNC at 22.

¹¹ *Id.*

deferred capacity discounts to be collected at the end of the electric security plan term. Prior to that time, a fraction of the RSR collections will be used to offset the deferred capacity discounts.

The PUCO and Ohio Power further rationalize the double payment by claiming that because all customers benefit from market-based capacity, all customers should pay for the wholesale capacity discount, not just customers who shop.¹² According to the PUCO, all customers benefit because competition will be promoted if market-based capacity is provided to marketers, who *may* provide the benefit of discounted capacity when they then turn around and sell the capacity to retail generation shoppers.

But those are empty words about competition that would have customers paying higher bills for a benefit (competition) that should instead be reducing customers' bills. Indeed, Ohio Power's customers have been waiting fourteen years, since R.C. Chapter 4928 was enacted in 1999, for the benefits of electric competition. Instead, the PUCO's decision below will cause customers to pay hundreds of millions of dollars to Ohio Power for electricity priced above the market. This violates the law, is unreasonable, and is contrary to the intent of S.B. 221.

S.B. 221 is supposed to be about choice. Under S.B. 221 customers can choose to receive generation service from Ohio Power rather than from a marketer. In other words, they can elect not to shop for their electric generation service. Charging these customers twice for capacity punishes them for their decision not to shop, and may drive customers away from the standard service offer, forcing them to shop to avoid double capacity payments. And even if

¹² PUCO Second Merit Brief at 27; Ohio Power Merit Brief at 19.

customers are driven to shop, they may yet be unable to avoid double payments, a fact noted by one of the PUCO Commissioners who decided the case.¹³

If a customer elects not to shop, why should that customer be responsible for paying for the capacity discounts given to marketers? The non-shopping customer does not require any additional capacity, nor create the need for the marketer to acquire additional capacity. There quite simply is no cost created when customers are given the opportunity to shop and then determine not to shop.

But the PUCO wants non-shopping customers to pay for capacity discounts given to marketers -- a concept that is unfounded in S.B. 221 or anywhere else in the Revised Code. The “opportunity costs” of shopping are not recognizable as a provision of an electric security plan under R.C. 4928.143(B)(2). Thus, under this Court’s ruling *In re: Application of Columbus Southern Power Company*, 128 Ohio St.3d 512, 2011-Ohio-1788. 947 N.E.2d 655, ¶32, the PUCO may not approve the wholesale capacity discount as part of Ohio Power’s electric security plan.

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 up paying twice for capacity, a result that is unjust and unreasonable.

¹³ See Commissioner Roberto’s concurring and dissenting opinion in the Ohio Power Capacity case which concludes that if marketers 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 [marketers].” Opinion and Order, Concurring and Dissenting Opinion of Commissioner Cheryl L. Roberto at 4.

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 million¹⁴ to customers over the term of its electric security plan.¹⁵ This charge is called the “retail stability rider.” The retail stability rider is a non-bypassable charge. That means 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**¹⁶ that Ohio Power will collect \$826 million from customers in non-fuel revenues, on an annual basis, during the term of the electric security plan.¹⁷ (App. 000036).

Ohio Power described the revenue guarantee as a means to “provide financial stability” for it. (Supp. 000069-70). According to Ohio Power, the need for a financial stability charge pertains in large part to its “transition to competition.” “Competition” will be achieved in 2015 when generation for 100% of Ohio Power’s standard service load will be procured through a competitive bid process where marketers compete to supply Ohio Power’s standard service load. (Appx. 000042). Prior to 2015, during the transition to competition, Ohio Power will be

¹⁴ \$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. (Appx. 35-37).

¹⁵ The term of the plan runs from the effective date of the PUCO Order through May 31, 2015.

¹⁶ 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).

¹⁷ “Non-fuel revenues” are defined as base generation revenues, environmental investment carrying cost rider revenues, and marketers’ capacity revenues. (R. 460).

providing marketers with wholesale capacity at a discounted price, as the PUCO ruled in the Ohio Power Capacity Case.¹⁸

According to the General Assembly, Ohio Power's transition to competition was to have been completed well before now. R.C. 4928.38 (Appx. 000505) permitted the electric utilities the opportunity to collect "transition revenues."¹⁹ But that door closed when the "market development period" ended for Ohio Power.

