ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of the Review of The Alternative Energy Rider Contained in The Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company.	)))))))	Case No. 13-2026 Appeal from the Public Utilities Commission of Ohio Public Utilities Commission of Ohio Case No. 11-5201-EL-RDR

MEMORANDUM CONTRA MOTION FOR STAY
BY
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I. INTRODUCTION

On August 7, 2013, the Public Utilities Commission of Ohio ("PUCO" or "Commission") decided that customers do not have to pay $43,362,796.50 (plus carrying costs) to FirstEnergy[1] for its imprudent purchase (in 2010) of 2011-vintage In-State All Renewable Energy Credits (RECs). See *In the Matter of the Review of The Alternative Energy Rider Contained in The Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company*, Case No. 11-5201-EL-RDR (Opinion and Order at 25) (Aug. 7, 2013). The PUCO found that "the record demonstrates that the Companies have not met their burden of proving that, based upon the facts and circumstances which the Companies knew, or should have known, at the time of the decision to purchase, the purchase of 2011 vintage year RECs in August 2010 was prudent." Id. at 28. That PUCO finding is correct.

R.C. 4928.64 requires, in part, that Ohio electric utilities include a portion of the electricity supply required for its standard service offer customers from alternative energy

[1] "FirstEnergy," "Utilities" and "Companies" mean the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

resources. The PUCO opened the underlying action for the purpose of reviewing charges for renewable energy that FirstEnergy collects on customers' bills through the Alternative Energy Resource Rider ("Rider AER"). Rider AER is used by the Utilities to collect costs, if reasonable, that are associated with meeting their requirements under R.C. 4928.64. A PUCO auditor specifically found that "[t]he FirstEnergy Ohio Utilities paid unreasonably high prices for In-State All Renewable RECs * * *."[2] After a hearing and subsequent briefing of the matter, the PUCO ordered FirstEnergy to "credit Rider AER in the amount of $43,362,796.50, plus carrying costs * * * within 60 days of the issuance of a final appealable order in this proceeding." Opinion and Order, Case No. 11-5201-EL-RDR at 28 (Aug. 7, 2013). On September 18, 2013, FirstEnergy, OCC, Interstate Gas Supply, the Environmental Advocates,[3] and AEP Ohio all filed Applications for Rehearing.[4] On rehearing, the PUCO affirmed its original Opinion and Order in its entirety. See Second Entry on Rehearing, Case No. 11-5201-EL-RDR at 38 (Dec. 18, 2013).

On December 24, 2013, FirstEnergy filed a Notice of Appeal of the PUCO's August 7, 2013 Opinion and Order and the December 18, 2013 Second Entry on Rehearing. FirstEnergy simultaneously filed a Motion requesting that this Court "stay[] the Commission's Opinion and Order, dated August 7, 2013, and Second Entry on Rehearing, dated December 18, 2013." Motion for Stay of Appellants, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("Motion for Stay") at 2 (Dec. 24, 2013). OCC

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[2] Final Report Management/Performance Audit of the Alternative Energy Resource Rider (RIDER AER) of the FirstEnergy Ohio Utility Companies for October 2009 through December 31, 2011, prepared by Exeter Associates, Inc., filed on August 15, 2012 in Case No. 11-5201-EL-RDR at iv.

[3] The Environmental Advocates include: The Environmental Law & Policy Center, The Ohio Environmental Council, and The Sierra Club.

[4] Direct Energy also filed an Application for Rehearing, but it was denied by the PUCO. See Second Entry on Rehearing, Case No. 11-5201-EL-RDR at 2 (Dec. 18, 2013).

opposes FirstEnergy's Motion for Stay and requests that it be denied so that customers may begin to receive their credit which resulted from FirstEnergy's imprudent purchases of RECs.

As illustrated below, this Court should not stay the PUCO's Order finding that FirstEnergy's customers do not have to pay for $43,362,796.50 (plus carrying costs) for imprudent purchases. The public interest favors a denial of the stay, in part, to prevent substantial harm to some of FirstEnergy's customers. Moreover, FirstEnergy has not demonstrated that it is likely to succeed on the merits or that it will suffer irreparable harm, much less that its interests outweigh the harm to the Utilities' customers and public interest. Alternatively, to the extent this Court intends to grant FirstEnergy's Motion for Stay, OCC respectfully requests that this Court require FirstEnergy to post a bond sufficient to meet the requirements of R.C. 4903.16 and the PUCO's August 7, 2013 Opinion and Order.

