Energy Committee
June 13, 2012

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2012 Energy Committee Calendar

Wednesday, June 13
Wednesday, October 24

OMA Energy Committee Meeting Sponsor:

OMA Energy Committee Agenda
June 13, 2012

- **Welcome and Introductions**
  - OMA Energy Chair – Brad Belden, Belden Brick Company

- **Public Policy Report & Counsel Report**
  - Regulatory Matters – Lisa McAlister, Bricker & Eckler, LLP
    - AEP Rate Cases
    - Auction Results
    - Other Items
  - Public Policy Matters – Kevin Schmidt, Matt Warnock, Bricker & Eckler, LLP
    - Senate Bill 315

- **Natural Gas Report**
  - Scott Phelps – Columbia Gas of Ohio

- **Lunch**

Meeting sponsored by:

To: OMA Energy Committee
From: Kevin Schmidt, OMA Staff
Re: Energy Update
Date: 6/12/2012

1. AEP-Ohio Rate Cases

AEP-Ohio has a number of rate cases before the PUCO now that if decided poorly could significantly undermine manufacturing competitiveness in AEP-Ohio's service territories. The OMA has prepared a separate document detailing these cases which can be found in your packet.

2. Senate Bill 315 Energy MBR

The Ohio House of Representatives passed Senate Bill 315 (Jones, R-Springboro), which makes several modifications to Ohio law related to oil and gas exploration and Ohio's renewable energy portfolio standard. The Ohio Senate agreed to the changes, avoiding a conference committee.

Notable changes the House made were: (a) clarifying that doctors are not barred from sharing proprietary information about chemicals used in the fracking process when treating patients; (b) limiting the university loophole for the qualification of combined heat and power projects as renewable energy to only the University of Cincinnati and Kent State, and (c) removing a provision important to manufacturing and the Ohio steel industry that would have required the disclosure of the country of origin of certain tubular steel products. These products have been dumped in Ohio in the past, resulting in the shutdown of Ohio steel mills.

A detailed analysis of SB 315 has been developed by OMA energy counsel at Bricker & Eckler.

3. Shale Update

Ohio continues to be hub for shale development. While natural gas markets are low and expected to stay that way resulting in gas wells being uneconomic, Ohio's abundant Utica shale is expected to continue to drive growth in the sector. The Utica shale is thought to contain vast reserves of oil and other materials that provide for much more lucrative revenue streams.

Other items of interest regarding shale are the changes made to Ohio law in Senate Bill 315 regarding exploration and production industries. A full summary of the changes made by SB 315 is in your packet.

Energy Management

Capacity Price Auction Results: A Mixed Bag for Ohio

PJM's capacity auction for the 2015-2016 delivery year (June 1 through May 31) resulted in higher than expected prices for FirstEnergy's service territory and lower than expected prices for AEP-Ohio's. Capacity is the fixed price customers' pay to ensure there is enough power plant generating capacity available. Due to a number of expected power plant closures, FirstEnergy's capacity price result came in at \$357 per megawatt day. AEP-Ohio's capacity price result was a much more moderate \$136 per megawatt day.

It should be noted that the price for AEP-Ohio's service territory is lower than the lowest offered price (\$146 per megawatt day) in AEP-Ohio's rate case currently before the PUCO, and that price comes with an additional non-bypassable rider. The OMA will be discussing the implications of the auction results at the upcoming OMA Energy Committee meeting on June 13th at the OMA. Click here to register. To read about the importance of capacity prices, how they affect your electric bill, and how AEP-Ohio's plan will affect its customers, click here.

05/25/2012

Legislature Passes Governor's Energy Legislation

The Ohio House of Representatives passed Senate Bill 315 (Jones, R-Springboro), which makes several modifications to Ohio law related to oil and gas exploration and Ohio's renewable energy portfolio standard. The Ohio Senate agreed to the changes, avoiding a conference committee.

Notable changes the House made were: (a) clarifying that doctors are not barred from sharing proprietary information about chemicals used in the fracking process when treating patients; (b) limiting the university loophole for the qualification of combined heat and power projects as renewable energy to only the University of Cincinnati and Kent State, and (c) removing a provision important to manufacturing and the Ohio steel industry that would have required the disclosure of the country of origin of certain tubular steel products. These products have been dumped in Ohio in the past, resulting in the shutdown of Ohio steel mills.

A detailed analysis of SB 315 will be developed by OMA energy counsel at Bricker & Eckler, and the OMA Energy committee will review at its upcoming meeting on June 13th at the OMA. Click here to register.

05/25/2012

Manufacturing Opposition to AEP Proposals Gains Attention

Manufacturers that purchase their electricity in the AEP Ohio service territory are concerned about cases pending at the state Public Utilities Commission of Ohio (PUCO) that will have significant impact on electricity prices for Ohio businesses and residents. In its editorial, "Unhappy Customers," the Akron Beacon Journal this week took note of OMA members who have voiced concerns to the PUCO.

Meanwhile AEP and FirstEnergy continue high profile media campaigns designed to influence the outcome. The OMA has produced an analysis to inform manufacturers what is at stake and how to take action.

05/25/2012

NAM Working to Kill Utility MACT Regulation in U.S. Senate

The National Association of Manufacturers (NAM) Director of Energy & Resources Policy, Alicia Meads, reported this week that a broad coalition is working to support Sen. Jim Inhofe's (R-OK) effort to repeal theU.S. EPA's costly Utility MACT regulation. Senator Inhofe's resolution is a privileged Senate motion and only needs a simple majority to pass.

The U.S. House of Representatives has already passed legislation (H.R. 2401) that would delay the implementation of the Utility MACT rule. Manufacturers encourage the Senate to pass similar legislation that either delays or nullifies the regulation.

NAM has prepared a brief summary of the Utility

MACT issue, and OMA Connections Partner, American Coalition for Clean Coal Electricity (ACCCE), has underwritten this one-page economic impact briefing.

05/18/2012

Duke Energy Ohio Customers: Lighting Incentive Deadline Approaching

Duke Energy Ohio reminds its customers they can earn cash incentives by replacing T12 lighting fixtures with more efficient T8 or T5 lighting systems, but the last day to purchase standard T8 or T5 lighting systems that qualify fo Duke Energy Incentives is July 15, 2012.

Duke Energy estimates that a lighting upgrade can save an estimated 30 percent on the cost of electricity and have on one- to three-year payback.