The market development period for Ohio Power ended December 31, 2010.²⁰ On that date the PUCO's authority to allow transition revenues (and the Utility's ability to collect transition revenues from customers) ended. After December 31, 2010, Ohio Power is to be "wholly responsible for whether it is in a competitive position" under R.C. 4928.38. (Appx. 000505). And with the termination of 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 transition revenues or "any equivalent revenues," except as provided by statute.

But in the proceeding below the PUCO did not recognize the end to its authority in this regard and in doing so it violated the law. 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

¹⁸ See *In re the Commission Review of the Capacity Charge of Ohio Power Company and Columbus Southern Power Company*, Pub. Util. Comm. Case 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.

¹⁹ "Transition revenues" are defined under R.C. 4928.39. (Appx. 000506).

²⁰ (R. 568 at 5). (Direct Testimony of J. Edward Hess).

are not recoverable in the competitive market where capacity is based on market prices and not on a utility's fully embedded cost of capacity.

The PUCO, Ohio Power, and Dayton Power & Light (“DP&L”) present a number of arguments to try to explain why the lost revenues collected through the RSR are not “transition revenues” under R.C. 4928.38. The PUCO, DP&L, and Ohio Power initially argue that Ohio Power did not ask for “transition revenues” in its application.²¹ This is a simple and easily defused argument. While Ohio Power did not characterize its request as a request for transition revenues, how Ohio Power labels its charge does not determine the nature of the charge. For instance if Ohio Power calls the \$508 million charge a retail stability charge, and not “a rate increase,” does that mean the retail stability charge does not increase customers’ rates?

Ohio Power also claims that it was not seeking transition revenues because it sought its actual costs of capacity, and not “legacy generation costs.”²² Similarly, the PUCO argues that transition charges (and the cases that addressed those charges) pertain to “retail charges” while the RSR is directed to wholesale capacity rates charged to marketers.²³ These arguments however should be rejected.

R.C. 4928.38 (Appx. 505) does not define transition revenues only as “legacy generation costs.” In fact that term is not found in the statute. So Ohio Power is attempting to rewrite the statute to serve its purposes. But neither Ohio Power nor the PUCO can rewrite the statute. That authority lies only with the General Assembly.

²¹ PUCO Second Merit Brief at 33; Ohio Power Merit Brief at 27; Merit Brief Amicus Curiae DP&L at 10.

²² Ohio Power Merit Brief at 26-27.

²³ PUCO Second Merit Brief at 33.

Additionally, the PUCO's retail versus wholesale argument is a distinction without a difference, given its ruling in this case. In its ruling the PUCO determined that the RSR is a retail charge that permits the recovery of a wholesale capacity discount. Thus the PUCO has directly assigned or allocated the costs to retail electric generation service, which is consistent with criteria for transition costs under R.C. 4928.39(B). (Appx. 506).

But more importantly, these arguments fail to recognize that the General Assembly not only precluded transition revenues from being collected after the market development period, but also precluded "any equivalent revenues." The phrase "any equivalent revenues" precludes a wide category of revenues from being collected. "Any" is used to refer to one or some of a thing or number of things, no matter how much or many.²⁴ "Equivalent" when used as an adjective, refers to being equal in force, amount, or value.²⁵ Thus, if the RSR charge is structured to permit any revenues that have the same effect as the transition revenues it is precluded under R.C. 4928.38.

The criteria for transition revenues are found in R.C. 4928.39. (Appx. 506). The costs must be 1) prudently incurred; 2) legitimate, net, verifiable, and directly assignable or allocable to retail generation service provided to electric consumers in the state; 3) unrecoverable in a competitive market; and 4) the utility would be otherwise entitled to an opportunity to recover the costs.²⁶

The RSR charge will have the same effect as the transition revenues. It will permit Ohio Power to collect presumably prudently incurred capacity costs. Those costs of capacity are legitimate, net, verifiable costs *that the PUCO has directly assigned or allocated to retail*

²⁴ See, e.g., Merriam-Webster.com, <http://www.merriam-webster.com/dictionary/any>.

²⁵ See, e.g., Merriam-Webster.com, <http://www.merriam-webster.com/dictionary/equivalent>.