II. STANDARD OF REVIEW

There is no controlling precedent in Ohio setting forth the conditions under which an order of the Commission shall be stayed. See *In the Matter of the Commission's Investigation Into the Modification of Intrastate Access Charges*, 2003 Ohio PUC LEXIS 62, *9-*10 (citing *MCI Telecommunications Corp. v. Pub. Util. Com.*, 31 Ohio St.3d 604, 606, 510 N.E.2d 806 (1987) (Douglas, J., dissenting). R.C. 4903.16 merely describes the process by which a party may request a stay of a PUCO decision.

But many other courts, including the Sixth Circuit, have consistently relied upon the following factors as logical considerations when determining whether it is appropriate to stay an administrative order pending judicial review. See *Bob Krihwan Pontiac-GMC Truck, Inc. v. General Motors Corporation*, 141 Ohio App. 3d 777, 783, 753 N.E.2d 864, (10th Dist. 2001). "Those factors are: (1) whether appellant has shown a strong or substantial likelihood or probability of success on the merits; (2) whether appellant has shown that it will suffer irreparable injury; (3) whether the issuance of a stay will cause harm to others; and (4) whether the public interest would be served by granting a stay." Id. (citing *Hamlin, supra*; *Gurtzweiler v. United States*, 601 F. Supp. 883 (N.D. Ohio 1985); *Holden v. Heckler*, 584 F. Supp. 463 (N.D. Ohio 1984); *UpJohn Company v. Finch*, 303 F. Supp. 241 (W.D. Mich. 1969); *Friendship Materials v. Michigan Brick, Inc.*, 679 F.2d 100 (6th Cir. 1982); and *Virginia Petroleum Jobbers Assn. v. FPC*, 104 U.S. App. D.C. 106, 259 F.2d 921 (D.C. Cir. 1958).

As discussed above, the general standards governing stays have been consistently applied and widely accepted. But there is little guidance on the question of when a stay should be granted in appeals involving the PUCO. Additionally, in his dissent in *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 31 Ohio St. 3d 604 (1987), Justice Douglas stated:

> R.C. 4903.16 does not detail under what circumstances a stay should be granted or, conversely, denied. Research indicates that this court has never enunciated criteria detailing the circumstances and conditions upon which a stay will be granted. *MCI*, 31 Ohio St.3d at 605, 606.

Justice Douglas then presented four factors to consider when examining a request for a stay of a PUCO Order. Those factors are, in essence, the same factors discussed above that have been consistently used by other courts when considering a motion for a stay. Those factors, as advocated by Justice Douglas, are:

1. Whether the seeker of the stay has made a strong showing of the likelihood of prevailing on the merits.
2. Whether the party seeking the stay has shown that without a stay irreparable harm will be suffered;
3. Whether or not, if the stay is issued, substantial harm to other parties would result; and
4. Above all, where lies the interest of the public. Id. at 606.

FirstEnergy's Motion for Stay is not reasonable and should not prevail under the aforementioned standards or any other reasonable standard. Accordingly, FirstEnergy's Motion for Stay should be denied.

III. LAW AND ARGUMENT

A. This Court Should Deny FirstEnergy's Requested Stay Because Delaying Customers A Credit Of Over $43 Million For Unlawful Charges Does Not Serve the Public Interest And Will Cause Substantial Harm.

Justice Douglas, in articulating a standard for stays, emphasized that the most important consideration is "above all * * *, where lies the interest of the public" and that "the public interest * * * is the ultimate important consideration for this court in these types of cases." *MCI Telecommunications Corp. v. Pub. Util. Com.* (1987), 31 Ohio St.3d 604, 606 (Douglas, J. dissenting). Justice Douglas's dissent in *MCI* emphasizes that PUCO orders "have effect on everyone in this state -- individuals, business and industry." Id. In these difficult economic times, that effect is most sharply felt by those residential consumers who can ill afford increases in essential services such as utilities in general.