Other important dates for this program are: T8 or T5 lighting system must be operable by October 15, 2012 and the application for the cash incentive must be submitted by January 15, 2013.

05/18/2012

Governor's Energy Policy Legislation Moving Quickly

Substitute Senate Bill 315 (SB 315) (Jones, R-Springboro) continued its quick move through the Ohio General Assembly this week. It passed out of the Senate and received its first hearing in the House Public Utilities Committee on Tuesday. If House plans hold up, SB 315 will be voted out of the House committee as soon as next Tuesday.

In making its way out of the Senate, Sub. SB 315 received a number of notable changes: 1) addition of a new steel pipe monitoring program that requires the country of origin be disclosed for pipe used in the exploration, gathering or transportation of natural gas to ensure that quality tubular steel products that meet industry standard product specifications are used, 2) removal of all combined heat and power (CHP) projects (except for Ohio university projects) from the definition of renewable energy; and 3) the addition of a provision that allows CHP and waste energy recovery (WER) projects completed only after the effective date of SB 315 to be counted towards an electric distribution utility's energy efficiency standard. (This provision negatively modifies current law which allows mercantile customers to count projects completed within the last three years towards a utility's energy efficiency standard and receive compensation.)

A full summary of the legislation as it stands today has been prepared by OMA energy counsel, Bricker and Eckler LLP.

05/18/2012

Governor's Energy Policy Continues to Advance

Senate Bill 315, the governor's energy policy legislation, had several changes via substitute bill this week. Notable provisions of the legislation include: expedited, automatic approval for gas pipelines less than five miles in length, customer-sited waste energy recovery projects, and small electric transmission lines.

The legislation is expected to move out of the Senate next week. OMA energy counsel, Bricker & Eckler LLP, has summarized the legislation, including content in the substitute bill, here.

05/11/2012

OMA Comments on CoGen Amendment

Several Ohio senators have proposed an amendment to Senate Bill 315, the Governor's energy proposal, that would restrict combined heat and power (CHP) systems from qualifying as a renewable energy resource.
CHP refers to co-production of electricity and useful thermal energy. This is distinct from a waste energy recovery (WER) system which generates electricity from exhaust heat or other sources. Like wind and solar power, both sources harness energy that would otherwise be wasted. The intent of the governor's proposal is to provide parity to CHP and WER with wind and solar when it comes to obtaining renewable energy credits.

An analysis by OMA energy counsel, Bricker

Eckler LLP, motivated the OMA to issue a letter of concern over the amendment, noting that the governor's proposal "simply puts CHP and WER on a level playing field with wind and solar and provides more options for Ohio customers to generate clean power."

05/11/2012

OMA Members File Testimony Against AEP Ohio Rate Increases

Six OMA members filed testimony in AEP Ohio's Electric Security Plan case, which seeks to increase rates on customers. Representatives from Summitville Tiles, Whirlpool, the Lima Refining Company, AMG-Vanadium, the Belden Brick Company, and OSCO Industries detailed what the impact of AEP Ohio's proposal will be on their companies. The central provision of AEP Ohio's plan is to manipulate the price of "capacity" that electric suppliers must pay AEP Ohio. Capacity refers to the charge that is paid to have a power plant available to produce electricity and is passed through to customers.

Dave Johnson, Chairman and CEO of Summitville Tile, noted "After a decade of restructuring, downsizing and right-sizing our company, we had hoped to finally be able to provide modest wage increases for our employees – many of whom have gone without wage increases for nearly a decade. However, facing the prospect of a $100,000 per year increase in electricity costs, wage increases may have to take a back seat to electricity increases."

The market price of capacity is going to dip to a low of roughly $17 per MW/Day on June 1st. AEP Ohio's proposal would, at best, keep this charge at its current price of $146 per MW/Day and at worst increase it to $355 per MW/Day. OMA's Kevin Schmidt said, "While the likelihood of the PUCO approving AEP Ohio's $355 request is slim, keeping the status quo and forcing customers to continue at $146 is a significant problem and will deny customers the current low market rates."

This proposal has significant ramifications for customers who have already elected to shop. Those contracts for what consumers believe to be fixed price products likely allow prices to increase to cover the costs of AEP Ohio's capacity. Contact Kevin Schmidt to learn more about how your company might be affected.

05/11/2012

Industry Leaders Talk Shale

OMA members participated in the Ohio Energy Jobs Summit this week which focused on the economic impact anticipated from Ohio shale plays.

Ward "Tim" Timken, Jr., Chairman of The Timken Company, spoke about the importance of shale opportunities both on demand for products in the supply chain and on the positive impact on energy costs. Doug Mathews, Vice President of Tubular Operations for U.S. Steel, detailed the ripple effect shale plays will have in revitalizing Ohio manufacturing.

Other industry leaders included Joseph Carrabba, Chairman and President of Cliffs Natural Resources, Jody Bevilaqua, Executive Vice President of Momentive Performance Materials Holdings, and Gary Heminger, President and CEO of Marathon Petroleum Corp.

Read coverage and view video in The Hill.

05/04/2012

AG Joins Challenge to U.S. EPA Mercury Rule

Ohio Attorney General Mike DeWine joined in the recent multi-state challenge to the U.S. EPA's rule covering Mercury and Air Toxics Standards (MATS).

DeWine is concerned the timeframe in which the new MATS are to be met is too short. The timeframe will make it difficult for regulated facilities to meet the requirements and for the state EPA to effectively confirm and monitor compliance within the three to four years allowed. And, Ohio utilities have indicated that they will have to limit, and shut down, operations of smaller units in order to fully comply, reducing electricity supply and driving up prices.

05/04/2012

Governor Kasich Defends CoGeneration

This week Governor John Kasich defended his proposal to put cogeneration technologies on the same "renewable" playing field as wind energy. Senate Bill 315, the governor's energy policy legislation, would allow waste energy recovery systems and combined heat and power systems to qualify as renewable energy within the state's renewable energy standards. The OMA suggested these changes in a white paper submitted to the governor's office last year.

Wind energy advocates have recently taken aim at these changes, arguing they would undermine the economics of their own projects. Governor Kasich's response: "Our goal ought to be a cleaner environment, and whatever moves us to a cleaner environment ought to be a part of it."