²⁶ R.C. 4928.39 (PUCO Appx. 34).

generation service. The fully embedded cost of capacity (\$188.88/MWh) is not recoverable in a competitive market, where capacity prices are significantly lower.²⁷ Ohio Power would otherwise be entitled to an opportunity to recover the costs of its capacity if it were in a regulated generation market. Thus, the RSR will permit equivalent revenues to be collected that have the same effect as the transition revenues precluded under R.C. 4928.38.

Disallowing the RSR is also a key to ensuring that Ohio Power is “fully on its own in the competitive market,” as R.C. 4928.38 requires. Being fully on its own in the competitive market means that a utility does not receive revenues to compensate it for those revenues it loses due to generation competition. But that is just what the RSR provides for.

DP&L further argues that even if the RSR is a transition charge, it would still be lawful.²⁸ DP&L points out that S.B. 221 was enacted after S.B. 3, and under R.C. 1.52(A) (Appx. 509), the later enacted statute controls.²⁹ DP&L then believes that S.B. 221 controls and allows the recovery of transition charges under R.C. 4928.143(B)(2)(d).³⁰

But DP&L’s reading of the rules of statutory construction in Ohio is flawed. This is because DP&L disregards R.C. 1.52(B). (Appx. 509). Under R.C. 1.52(B), if statutes are enacted at different times, they are to be harmonized, if possible to give effect to both. Only if the amendments are irreconcilable, does R.C. 1.52(A) come into play. Once determined to be irreconcilable, then the later enacted statute controls.

²⁷ The capacity price over the next three planning years varies from \$20.01/MW-D in planning year 2013; \$33.71/MW-D in planning year 2013; \$153/MW-D in planning year 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).

²⁸ Merit Brief Amicus Curiae DP&L at 11.

²⁹ *Id.*

³⁰ *Id.*

But here the statutes are reconcilable. They can simultaneously operate without running afoul of one another. The transition costs statutes specifically preclude transition costs from being collected after the market development period and mandate that the utility be fully on its own in the competitive generation market. R.C. 4928.143(B)(2) does not address transition costs; nor does it include words that suggest a utility can receive financial assistance for competitive losses. Moreover, to read R.C. 4928.143(B)(2)(d) to allow such costs would be inconsistent with other S.B. 221 provisions, including R.C. 4928.02(H). (Appx. 488). Instead, R.C. 4928.143 specifically identifies the provisions that can be included in an electric security plan.

The way to harmonize the two statutes is to conclude that R.C. 4928.143 (B)(2)(d), which allows provisions related to “default service,” does not mean a utility can collect transition charges or financial assistance for competitive losses. There is nothing about “default service” that can be interpreted as relating to transition charges or financial assistance for competitive losses. Nor are there specific or general words that mention or refer to “transition charges” or financial assistance for competitive losses in subsection (d) or any other part of R.C. 4928.143(B)(2). Thus, there is no manifest intent that the General Assembly meant to allow such charges to be collected.

The statutes can be harmonized and should be harmonized. When they are harmonized R.C.4928.38 *et al.* precludes transition charges and make whole payments to Ohio Power. R.C. 4828.143(B)(2)(d) does not address transition charges or make whole payments when it uses the term “default service.” To conclude otherwise, would be to ignore the statutory construction rules in Ohio, especially R.C. 1.52(B). The Court should reject DP&L’s arguments that R.C. 4928.143(B)(2)(d) controls over R.C. 4928.38.

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 retail 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. However, 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.

In order for the PUCO decision to stand, the Court must conclude that the PUCO was correct when it determined the retail stability charge is a charge relating to “default service.” The Court must also determine that the PUCO appropriately concluded that the retail stability rider stabilizes or provides certainty regarding retail electric service.

But as explained in OCC’s First Merit Brief, the PUCO erred in both of these conclusions. “Default service” is not synonymous with “standard service offer.” The two terms are distinct and cannot be used interchangeably as the PUCO suggests. “Default service” instead refers to provider of last resort service (“POLR”), as defined under R.C. 4928.14. (Appx. 493). And because Ohio Power did not produce measurable and verifiable evidence³¹ of its provider of last resort costs, as the PUCO has ruled it must, the retail stability charge must fail.

³¹ 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).

Additionally, the retail stability rider does not directly stabilize or provide certainty regarding retail electric service. 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.