FirstEnergy imprudently purchased RECs in August 2010 at a considerable cost to the Utilities' customers, resulting in a PUCO-ordered disallowance of $43,362,796.50 plus carrying costs. FirstEnergy has collected most—if not all—of that money from customers. By filing its Motion for Stay, FirstEnergy now seeks to deprive customers of over $43 million of their own money for an even longer period of time. This Court should deny FirstEnergy's Motion for Stay so that customers will begin to benefit from a credit to Rider AER for an amount that the PUCO determined to be imprudently incurred and, in addition, not be deprived any longer of the time-value of this sum of money.

Moreover, the PUCO has recognized that FirstEnergy's claim that the PUCO's Order (requiring a credit of over $43 million to Rider AER) constitutes retroactive ratemaking "conflicts with FirstEnergy's argument made during the audit proceeding in which FirstEnergy sought an 11-week delay in the hearing, which was granted, and, in doing so, [FirstEnergy] assured the Commission that delay would not prejudice any party's interest." Second Entry on Rehearing, Case No. 11-5201-EL-RDR at 22 (Dec. 18, 2013) citing to FirstEnergy's Memorandum in Support of Motion to Modify Procedural Schedule (October 19, 2012) at 3. Specifically, in successfully requesting an eleven-week delay for the hearing (which OCC opposed), FirstEnergy reassured the PUCO (in October 2012) that such a delay would "not unduly prejudice any party's interest." See FirstEnergy's Memorandum in Support of Motion to Modify Procedural Schedule, Case No. 11-5201-EL-RDR at 3 (October 19, 2012). At the same time, FirstEnergy acknowledged that its customers were still paying for the 2009-2011 RECs. See id.

But then, in its Application for Rehearing to the PUCO, FirstEnergy contradicted itself by claiming that the passage of time had indeed prejudiced customer parties' interests. FirstEnergy asserted that "[b]ecause the Companies have shown that by July 31, 2013, the Companies would have likely recovered all but $4.9 million in costs for purchasing RECs in 2009 through 2011, the Commission cannot order the Companies not to collect more than $4.9 million of AER-related costs." FirstEnergy Memorandum in Support of Application for Rehearing, Case No. 11-5201-EL-RDR at 37 (Sept. 6, 2013).

Assuming *arguendo* that FirstEnergy cannot lawfully be required to credit customers for money it already collected (as FirstEnergy wrongfully alleges now), then FirstEnergy's customers were unduly prejudiced by the 11-week delay that allowed for FirstEnergy's further collections from customers. FirstEnergy cannot have it both ways at the PUCO. The correct way is for customers to be given credit for the PUCO's disallowance of over $43 million (plus carrying costs) related to FirstEnergy's imprudent purchases. That is not retroactive ratemaking, it is lawful and the public interest would be served by denying FirstEnergy's request to stay the fulfillment of the PUCO's protection of FirstEnergy's customers.

Finally, if a stay is issued, then customers who currently pay Rider AER and later leave FirstEnergy's standard service offer ("SSO") or move from FirstEnergy's service territory during this appeal will suffer substantial harm. Those customers will be harmed because they will not receive the credit for the unlawful rate that they paid FirstEnergy under Rider AER.

Rider AER is a bypassable rider, meaning that customers leaving the standard service offer to purchase generation from marketers will not receive the benefit of any credit to Rider AER. This is particularly concerning in the FirstEnergy footprint, which has seen the highest levels of shopping in the state and is continually growing. See Attachments B and C. Not to mention, people may be moving out of the FirstEnergy's service territory in northern Ohio. Therefore, as time passes, it becomes less likely that customers who paid FirstEnergy's imprudent charges will see the benefits of a credit to a bypassable rider--Rider AER.

In the interests of returning this money to the maximum number of customers that paid for FirstEnergy's imprudent purchases, FirstEnergy's Motion for Stay should be denied and customers should begin receiving the credit of $43,362,796.50 (plus carrying costs) in the manner prescribed by the PUCO. FirstEnergy has already wrongfully taken this money from its customers. Now FirstEnergy is seeking to hold onto its customers' money even longer and further deprive them of its benefits. FirstEnergy has failed to show how a delay in returning money back to its customers is in the public interest.