Meanwhile, the Ohio Senate Public Utilities Committee this week moved forward on the governor's proposal. This week the committee adopted a substitute bill that made a number of modifications, mostly dealing with natural gas pipeline regulation. Chairwoman Shannon Jones (R-Springboro) said that additional amendments may be made next week when the committee is expected to act on the legislation.

05/04/2012

Five OMA Members Take Stand Against AEP Capacity Charge Proposal

Stepping into the habitat of lawyers and paid expert witnesses, five OMA members, customers of AEP Ohio, this week took the stand at a hearing at the Public Utilities Commission of Ohio to oppose AEP Ohio's proposal to increase charges, substantially, for use of its capacity.

It is highly unusual for customers to appear at these hearings, and an indication of the matter's significance to manufacturers. The cost to these five companies alone will be in the tens of millions of dollars. The consequences for all manufacturers in the AEP Ohio operating territory: an untold amount of investment- and job-destroying new costs.

Special thanks to the five manufacturers who took the stand to stand up for manufacturing: Ed Forshey of AMG Vanadium in Cambridge, John Burke of OSCO in Portsmouth, Rick Walters of Lima Refining in Lima, John Siefker for Whirlpool's Findlay facility, and Brad Belden of Belden Brick in Canton.

If you have operations in the AEP Ohio operating footprint and you have not looked into the effect of this case on your operations, do so right away. Contact Kevin Schmidt to have the OMA run the numbers for you.

04/27/2012

OMA Testifies in Support of Governor's Co-Gen Proposal

The OMA's Kevin Schmidt this week testified in support of SB 315, which is an energy policy proposal contained in Governor Kasich's "mid-biennium review" of budgets and policies. The bill would modify Ohio's renewable energy requirements and energy efficiency requirements to specifically include waste energy recovery projects. The OMA proposed this policy to the governor in follow-up to his energy summit conducted earlier this year.

Schmidt said: "Allowing cogeneration to be included as renewable energy would create an additional revenue stream for manufacturers through long-term Renewable Energy Certificate (REC) contracts with utilities. Including cogeneration in Ohio's energy efficiency requirements would allow utilities to provide financing for manufacturers' waste energy recovery projects in exchange for counting the energy efficiency gains toward the utilities' benchmarks."

"In both cases, the result would be to mitigate by some significant measure the capital costs of implementing waste energy recovery technologies," Schmidt continued. "By facilitating private-sector investment in waste energy recovery projects, these specific provisions of SB 315 would strengthen the state's manufacturing base, reduce our reliance on imported power, shrink our collective carbon footprint by producing carbon-free electricity generation."

04/27/2012

FES Strikes Back at AEP in Media

AEP Ohio launched a media strike against FirstEnergy Solutions (FES) last week. This week FES struck back.

AEP Ohio's message: FES seeks "unfair and artificially low prices" to buy AEP Ohio power and sell it to its customers in AEP Ohio operating territory at a "significant profit."

The FES message: "AEP is lobbying to limit your choices, raise customer prices and increase its profits."

This uncommon media skirmish is a sign of the level of stakes in the AEP Ohio rate cases pending before the Ohio Public Utilities Commission: Those stakes are very high for manufacturers and other customers, as well as for the utilities. Contact Kevin Schmidt at the OMA for information.

04/27/2012

OMA Supports Smart Energy Policy

The Ohio House Agriculture and Natural Resources Committee heard testimony this week on House Resolution 305 which urges President Obama to open up areas for oil and gas exploration on the northern coast of Alaska, grant permits for oil and natural gas exploration in the Gulf of Mexico on a timely basis, and permit the Keystone XL pipeline project.

In a letter of support for the resolution, the OMA's Kevin Schmidt noted that Ohio is uniquely situated to benefit from these actions: "Ohio is the seventh largest refining state in the union and ships well over $6 billion dollars in product from its petroleum refineries each year. Additionally, Ohio is the second largest producer of steel pipe, a critical component to a safe and environmentally protective oil and natural gas industry."

04/20/2012

Governor's Energy Policy Receives Hearings

The governor's energy policy legislation (Senate Bill 315) received a hearing this week in the Senate Energy and Public Utilities Committee. An analysis prepared by OMA energy counsel at Bricker & Eckler can be found here.

The legislation would broaden the Public Utilities Commission of Ohio's jurisdiction over natural gas pipelines and would include on-site generation technologies in the renewable and energy efficiency mandates for utilities.

Implemented correctly, the renewable and energy efficiency mandates will help Ohio's grid become more stable and resilient. The inclusion on-site generation will benefit manufacturers who have the ability to use combined heat and power systems, waste energy recovery systems (for example, waste heat or bio digesters) and a host of other technologies that produce electricity on-site.

04/20/2012

Beyond Boom and Bust for "Clean Tech"

Amid the debate about subsidization of clean energy technology ("clean tech") Brookings has released a report that proposes a middle course. "Beyond Boom and Bust: Putting Clean Tech On a Path To Subsidy Independence" recommends a phased elimination of subsidies designed to accelerate technological development and cost reductions.

"Many of today's existing subsidies and clean energy programs, after all, are poorly optimized, characterized by a boom and bust cycle of aid and withdrawal, or in need of thorough revision thanks to either recent progress in the price and performance of subsidized technologies or the mounting fiscal burden imposed by some programs," suggests the report. "The end of the present policy regime therefore offers the opportunity to implement smart reforms that not only avoid a potential "clean tech crash" but also accelerate technological progress and more effectively utilize taxpayer resources."

04/20/2012

AEP Takes to the Airwaves

In the ongoing debate about how much AEP Ohio can charge its customers, the company took the unusual step of airing television ads against its in-state rival, FirstEnergy Solutions (FES).

AEP Ohio seems to have created a new organization, Fair Energy Ohio, to advocate its position with the public. On its website, Fair Energy Ohio claims: "First Energy Solutions and other suppliers are asking the Public Utilities Commission of Ohio (PUCO) for unfair and artificially low prices (referred to as capacity charges) so they can buy AEP Ohio's power, undercut AEP Ohio's rates, and still make a significant profit through their sales to customers."

The OMA opposes AEP Ohio's position in its capacity charge case.

04/20/2012

Free Energy Audits for Qualified Industrial Facilities

The University of Dayton Industrial Assessment Center, with funds from the U.S. Department of Energy, has helped more than 850 small- to mid-sized industries reduce energy costs. A small team of faculty and graduate students trained in industrial energy best practices spend a day in qualified facilities and compile customized recommendations for reducing energy costs.