I. The PUCO erred in finding that the retail stability charge relates to “default service” under R.C. 4828.143(B)(2)(d).

The PUCO, Ohio Power, and Dayton Power & Light try to address OCC's statutory construction arguments in several ways. Although the PUCO and Ohio Power admit that default service relates to provider of last resort service,³² they allege that “default service” means more than provider of last resort. While the PUCO disputes that R.C. 4928.14 (Appx. 493) defines “default service,”³³ it and Ohio Power nonetheless link R.C. 4928.14 to the standard service offer through R.C. 4928.141 (Appx. 494).³⁴ The PUCO also argues that the Utility does not have to justify the RSR as POLR, without explaining why this is so.³⁵

But these arguments fail. First, R.C. 4928.14 at the very least refers to default service and the provider of last resort obligations of the utility. It is only one of three provisions within Chapter 4928 that uses some form of the term “default service.” For this reason, it should be reviewed and considered when trying to discern what “default service” means in R.C. 4928.143(B)(2)(d). Indeed this Court has noted that where the meaning of a phrase in a statute is doubtful, but the meaning of the same phrase is clear where it is used elsewhere in an act, the phrase in the obscure clause will be held to mean the same thing as the phrase where the meaning

³² See PUCO Second Merit Brief at 19; Ohio Power Merit Brief at 7.

³³ PUCO Second Merit Brief at 18-19.

³⁴ PUCO Second Merit Brief at 19; Ohio Power Merit Brief at 8.

³⁵ PUCO Second Merit Brief at 19.

is clear. *Kimble Clay & Limestone v. McAvoy*, 59 Ohio St.2d 94, 97, 391 N.E.2d 1030 (1979). When “default service” is reviewed under R.C. 4928.14, it is clear that the statute is speaking of provider of last resort service being an obligation of the electric distribution utility. This meaning carries over into the more obscure use of the phrase “default service” in R.C. 4928.143(B)(2)(d). Moreover, R.C. 4928.141 (Appx. 494) -- the statute cited by the PUCO and Ohio Power as proof that standard service offer means “default service” -- does not refer to “default service” but uses the term “default standard service offer.”

In order for Appellants to prevail, the Court would have to conclude that the General Assembly used the terms “default standard service offer” and “default service” interchangeably and that they mean the same thing. Additionally, the Court would have to conclude that “default service” under R.C. 4928.14 (Appx. 493) is different from the term “default service” used in R.C. 4928.143(B)(2)(d). Finally, the Court would have to conclude that “default service” as used under R.C. 4928.143(B)(2)(d) means “standard service offer,” effectively replacing or substituting for the General Assembly’s phrase “default service.”

But such construction is contrary to the rules of statutory construction in Ohio which guide courts in understanding statutory text. In particular, under R.C. 1.47 (Appx. 478) it is presumed that the entire statute is to be effective. A basic rule of statutory construction is 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). It must be presumed that each word in statute was placed there for a purpose. *State ex rel. Bohan v. Industrial Com.*, 147 Ohio St. 249, 251, 70 N.E.2d 888, 889 (1946). The duty of the Court is to give effect to the words used, not to delete words used or insert words not used. *Cleveland Electric Illum. Co. v. Cleveland*, 37 Ohio St.3d 50, 524 N.E.2d 441, ¶3 of the syllabus (1988).

There is “no authority to add to, enlarge, supply, expand, extend or improve the provision of a statute to meet a situation not provided for.” *State ex rel. Foster, v. Evatt*, 144 Ohio St. 65, 56 N.E.2d 265, ¶8 of the syllabus (1944). But the PUCO and Ohio Power would have this Court do just that. They construe the statutes in a fashion that would effectively insert words into the statute, rather than give effect to the words used by the General Assembly. The Court should decline to adopt such an approach.