B. This Court Should Deny The Requested Stay Because FirstEnergy Failed to Show a Likelihood of Success on the Merits.

FirstEnergy claims that it is likely to succeed on the merits because the PUCO's decision to credit Rider AER constitutes retroactive ratemaking in accordance with *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 141 N.E.2d 465 (1957) and *Lucas County Commrs. v. Pub. Util. Comm.,* 80 Ohio St.3d 344, 686 N.E. 2d 501(1997). Memorandum in Support of Motion for Stay at pp. 6-7. But FirstEnergy is wrong.

This Court has consistently held that "it is axiomatic that before there can be retroactive ratemaking, there must, at the very least, be ratemaking." *River Gas Co. v. Pub. Util. Comm.* 69 Ohio St.2d 509, 512, 433 N.E.2d 568, 571 (1982). The PUCO based its decision (in regard to FirstEnergy's retroactive ratemaking argument) on Ohio Supreme Court precedent and lawfully found that:

> Regarding FirstEnergy's argument that a Commission disallowance will constitute retroactive ratemaking in this case, the Commission notes that the Supreme Court of Ohio has held that rates arising out of customary base rate proceedings implicate the retroactive ratemaking doctrine, while rates arising from variable rate schedules tied to fuel adjustment clauses do not. *See River Gas Co.*, 69 Ohio St.2d at 512, 433 N.E.2d 568. The Commission agrees with Staff that Rider AER is akin to a variable rate schedule tied to a fuel adjustment clause for purposes of applying the retroactive ratemaking doctrine, as Rider AER did not arise out of a base rate proceeding and was created by a stipulation expressly providing that only prudently incurred costs would be recoverable. Consequently, the Commission finds that the disallowance does not constitute retroactive ratemaking. Opinion and Order, Case No. 11-5201-EL-RDR at 28 (Aug. 7, 2013).

By relying on *River Gas Co.*, the PUCO correctly explained that a disallowance or credit to rider AER is not retroactive ratemaking. The PUCO correctly found that Rider AER is similar "to a variable rate scheduled tied to a fuel adjustment clause for purposes of applying the retroactive ratemaking doctrine, as Rider AER did not arise out of a base rate proceeding." Opinion and Order, Case No. 11-5201-EL-RDR at 28 (Aug. 7, 2013). In its Motion for Stay, however, FirstEnergy neglects to even mention the *River Gas* exception to the *Keco* line of precedent. Because there has been no ratemaking affixed to Rider AER (or the subsequent credit ordered by the PUCO), the PUCO's Opinion and Order does not constitute retroactive ratemaking. Thus, FirstEnergy is unlikely to succeed on the merits of its appeal.

C. This Court Should Deny FirstEnergy's Requested Stay Because FirstEnergy Has Not Established That It Will Suffer Irreparable Harm Absent a Stay.

FirstEnergy fails to establish that it will suffer irreparable harm in the event its Motion for Stay is denied. This factor requires the party seeking a stay to show that it **will** suffer irreparable harm absent a stay. See *MCI Telecommunications*, 31 Ohio St.3d at 606 (Douglas, J., dissenting). FirstEnergy merely maintains that it "will likely" suffer irreparable harm. See Memorandum in Support of Motion for Stay at p. 7. Thus, FirstEnergy does not even argue that it will suffer irreparable harm absent a stay.

Similarly, FirstEnergy attempts to argue that it might be irreparably harmed if the PUCO's Order is not stayed based upon its belief that re-collection of credited funds (resulting from reversal of the PUCO's decision) **may** implicate retroactive ratemaking concerns. See id. at 7-8. This argument is based upon a flawed premise for the reasons explained above. FirstEnergy bases its argument for potential irreparable harm upon nothing more than a vague belief that— if FirstEnergy wins its appeal—then re-collection might constitute retroactive ratemaking. Accordingly, FirstEnergy fails to satisfy the requirement of demonstrating that it will suffer irreparable harm. The harm that will befall some of FirstEnergy's customers during a stay, on the other hand, is substantial and not in the public interest. See supra, Section III (A).

D. To the Extent This Court Grants FirstEnergy's Motion For Stay, FirstEnergy Should Be Required To Post A $64,776,804 Bond To Effect The Stay.