Typical energy savings opportunities reduce annual energy usage, cost and associated carbon emissions by 10 to 15 percent.

Here are the qualifications and contact information for this free energy assessment.

04/13/2012

O.U. Convenes Shale Supply Chain Conference

The Voinovich School of Ohio University hosted the "Ohio Shale Energy 2012: Discovering Supply Chain Opportunities" conference this past Wednesday in Cambridge. The event brought together more than 500 business people interested in becoming suppliers to the shale energy industry in Ohio. Coverage of the event can be found here.

04/13/2012

Governor Kasich: Climate Change a Problem

The Columbus Dispatch reported this week that Governor Kasich went off script to discuss climate change. The governor stated, “This isn’t popular to always say, but I believe there is a problem with climates, climate change in the atmosphere.”

This comment was made while the governor spoke about his energy policy, which includes support for: capturing waste heat, clean-coal technology and shale drilling. Click here to read the full article.

04/13/2012

2011 Ohio DNR Shale Production Reports Available

The Ohio Department of Natural (DNR) resources recently released the 2011 Utica shale production report. On its website DNR notes that the “... reported volumes of oil are lower than estimated, but higher than conventional wells” and “Gas production is significant, even with the early production numbers.” The agency also reports that “... it is very unlikely that the wells are being produced at anything near capacity.”

04/06/2012

Dayton Power & Light Files its Rate Plan

Dayton Power and Light (DP&L) filed its new rate plan last Friday at the Public Utilities Commission of Ohio. The plan would move them along the same path toward market pricing as Duke Energy Ohio and AEP-Ohio have gone in recent months.

Over a five year timeframe, the plan would transition DP&L’s standard service offer rate, the rate customers pay if they do not shop, from a cost-based rate to a market-based rate. A detailed memo of the plan can be found here.

In addition to market transition, DP&L is asking for at least one rider that doesn't appear to be authorized by Ohio law. Finally, even though DP&L would transition its pricing structure to a market-based one, it is not proposing to sell its generating assets. The OMA is a party to this case through the OMA Energy Group.

Click here to learn more about how you might engage to protect your energy interests.

The electricity markets in Ohio have changed dramatically. Read a brief whitepaper about the changes and their consequences.

04/06/2012

AEP Files New Rate Plan

Last Friday, AEP filed a new rate plan (an "Electric Security Plan" or ESP, in the language of the statute) that would affect its customers from the time of its approval (maybe late summer of this year) to June 1, 2015. Its previously approved rate plan was rejected by the Public Utilities Commission (PUCO) after a public outcry against its price increases.

Counsel to the OMA Energy Group, Lisa McAlister of Bricker & Eckler LLP, summarizes the AEP filing: "Under the plan, there are limited base generation rate increases but there is the addition of a nonbypassable "Rate Stability Rider" and new distribution rate increases that combine to increase rates on average 4.5% in the first year, and then, with the addition of the Phase In Recovery Rider in the second year, the rates increase an incremental 3.77% on average, and finally, increase an additional 0.25% in year three."

Counsel continues: "The shopping is very limited and would require the same queuing process as the ESP settlement. AEP-Ohio also proposes to…hold an energy only auction for 5% of its load immediately upon approval of the Revised ESP …, an energy only auction for 100% of its load in January 2015, and a competitive bidding process (auction) for capacity and energy for June 1, 2015."

In a separate case before the PUCO, AEP is asking for a $355/MW-day capacity rate for all shopping customers. In its ESP case, AEP proposes a capacity rate of $146 for customers that have already shopped, and $255 for all others, if the PUCO approves the ESP without modification.

AEP-Ohio states that if AEP-Ohio got the $355/MW-D rate, it would not request any base generation rate increase for its standard service customers and would provide a "meaningful" shopping credit. The effect of this would, effectively, freeze customers' ability to shop load to competitive suppliers for the duration of the ESP.

04/06/2012

OMA Members Testify Against AEP Capacity Charge Proposal

On behalf of the OMA, five OMA member companies presented testimony to the Public Utilities Commission of Ohio (PUCO) in opposition to the pending AEP proposal to increase its "capacity charge." Testifying were: Lima Refining Company, OSCO, Belden Brick, AMG Vanadium, and Whirlpool. These companies are a range of manufacturing operations by size, industry and electricity load. Some of the companies have "shopped" generation load; others have not.

AEP has asked the PUCO for authority to charge all competitive suppliers of electricity to its distribution customers a price of $355/MW-day. AEP claims that this price is its cost of capacity, and that any price less than that would be unfair and financially destructive to the company. The current market price of capacity is $146 (market capacity prices are set by auction). The market price will drop to $16 on June 1.

Rick Walters of the Lima Refining Company testified: "As a long-standing customer of AEP-Ohio, Lima (Refining Company) needs reliable service. We also understand that AEP-Ohio needs to be fairly compensated for the service it provides. However, when AEP-Ohio's proposal is viewed in the larger context, we feel like AEP-Ohio charged market rates for capacity when the market rates were above AEP-Ohio's costs but, now, when the market prices are at historic lows, AEP-Ohio is using "costs" to justify rate increases. Worse yet, AEP-Ohio will revert to market prices in 2015, when, as I understand it, market prices are predicted to increase again. In other words, we think AEP-Ohio's proposal lacks balance and fairness. This is particularly true when the proposal undermines our ability to manage the risk of rate impacts by shopping with a competitive supplier."

A hearing on the matter is scheduled for April 17. It is expected that the PUCO will act prior to May 31.

04/06/2012

Blast Furnace Co-Generation Bill Makes its Way to Governor

The Ohio House of Representatives passed Senate Bill 289 this week which would allow one blast furnace co-generation project in the state to qualify for renewable energy credits. The Air Products project in Middletown will produce 110 megawatts of power using the off-gas from a blast furnace.

The bill came under fire from wind advocates who argued that the inclusion of industrial cogeneration facilities in the renewable energy market will kill the value of Ohio renewable energy credits.

03/30/2012

Governor's Energy Proposal Receives its First Hearing – CoGen and Shale

Governor Kasich's energy policy proposal, Senate Bill 315 (Jones, R-Springboro), received its first hearing this week before the Senate Public Utilities Committee. Chairman Todd Snitchler of the Public Utilities Commission of Ohio (PUCO) and Director Jim Zehringer of the Ohio Department of Natural Resources (DNR) provided testimony.