DP&L and Ohio Power additionally argue that the PUCO should be affirmed because the RSR relates to other terms contained within R.C. 4928.143(B)(2)(d) -- “bypassability,” and “accounting deferrals.”³⁶ DP&L reasons that the RSR relates to bypassability because it is a non-bypassable charge, and cites to the PUCO’s more recent decision in its own ESP proceeding for support.³⁷ Ohio Power cites to the arguments contained in its brief as evidence that the RSR is related to bypassability and accounting deferrals.³⁸

These arguments should also be rejected. First, and foremost, Ohio Power bore the burden of proving that the retail stability rider fits within R.C. 4928.143(B)(2). It failed to do so. Not until the briefs filed in this appeal did Ohio Power argue that the retail stability rider relates to bypassability and accounting deferrals. Indeed the PUCO did not even attempt to make such arguments. The sole ground the PUCO asserted for approving the retail stability rider was that it related to default service. Second, accepting the argument that the retail stability rider relates to bypassability since the rider is non-bypassable would render the words virtually meaningless. All utility charges must be either “bypassable” or non-bypassable.” So all charges then would

³⁶ Merit Brief Amicus Curiae DP&L at 8; Ohio Power Merit Brief at 7, footnote 1.

³⁷ Merit Brief Amicus Curiae DP&L at 8.

³⁸ Ohio Power Merit Brief at 7.

relate to “bypassability.” Almost every charge would qualify as it could arguably “affect” customers who are shopping or not shopping, as is the case with a non-bypassable charge. A bypassable charge would also affect shopping as it could create the incentive for customers to shop.

But under Ohio rules of statutory construction, words used by the General Assembly are intended to have meaning. This Court has held that if construction of a statute produces unreasonable and 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). Accepting DP&L’s and Ohio Power’s arguments would produce unreasonable results because any charge would fit within R.C. 4928.143(B)(2). Such an approach is inconsistent with this Court’s holding in *In re: Columbus Southern Power Co., et al.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 665, ¶32, where the Court recognized definitive limits on the provisions included in a utility’s electric security plan.

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

In response to OCC’s arguments that the RSR does not stabilize or provide certainty for electric service, Ohio Power, DP&L, and the PUCO come forward with various arguments. The PUCO claims that the RSR “freezes any non-fuel generation rate increase,” allows customers to return to Ohio Power’s SSO rates, after exploring shopping, and guarantees pricing will be based on energy and capacity auctions in less than three years.³⁹ The PUCO also claims

³⁹ PUCO Second Merit Brief at 20.

that the statute fails to specify that the effect must be “direct.”⁴⁰ DP&L also points to the fact that the RSR allows Ohio Power to keep its base generation rates frozen.⁴¹ Ohio Power echoes these arguments and additionally alleges that the RSR enables the entire modified ESP and provides stability for the utility and to customers through marketers’ generation services which fall under “retail electric service” as well.⁴²

These arguments should be rejected. First, the Court should understand that if it determines the PUCO erred in ruling that the RSR relates to default service, it need not address the secondary argument on whether the RSR stabilizes or provides certainty regarding electric service. This is because the RSR must meet both conditions under the law. And as explained above, and in OCC’s First Merit Brief⁴³ the RSR does not equal default service or any other provision of R.C. 4928.143(B)(2).

Second, the fact that customers are able to return to Ohio Power’s SSO rates after exploring shopping is not something that is attributable to the RSR. Ohio Power is obligated by statute (R.C. 4928.14 and 4928.141) to provide a standard service offer that customers are able to come back to after exploring shopping.

Third, guaranteeing pricing based on energy and capacity auctions in less than three years, although presumably beneficial, will not stabilize or provide certainty for electric service. Indeed it can be expected that future auctions will result in varying prices for electric service that cannot be predicted with any degree of certainty.

⁴⁰ PUCO Second Merit Brief at 21.

⁴¹ Merit Brief Amicus Curiae DP&L at 9.

⁴² Ohio Power Merit Brief at 9-10.

⁴³ OCC First Merit Brief at 21-28.

Fourth, base generation rates, will only be frozen for a short period of time (August 2012 through January 2014) as a result of the PUCO's recent pronouncements in Case No. 12-3254-EL-UNC.⁴⁴ There the PUCO ruled that the base generation rates would be adjusted to account for the results of four auctions that are to take place from February 2014 through May 2015. So the RSR only effectively freezes generation rates for half of the period of time (16 months) over which it is collected (32 months).

Finally, base generation rates are only one component of SSO rates. SSO rates also consist of energy costs, including auction related costs and other costs associated with the fuel adjustment clause.⁴⁵ Even if the base generation rates were to be frozen during the entire term of the ESP (which they are not), that does not mean that the SSO rate as a whole will not vary during that same period. Thus, the claim that the RSR promotes certainty and stability for one element of a customer's retail electric generation service rate falls short of the statutory mandate that the provision ensure rate stability and certainty for retail electric service.