If this Court grants FirstEnergy's Motion for Stay, then FirstEnergy should be required to post a $64,776,804[5] bond to effect the stay. That amount is sufficient to return $43,362,796.50 plus $21,414,007 in estimated carrying costs (incurred since August 2010) back to its customers once this Court affirms the PUCO's disallowance of imprudently incurred costs. R.C. 4903.16 states, in part, that:

> [A]ppellant shall execute an undertaking, payable to the state in such a sum as the supreme court prescribes, **with surety to the satisfaction of the clerk of the supreme court**, conditioned for the prompt payment by the appellant of all damages caused by the delay in the enforcement of the order complained of, and for the repayment of all moneys paid by any person, firm, or corporation for transportation, transmission, produce, commodity, or service in excess of the charges fixed by the order complained of, in the event such order its sustained. (Emphasis added.)

In its Opinion and Order, the PUCO found "that recovery of $43,362,796.50 for 2011 vintage RECs purchased in August 2010 should be disallowed." Opinion and Order, Case No. 11-5201-EL-RDR at 25 (Aug. 7, 2013). The PUCO then ordered FirstEnergy to "credit Rider AER in the amount of $43,362,796.50, plus carrying costs." Id. at 28. In the Utilities' Motion for Stay, FirstEnergy asserts that it will secure a bond for $50,096,550, which "represents the disallowance ($43,362,796) ordered by the Commission in its Opinion and Order," (Memorandum In Support of Motion for Stay at 5) with carrying costs of $6,733,730 using a rate[6] of 0.7066 percent through April 2015. Id. at 5, fn. 2.

FirstEnergy's proposed bond, however, only accounts for carrying charges incurred from the date of the PUCO's Opinion and Order – August 2013. Id. at Exhibit E. The Utilities do not

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[5] See Attachment A for OCC's estimated carrying costs calculation.

[6] It should be noted that this is a "monthly" rate.

account for the carrying costs that have accrued during the time that this money has been collected from customers. The PUCO disallowed the $43,362,796.50 from the Utilities' acquisition of RECs through Request for Proposal ("RFP") 3, which took place in August 2010. For purposes of a bond, carrying costs should be calculated from the date of the imprudent acquisition of the RECs (August 2010), not from the date of the PUCO's Opinion and Order (August 2013), as calculated by FirstEnergy.

IV. CONCLUSION

For the reasons set forth for Ohio consumers in this Memorandum Contra, OCC respectfully requests that this Court deny FirstEnergy's Motion for Stay. Alternatively, if this Court grants the requested stay, then FirstEnergy should be required to post a $64,776,804 bond (that includes interest as of August 2010) to effect the stay.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Memorandum Contra Motion for Stay* was served on the persons listed below, via electronic service, this 3rd day of January 2014.

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	Initial Expense Adjustment	Monthly Interest Rate	No. of Months from 8/2010 - 4/2015	Ending Balance	Cumulative Interest
CEI[1]	$15,357,208	0.7066%	57	$22,941,114	$7,583,906
OE[2]	$19,903,145	0.7066%	57	$29,731,987	$9,828,842
TE[3]	$8,102,444	0.7066%	57	$12,103,703	$4,001,259
Total	**$43,362,797**			**$64,776,804**	**$21,414,007**

1 "CEI" is The Cleveland Electric Illuminating Company.
2 "OE" is Ohio Edison Company.
3 "TE" is The Toledo Edison Company.

Summary of Switch Rates from EDUs to CRES Providers in Terms of Customers
For the Month Ending September 30, 2013

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Customers	Commercial Customers	Industrial Customers	Total Customers
Cleveland Electric Illuminating Company	CEI	30-Sep	2013	166744	16344	153	183638
CRES Providers	CEI	30-Sep	2013	492913	66643	517	560114
Total Customers	CEI	30-Sep	2013	659657	82987	670	743752
EDU Share	CEI	30-Sep	2013	25.28%	19.69%	22.84%	24.69%
Electric Choice Customer Switch Rates	**CEI**	**30-Sep**	**2013**	**74.72%**	**80.31%**	**77.16%**	**75.31%**