Chairman Snitchler used the time to discuss how the proposed changes would allow on-site generation technologies, such as combined heat and power and waste energy recovery systems, to qualify for either the renewable energy standard or the energy efficiency standard, but not both. The chairman stated that the PUCO believes that the inclusion of more technology options for utilities to meet the standards would lower compliance costs.

Director Zehringer spoke about additional regulations that were being proposed, including the first cradle-to-grave reporting system of" fracking" fluid in the nation. The director also produced a number of visual aids on Ohio's regulations, including well construction, Ohio drilling regulations, and one on industrial and regulatory responsibilities.

03/30/2012

Snapshot of Midwest Manufacturing Energy Use

The World Resource Institute (WRI) has released a study, "Midwest Manufacturing Snapshot: Energy Use and Efficiency Policies," that for the first time estimates manufacturing subsector-specific energy use in 10 Midwest states.

Writes WRI: "The workforce and economies of Midwestern states are more reliant on manufacturing than in any other U.S. region. Like the U.S. as a whole, during the past decade, the Midwest lost one-third of its total manufacturing workforce. With the central focus of state governments on economic development, there is a growing interest in understanding how industrial energy efficiency investments could contribute to regional economic recovery and long-term competitiveness for U.S. manufacturers."

Detailed manufacturing energy-use and economic activity data are presented alongside state-by-state policy summaries, giving a snapshot of where energy is being used and current state approaches for reducing energy-related costs and emissions.

Read more about the Ohio data. In the most recent year of the data, Ohio manufacturing consumed 20% of total energy used by Midwest manufacturers, more than any other Midwestern state.

03/23/2012

AEP to Hold Forum Today on New Rate Case

AEP-Ohio plans to hold a forum at the Public Utilities Commission of Ohio (PUCO) today to discuss its modified rate plan. AEP-Ohio's previously approved rate plan was revoked by the PUCO recently after customers complained to the PUCO of large and unexpected rate increases.

The OMA will be attending the event and intervening in the rate case. Contact Kevin Schmidt at the OMA to share concerns and get more information.

03/23/2012

AEP Confirms it Will Shutter Plants

In response to U.S. EPA regulations, AEP confirmed with regional power grid operators that it will be shutting down power plants that generate more than 4,600 megawatts. AEP was required to notify the grid operator of these plant shut downs so the upcoming capacity auction would reflect the reduced supply from the plants.

The auction will set capacity prices for 2015. Capacity is a component of generation price and reflects the cost to have power plants available to generate electricity to meet market needs.

03/23/2012

Senate Passes Even Narrower Blast Furnace CoGen Bill

The Ohio Senate passed Senate Bill 289 this week to allow one blast furnace cogeneration project to qualify as a renewable energy resource under Ohio's renewable energy portfolio standard. This would allow this project owner to sell renewable energy credits (RECs) to enhance the project economics.

The legislation sparked a debate with wind energy advocates who noted that these projects could oversupply the marketplace for RECs. In response to these concerns the legislation was narrowed so that only one blast furnace in Ohio could qualify.

A brief summary of the legislation prepared by OMA energy counsel at Bricker and Eckler can be found here.

03/23/2012

FirstEnergy to Keep 800 MW of Generation Operational

FirstEnergy recently announced that it will put on line 800 megawatts (MW) of natural gas fired generation in Eastlake, Ohio to help ensure reliable electric service in its Ohio service region. Earlier this year, FirstEnergy had announced that its generation holding company would retire six older coal-fired power plants, including the Eastlake plant.

The plant shut down plans are in response to U.S. EPA's continued crack down on affordable coal-fired electricity. The plant shut downs are sparking growing fear of future supply shortages.

03/16/2012

Energy Policy Included Mid-Biennium Review

The MBR will address a package of proposed energy reforms. Legislative hearings on these measures will commence next week. The administration hopes for passage before the summer recess.

Specifics have yet to be introduced in bill-form, however Governor Kasich released a summary document outlining 10 energy "pillars" that include: shale; electricity generation; electricity transmission and distribution; cogeneration/waste heat recovery; workforce training; compressed natural gas (CNG)/ alternative fuels; energy efficiency; coal; regulatory reform; and renewables.

Pillar 4 proposed to qualify cogeneration technologies as "renewable energy source" and allows electric utilities to use cogeneration to meet "alternative efficiency standards." Pillar 6 calls for Ohio to join a multi-state agreement to develop a regional CNG refueling infrastructure. Pillar 8 proposes spending $30 million for coal research on carbon capture.

03/16/2012

HB51 **MUNICIPAL UTILITIES** (SNITCHLER T) To require a municipal utility supplying surplus electricity to nonresidents to provide written notice of termination one year before terminating the service.

Current Status: 2/1/2011 - Referred to Committee House Public Utilities

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_51

HB73 **TRANSPORTATION OF NUCLEAR MATERIALS** (YOUNG R) To require payment of only the cost of police escort services for the highway transportation of limited amounts of certain nuclear materials.

Current Status: 3/2/2011 - **REPORTED OUT**, House Transportation, Public Safety and Homeland Security, (Third Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_73

HB95 **NATURAL GAS RATES** (STAUTBERG P) To permit certain rate-calculation adjustments for natural gas companies, eliminate public notice requirements for rate cases, and for natural gas companies, to make other regulatory changes concerning audits, alternative rate plans, and forecast reports, and allowing applications for natural gas company capital expenditure programs.

Current Status: 6/2/2011 - **SIGNED BY GOVERNOR**; Eff. 9/9/2011

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_95

HB133 **OIL AND GAS LEASING/DRILLING ON STATE LAND** (ADAMS J) To create the Oil and Gas Leasing Board and to establish a procedure by which the Board may enter into leases for oil and gas production on land owned or under the control of a state agency for the purpose of providing funding for capital and operating costs for the agency.

Current Status: 6/30/2011 - **SIGNED BY GOVERNOR**; Eff. 9/30/2011

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_133

HB204 **ADVANCED ENERGY FUND** (FOLEY M) To reimburse the Advanced Energy Fund revenue rider on retail electric distribution service rates and to clarify how Advanced Energy Fund grant amounts are to be determined.