III. 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 Ohio Power

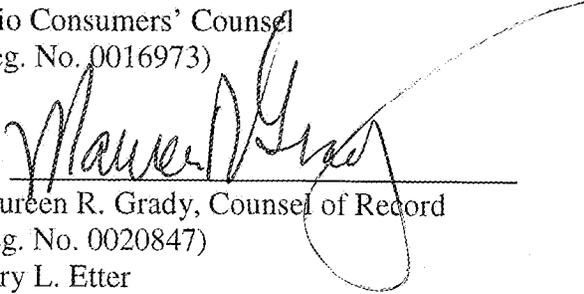
⁴⁴ *In re: Application of Ohio Power Company to Establish a Competitive Bidding Process for Procurement of Energy to Support its Standard Service Offer*, Pub. Util. Comm. No. 12-3254-EL-UNC, Opinion and Order at 12-14 (Nov. 13, 2013).

⁴⁵ *Id.* at 9.

customers the protection of the law, as intended by the Ohio General Assembly, with the benefit of lower electric bills.

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
etter@occ.state.oh.us
serio@occ.state.oh.us

Attorneys for Appellant
Office of the Ohio Consumers' Counsel

IN THE SUPREME COURT OF OHIO

In the Matter of The Application of Columbus)
Southern Power Company and Ohio Power) Supreme Court Case No. 13-0521
Company for Authority to Establish a Standard)
Service Offer Pursuant to § 4928.143 Ohio)
Rev. Code, in the Form of an Electric Security)
Plan.)

Third Appeal from the Public Utilities
Commission of Ohio

In the Matter of the Application of Columbus)
Southern Power Company and Ohio Power)
Company for Approval of Certain Accounting) PUCO Case Nos. 11-346-EL-SSO,
Authority.) 11-348-EL-SSO, 11-349-EL-AAM, and
11-350-EL-AAM.

**APPENDIX
OF APPELLANT
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

1.52 Irreconcilable statutes or amendments - harmonization.

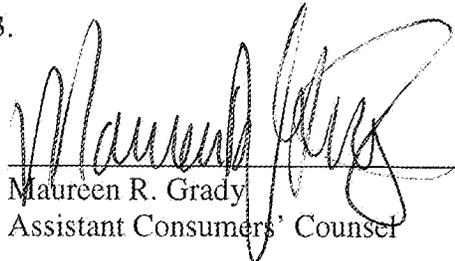
(A) If statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.

(B) If amendments to the same statute are enacted at the same or different sessions of the legislature, one amendment without reference to another, the amendments are to be harmonized, if possible, so that effect may be given to each. If the amendments are substantively irreconcilable, the latest in date of enactment prevails. The fact that a later amendment restates language deleted by an earlier amendment, or fails to include language inserted by an earlier amendment, does not of itself make the amendments irreconcilable. Amendments are irreconcilable only when changes made by each cannot reasonably be put into simultaneous operation.

Effective Date: 01-03-1972

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Third Merit Brief and Appendix of Appellant the Office of the Ohio Consumers' Counsel was served upon all parties of record via electronic transmission this 10th day of December 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

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

David Kutik (0006418)
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114
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
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
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
bhughes@porterwright.com

Jeffrey A. Lamken
Martin V. Totaro
MoloLamken LLP
The Watergate, Suite 660
600 New Hampshire Ave., NW
Washington, D.C. 20037
(202) 556-2000 - Telephone
(202) 556-2001 - Fax
jlamken@mololamken.com
mtotaro@mololamken.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
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
dboehm@BKLawfirm.com
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. 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
fdarr@wmncmh.com
joliker@mwncmh.com
mpritchard@mwncmh.com

*Counsel for Appellant, Industrial Energy
Users-Ohio*

Charles J. Faruki (0010417)
(Counsel of Record)
Jeffrey S. Sharkey (0067892)
Faruki Ireland & Cox P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, Ohio 4540
(937) 227-3705 - Telephone
(937) 227-3717 - Facsimile
cfaruki@ficlaw.com
jsharkey@ficlaw.com

*Attorneys for Amicus Curiae
The Dayton Power and Light Company*