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Customers	Commercial Customers	Industrial Customers	Total Customers
Duke Energy Ohio	DUKE	30-Sep	2013	311371	33280	655	346958
CRES Providers	DUKE	30-Sep	2013	302921	34751	1513	343536
Total Customers	DUKE	30-Sep	2013	614292	68031	2168	690494
EDU Share	DUKE	30-Sep	2013	50.69%	48.92%	30.21%	50.25%
Electric Choice Customer Switch Rates	**DUKE**	**30-Sep**	**2013**	**49.31%**	**51.08%**	**69.79%**	**49.75%**

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Customers	Commercial Customers	Industrial Customers	Total Customers
AEP - Ohio	AEP	30-Sep	2013	945318	99286	5352	1051325
CRES Providers	AEP	30-Sep	2013	326612	75469	4786	408290
Total Customers	AEP	30-Sep	2013	1271930	174755	10138	1459615
EDU Share	AEP	30-Sep	2013	74.32%	56.81%	52.79%	72.03%
Electric Choice Customer Switch Rates	**AEP**	**30-Sep**	**2013**	**25.68%**	**43.19%**	**47.21%**	**27.97%**

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Customers	Commercial Customers	Industrial Customers	Total Customers
The Dayton Power and Light Company	DPL	30-Sep	2013	283574	22923	505	308476
CRES Providers	DPL	30-Sep	2013	170982	27424	1228	204817
Total Customers	DPL	30-Sep	2013	454556	50347	1733	513293
EDU Share	DPL	30-Sep	2013	62.38%	45.53%	29.14%	60.10%
Electric Choice Customer Switch Rates	**DPL**	**30-Sep**	**2013**	**37.62%**	**54.47%**	**70.86%**	**39.90%**

Source: PUCO, Energy & Environment

Note1: Total customers includes residential, commercial, industrial and other customers.
Note2: The switch rate calculation is intended to present the broadest possible picture of the state of retail electric competition in Ohio. Appropriate calculations made for other purposes may be based on different data, and may yield different results.
Note3: "Total Customers" include "Other Customers" (e.g. street lighting).
Note4: CSP and OP have merged into AEP-Ohio

Summary of Switch Rates from EDUs to CRES Providers in Terms of Customers
For the Month Ending September 30, 2013

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Customers	Commercial Customers	Industrial Customers	Total Customers
Ohio Edison Company	OEC	30-Sep	2013	272190	23707	310	297841
CRES Providers	OEC	30-Sep	2013	646322	86367	1104	734262
Total Customers	OEC	30-Sep	2013	918512	110074	1414	1032103
EDU Share	OEC	30-Sep	2013	29.63%	21.54%	21.92%	28.86%
Electric Choice Customer Switch Rates	**OEC**	**30-Sep**	**2013**	**70.37%**	**78.46%**	**78.08%**	**71.14%**

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Customers	Commercial Customers	Industrial Customers	Total Customers
Toledo Edison Company	TE	30-Sep	2013	75827	6733	79	83574
CRES Providers	TE	30-Sep	2013	195291	27962	431	223767
Total Customers	TE	30-Sep	2013	271118	34695	510	307341
EDU Share	TE	30-Sep	2013	27.97%	19.41%	15.49%	27.19%
Electric Choice Customer Switch Rates	**TE**	**30-Sep**	**2013**	**72.03%**	**80.59%**	**84.51%**	**72.81%**

Source: PUCO, Energy & Environment
Note1: Total customers includes residential, commercial, industrial and other customers.
Note2: The switch rate calculation is intended to present the broadest possible picture of the state of retail electric competition in Ohio. Appropriate calculations made for other purposes may be based on different data, and may yield different results.
Note3: "Total Customers" include "Other Customers" (e.g. street lighting).
Note4: CSP and OP have merged into AEP-Ohio

Summary of Switch Rates from EDUs to CRES Providers in Terms of Sales
For the Month Ending September 30, 2013
(MWh)