Current Status: 5/25/2011 - House Public Utilities, (Second Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_204

HB297 **MOTOR FUEL QUALITY TESTING** (WEDDINGTON C, FENDE L) To require the Department of Agriculture to establish a motor fuel quality testing program under which county auditors may conduct such testing.

Current Status: 4/18/2012 - House Agriculture and Natural Resources, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_297

HB304 **LAKE ERIE OIL/NATURAL GAS** (ANTONIO N) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.

Current Status: 4/18/2012 - House Agriculture and Natural Resources, (First Hearing)

More Information: http://www.legislature.state.oh.us/res.cfm?ID=129_HB_304

HB306 **BUILDING STANDARDS** (PILLICH C) To require a building or structure constructed using state capital budget moneys to adhere to certain
energy efficiency and building standards and to encourage the use of Ohio-produced products.

Current Status: 9/13/2011 - Referred to Committee House State Government and Elections

More Information: http://www.legislature.state.oh.us/res.cfm?ID=129_HB_306

HB310 **ELECTRIC VEHICLE SALES TAX REDUCTION** (GOODWIN B) To reduce the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to $2,000.

Current Status: 11/16/2011 - House Ways and Means, (Second Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_310

HB345 **STIMULATION OF OIL AND GAS WELLS** (DRIEHAUS D, HEARD T) Establishes a moratorium on horizontal stimulation of oil and gas wells until the USEPA publishes a report containing the results of a study of the relationship of hydraulic fracturing to drinking water resources and the Chief of the Division of Oil and Gas Resources Management issues a report analyzing how Ohio's rules address issues raised in the USEPA report.

Current Status: 4/18/2012 - House Agriculture and Natural Resources, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_345

HB351 **WELL STIMULATION/BRINE DISPOSAL** (ANTONIO N, FEDOR T) To establish requirements governing well stimulation, brine disposal and water that is used in the drilling/operation of oil and gas wells, including a requirement that oil and gas permitees pay a seven per cent overriding royalty for each well that is stimulated.

Current Status: 11/9/2011 - Referred to Committee House Agriculture and Natural Resources

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_351

HB364 **SECURITIZATION COSTS STANDARDS-ELECTRIC UTILITIES** (ROEGNER K, DUFFEY M) To establish standards for the securitization of costs for electric distribution utilities.

Current Status: 12/21/2011 - **SIGNED BY GOVERNOR**; Eff. 3/22/2012

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_364

HB418 **FRACKING MORATORIUM** (HAGAN R) To establish a moratorium until January 1, 2015, on the disposal by injection into an underground formation of brine and other waste substances associated with the exploration or development of oil and gas resources.

Current Status: 4/18/2012 - House Agriculture and Natural Resources, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_418

HB443 **RENEWABLE ENERGY RESOURCE** (CONDITT M) To include cogeneration technology using waste or byproduct gas from an air contaminant source as a renewable energy resource.

Current Status: 3/28/2012 - House Public Utilities, (Fourth Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_443

HB464 **WELL STIMULATION REQUIREMENTS** (FOLEY M) To prohibit well stimulation unless all methane gas released as a result of the proposed stimulation of the well is captured by the owner of the well or the owner's authorized representative and to revise other requirements governing well stimulation.

Current Status: 4/18/2012 - House Agriculture and Natural Resources, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_464

HB528 **OIL-GAS LEASES** (CARNEY J, OKEY M) To require the lessee of an oil and gas lease to provide monthly oil and gas production statements, to specify the minimum information that must be included in a monthly statement, and to establish procedures and requirements in accordance with which a lessor may conduct an audit of the lessee's records and documents related to production or post-production costs under the lease.

Current Status: 5/8/2012 - Referred to Committee House Agriculture and Natural Resources

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_528

HB537 **SAFETY STANDARDS ENFORCEMENT-OIL AND GAS DRILLING** (HAGAN R) To authorize a political subdivision to enact and enforce health and safety standards for oil and gas drilling and exploration, and to revise the setback requirements in the Oil and Gas Law.

Current Status: 5/8/2012 - Referred to Committee House Agriculture and Natural Resources

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_537

HCR3 **HEALTH COVERAGE TAX CREDIT** (O'BRIEN S) To request the members of the United States Congress to reauthorize and continue the Health Coverage Tax Credit (HCTC) enhancements including provisions related to the monthly reimbursement program, the qualified family members program, and Voluntary Employee Beneficiary Associations (VEBAs).

Current Status: 2/10/2011 - Referred to Committee House Finance and Appropriations

More Information: http://www.legislature.state.oh.us/res.cfm?ID=129_HCR_3

HCR4 **URANIUM ENRICHMENT** (ROSENBERGER C) To urge the President of the United States to direct the United States Department of Energy to ensure the continuation of the uranium enrichment work being developed by USEC, Inc. at its Piketon, Ohio plant by granting USEC's application for a federal loan guarantee and to direct the Secretary of Energy to strongly consider providing federal funding assistance for the Clean Energy Park Demonstration Project.

Current Status: 4/12/2011 - Referred to Committee Senate State & Local Government & Veterans Affairs

More Information: http://www.legislature.state.oh.us/res.cfm?ID=129_HCR_4

HCR12 **ENCOURAGE DOMESTIC PRODUCTION OF COAL** (THOMPSON A) To urge the Administration of President Barack Obama to reconsider proposals to increase taxes on producers of coal, natural gas, and petroleum and instead commit to adopting policies that encourage domestic production of these important resources.

Current Status: 6/15/2011 - Referred to Committee Senate Agriculture, Environment & Natural Resources

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HCR_12

HR97 **TRANSCANADA KEYSTONE XL PIPELINE PROJECT** (SEARS B) To urge Congress to support the continued and increased importation of oil derived from Canadian oil sands and urge Congress to ask the U.S. Secretary of State to approve the TransCanada Keystone XL pipeline project from Alberta to Oklahoma.

Current Status: 6/15/2011 - **ADOPTED BY HOUSE**; Vote 92-0

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_97

HR305 **OIL AND GAS EXPLORATION** (DOVILLA M) To urge the Administration of President Barack Obama to allow oil and natural gas production off the northern coast of Alaska, to grant permits for oil and natural gas exploration in the Gulf of Mexico on a timely basis, and to grant a presidential permit to allow the construction of the Keystone XL pipeline project.

Current Status: 5/24/2012 - **ADOPTED BY HOUSE**; Votes 60-28

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HR_305

SB75 **ELECTRICITY CUSTOMER DISCOUNTS** (PATTON T) To restore discounts for customers using electricity to heat their homes and for electric, load-management programs, to specify that those discounts run with the land and may be transferred, to provide for refunds to customers whose rate discounts were modified or discounted, and to declare an emergency.

Current Status: 9/27/2011 - Senate Energy & Public Utilities, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_75

SB78 **NATURAL GAS LAKE ERIE** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.

Current Status: 2/23/2011 - Referred to Committee Senate Agriculture, Environment & Natural Resources

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_78

SB108 **OIL & GAS LEASING** (JORDAN K) To create the Oil and Gas Leasing Board and to establish a procedure by which the Board may enter into leases for oil and gas production on land owned or under the control of a state agency for the purpose of providing funding for capital and operating costs for the agency.

Current Status: 3/29/2011 - Senate Agriculture, Environment & Natural Resources, (Third Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_108

SB188 **ALTERNATIVE FUEL FACILITY** (PATTON T) To allow a credit against the personal income tax or commercial activity tax for the installation of an alternative fuel facility.

Current Status: 9/22/2011 - Senate Ways & Means & Economic Development, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_188

SB198 **MOTOR FUEL QUALITY TESTING PROGRAM** (TAVARES C) To require the Department of Agriculture to establish a motor fuel quality testing program under which county auditors may conduct such testing.

Current Status: 9/20/2011 - Referred to Committee Senate Agriculture, Environment & Natural Resources

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_198

SB209 **ELECTRIC VEHICLE SALES TAX REDUCTION** (HITE C, TURNER N) To reduce the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to $2,000.

Current Status: 9/22/2011 - Senate Ways & Means & Economic Development, (First Hearing)
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_209

SB242 **RENEWABLE ENERGY CREDITS** (PATTON T) To specify that renewable energy resources do not have to be converted to electricity to receive renewable energy credits.
Current Status: 3/28/2012 - Senate Energy & Public Utilities, (First Hearing)
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_242

SB248 **ELECTRIC DISTRIBUTION UTILITIES** (BALDERSON T) To establish standards for the securitization of costs for electric distribution utilities.
Current Status: 1/24/2012 - Referred to Committee House Public Utilities
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_248

SB289 **COGENERATION TECHNOLOGY** (COLEY W) To include cogeneration technology using waste or byproduct gas from an air contaminant source as a renewable energy resource.
Current Status: 4/13/2012 - **SIGNED BY GOVERNOR**; Eff. 7/16/2012
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_289

SB296 **OIL & GAS INDUSTRY JOB TRAINING** (BALDERSON T) To establish state funding for job training related or ancillary to the oil and gas industry and to make an appropriation.
Current Status: 2/14/2012 - Referred to Committee Senate Finance
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_296

SB315 **MBR-MID-BIENNIUM REVIEW - ENERGY** (JONES S) To make changes to the energy and natural resources laws and related programs of the state.
Current Status: 5/31/2012 - Sent to Governor for Signature
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_315

SCR4 **URANIUM ENRICHMENT** (DANIELS D) To urge the President of the United States to direct the United States Department of Energy to ensure the continuation of the uranium enrichment work being developed by USEC, Inc. at its Piketon, Ohio plant by granting USEC's application for a federal loan guarantee and to direct the Secretary of Energy to strongly consider providing federal funding assistance for the Clean Energy Park Demonstration Project.
Current Status: 6/15/2011 - **ADOPTED BY HOUSE**; Vote 87-6
More Information: http://www.legislature.state.oh.us/res.cfm?ID=129_SCR_4

SR69 **TRANSCANADA KEYSTONE COAST EXPANSION PROJECT** (WAGONER M) To urge Congress to support the continued and increased importation of oil derived from Canadian oil sands and urge Congress to take the U.S. Secretary of State to approve the TransCanada Keystone Coast Expansion pipeline project.
Current Status: 1/18/2012 - **ADOPTED BY SENATE**; Vote 25-7
More Information: http://www.legislature.state.oh.us/res.cfm?ID=129_SR_69

POLICY GOAL: Access to Reliable, Economical Energy

- **Design rates that ensure access to affordable, reliable energy and reflect the competitive nature of manufacturing.**

- **Construct a system that provides transparent and stable signals for electricity so manufacturers and utilities can adequately plan.**

- **Improve energy cost competitiveness by (a) enabling multi-site industrial consumers to pool electricity consumption levels in order to qualify for self-assessment of the kWh tax, (b) lowering the self-assessment threshold to allow a broader group of industrial and commercial consumers to qualify, and/or (c) considering deleting the kWh tax altogether.**

- **Improve the PUCO's rules governing Ohio's energy efficiency program/requirements.** [NEED SPECIFICS]

- **Identify and invest in the least expensive ways to improve energy efficiency.**

- **Be vigilant and watch for U.S. EPA proposing regulations based on dubious science that will serve to drive up costs disproportionately in the coal-dependent Midwest.**

- **Ensure manufacturers have clear and reasonable regulations regarding all forms of co-generation and that interconnection standards are barriers to development.**

- **Promote the installation of all forms of co-generation as a way for customers to reduce their risk, enhance local reliability, and provide for low, or no-carbon electricity.**

- **Ensure that Ohio's electric utilities invest wisely in their distribution and transmission systems to promote reliability and avoid congestion which results in artificially high prices**.

- **Policy objective re: state government mandates regarding electric utilities' generation resources.** [ELABORATE]

Bricker & Eckler
ATTORNEYS AT LAW

COLUMBUS I CLEVELAND
CINCINNATI-DAYTON

BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
MAIN: 614.227.2300
FAX: 614.227.2390

www.bricker.com
info@bricker.com

Thomas J. O'Brien
614.227.2335
tobrien@bricker.com

OMA ENERGY COMMITTEE
COUNSEL'S REPORT

Thomas O'Brien, Lisa McAlister, Matthew Warnock, Thomas Siwo
Bricker & Eckler LLP, Counsel to the OMA
June 13, 2012

ADMINISTRATIVE ACTIONS: Current Electric Proceedings

1. AEP-Ohio's Electric Security Plan ("ESP") Case No. 11-346-EL-SSO *et al.*

This case involves the default or Standard Service Offer ("SSO") pricing for customers who do not shop in AEP-Ohio's service territory for the years 2012-2015. In January 2011, AEP-Ohio filed an application for a 29-month ESP beginning on January 1, 2012, based upon a quasi-cost based default rate. A new market-based rate settlement offer emerged in August 2011. On September 7, 2011, 22 of the parties agreed to a settlement framework. While the PUCO initially adopted the settlement with some changes, on February 23, 2012, the PUCO reversed itself and rejected the settlement. The result of the PUCO's rejection of the settlement is that each of the cases that were consolidated revert back to the point at which the consolidation occurred on their own. Additionally, AEP-Ohio was required to make a new ESP filing. On March 30, 2012, AEP-Ohio filed its revised ESP proposal ("Revised ESP") and supporting testimony.