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Sales	Commercial Sales	Industrial Sales	Total Sales
Cleveland Electric Illuminating Company	CEI	30-Sep	2013	111898	47911	50745	222189
CRES Providers	CEI	30-Sep	2013	358218	523740	474952	1357224
Total Sales	CEI	30-Sep	2013	470116	571651	525697	1579413
EDU Share	CEI	30-Sep	2013	23.80%	8.38%	9.65%	14.07%
Electric Choice Sales Switch Rates	**CEI**	**30-Sep**	**2013**	**76.20%**	**91.62%**	**90.35%**	**85.93%**

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Sales	Commercial Sales	Industrial Sales	Total Sales
Duke Energy Ohio	DUKE	30-Sep	2013	329319	91944	11014	440694
CRES Providers	DUKE	30-Sep	2013	345453	496710	436008	1400139
Total Sales	DUKE	30-Sep	2013	674772	588654	447022	1840833
EDU Share	DUKE	30-Sep	2013	48.80%	15.62%	2.46%	23.94%
Electric Choice Sales Switch Rates	**DUKE**	**30-Sep**	**2013**	**51.20%**	**84.38%**	**97.54%**	**76.06%**

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Sales	Commercial Sales	Industrial Sales	Total Sales
AEP - Ohio	AEP	30-Sep	2013	874661	275607	345055	1500235
CRES Providers	AEP	30-Sep	2013	325115	1022450	955226	2308353
Total Sales	AEP	30-Sep	2013	1199776	1298057	1300281	3808588
EDU Share	AEP	30-Sep	2013	72.902%	21.232%	26.537%	39.391%
Electric Choice Sales Switch Rates	**AEP**	**30-Sep**	**2013**	**27.098%**	**78.768%**	**73.463%**	**60.609%**

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Sales	Commercial Sales	Industrial Sales	Total Sales
The Dayton Power and Light Company	DPL	30-Sep	2013	254084	57535	6656	364050
CRES Providers	DPL	30-Sep	2013	177866	279354	309108	845241
Total Sales	DPL	30-Sep	2013	431950	336889	315764	1209291
EDU Share	DPL	30-Sep	2013	58.82%	17.08%	2.11%	30.10%
Electric Choice Sales Switch Rates	**DPL**	**30-Sep**	**2013**	**41.18%**	**82.92%**	**97.89%**	**69.90%**

Source: PUCO, Energy & Environment
Note1: Total sales includes residential, commercial, industrial and other sales.
Note2: The switch rate calculation is intended to present the broadest possible picture of the state of retail electric competition in Ohio.
Appropriate calculations made for other purposes may be based on different data, and may yield different results.
Note3: "Total Sales" include "Other Sales" (e.g. street lighting).
Note4: CSP and OP have merged into AEP-Ohio

Summary of Switch Rates from EDUs to CRES Providers in Terms of Sales
For the Month Ending September 30, 2013
(MWh)

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Sales	Commercial Sales	Industrial Sales	Total Sales
Ohio Edison Company	OEC	30-Sep	2013	219097	53694	140288	423767
CRES Providers	OEC	30-Sep	2013	548204	541379	576174	1666528
Total Sales	OEC	30-Sep	2013	767301	595073	716462	2090295
EDU Share	OEC	30-Sep	2013	28.55%	9.02%	19.58%	20.27%
Electric Choice Sales Switch Rates	**OEC**	**30-Sep**	**2013**	**71.45%**	**90.98%**	**80.42%**	**79.73%**

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Sales	Commercial Sales	Industrial Sales	Total Sales
Toledo Edison Company	TE	30-Sep	2013	62029	17576	119115	202940
CRES Providers	TE	30-Sep	2013	156872	161823	407940	726681
Total Sales	TE	30-Sep	2013	218901	179399	527055	929621
EDU Share	TE	30-Sep	2013	28.34%	9.80%	22.60%	21.83%
Electric Choice Sales Switch Rates	**TE**	**30-Sep**	**2013**	**71.66%**	**90.20%**	**77.40%**	**78.17%**

Source: PUCO, Energy & Environment
Note1: Total sales includes residential, commercial, industrial and other sales.
Note2: The switch rate calculation is intended to present the broadest possible picture of the state of retail electric competition in Ohio. Appropriate calculations made for other purposes may be based on different data, and may yield different results.
Note3: "Total Sales" include "Other Sales" (e.g. street lighting).
Note4: CSP and OP have merged into AEP-Ohio