AEP-Ohio's Revised ESP would begin upon PUCO approval (estimated late summer 2012) and end on June 1, 2015. Under the plan, there are limited base generation rate increases but there is the addition of a nonbypassable "Retail Stability Rider" and new distribution rate increases that combine to increase rates on average 4.5% in the first year, and then, with the addition of the Phase In Recovery Rider in the second year, the rates increase an incremental 3.77% on average, and finally, increase an additional 0.25% in year three. However, calculations of individual customer rate increases vary greatly and could be significantly more significant than reflected by the average. There is also limited shopping pursuant to a queuing process. AEP-Ohio also proposes to terminate the AEP Pool agreement and hold an energy only auction for 5% of its load immediately upon approval of the Revised ESP and corporate separation plan, an energy only auction for 100% of its load in January 2015, and an competitive bidding process (auction) for capacity and energy for June 1, 2015. Finally, the Revised ESP maintains the rate design from 2011 and does not include any load factor provision or market transition rider.

The specific components are outlined below.

Non-Fuel Generation Rates: AEP-Ohio is proposing to freeze the non-fuel portion of the generation rates through 2014 and the Environmental Investment Carrying Charge Rider ("EICCR") would be bundled into the base generation rates.

FAC: The Fuel Adjustment Clause ("FAC") rider will continue but will separate out the renewable energy credits ("RECs") for renewable fuel and recover those costs through a new Alternative Energy Rider ("AER"). Further, bundled purchased power products will be divided into the REC and non-REC components. The REC component will be recovered through the AER and the non-REC component will be recovered through the FAC.

AEP-Ohio proposes to combine the FAC for the operating companies into one FAC as of June 1, 2013. Combining the FAC would raise the fuel cost for OP customers and lower it for CSP customers. However, AEP-Ohio is also seeking to delay the implementation of the Phase In Recovery Rider ("PIRR") to recover the costs of deferred fuel from 2009-2011 until June 1, 2012, and recover it as one rate, which would lower the cost for OP customers and raise the rate for CSP customers. Together, the combination of these two riders is almost a wash for both companies. However, AEP-Ohio is predicting an increase in the FAC over and above that described herein.

Generation Resource Rider: The Generation Resource Rider ("GRR"), is a nonbypassable placeholder to recover the costs of renewable and alternative capacity additions approved by the PUCO. The Turning Point solar project will be the first capacity resource recovered under the GRR if approved. First, the PUCO has to determine it is needed and, second, the PUCO must approve the level of the cost recovery.

Interruptible Service Rates: AEP-Ohio will continue the interruptible service but it will no longer be a rate schedule – it will be a rider (Rider IRP-D) that provides a credit to offset firm service rates. The IRP-D credit will be the base generation rate demand charge discount adjusted upward for the roll-in of the EICCR. However, if the Retail Stability Rider ("RSR", discussed below) is approved, AEP-Ohio will increase the credit to $8.21 per KW-month. The difference would be recovered through the RSR.

Additionally, AEP-Ohio is modifying its other interruptible service offerings by permitting customers to participate in PJM demand response programs. AEP-Ohio will eliminate the Rider Emergency Curtailable Service ("ECS") and Rider Price Curtailable Service ("PCS") from Case Nos. 10-343-EL-ATA and 10-344-EL-ATA. However, customers with reasonable arrangements that include demand response must commit the demand response to AEP-Ohio at no extra cost.

Capacity Costs: AEP-Ohio has a separate case before the PUCO (Case No. 10-2929-EL-UNC) where it is requesting a $355/MW-day capacity rate for all shopping customers. However, AEP-Ohio says that if this total Revised ESP package and the corporate separation case are adopted without modification, AEP-Ohio will implement a two-tiered capacity cost approach (even if it wins in the 10-2929 case). Under this proposal, a queuing process is still required, based upon a first-come, first-served process controlled by AEP-Ohio.

AEP-Ohio states that if AEP-Ohio got the $355/MW-D rate from all CRES providers, it would not request any base generation rate increase for SSO customers, would not request the RSR, and would provide a "meaningful" shopping credit

Retail Stability Rider ("RSR"): The RSR is a nonbypassable rider to make up a portion of the difference between the full cost of AEP-Ohio's capacity and the "discounted" capacity. The rate will be set to recover $94.7 million annually. It will be first allocated to customer classes based upon the class average contribution to peak and then on a kWh basis.

Transition to Market: AEP-Ohio plans to be fully separated into a wires company and spin off its generating assets by June 1, 2015. If AEP-Ohio's Interconnection Agreement (aka the "AEP Pool") can be terminated and its corporate separation plan is approved early, AEP-Ohio will conduct an auction for 100% of its SSO load for service beginning on January 1, 2015. AEP-Ohio also stated that it is willing to conduct an energy-only auction for 5% of its SSO load before January 2015, on the express condition that it is made whole. The energy-only auction could be for service beginning six months after the PUCO approves its ESP and corporate separation case without modification through December 2014.

Corporate Separation: AEP-Ohio filed a separate application in Case No. 12-1126-EL-UNC to spin off its generating assets at net book value. AEP-Ohio made clear that two of its units will be transferred to affiliated distribution companies who will put them in rate base, rather than bid them into the PJM RPM market. Also, AEP-Ohio will dissolve the AEP East Pooling Agreement with an estimated date of January 1, 2015.

Distribution Investment Rider ("DIR"): This rider is intended to provide capital funding for distribution assets for increased capacity and continued implementation of advanced technologies. The amount of revenue the DIR is scheduled to collect is $86 million in 2012; $104 million in 2013; $124 million in 2014; and $51.7 million in 2015 (1/2 year). It would expire on June 1, 2015.

Phase In Recovery Rider ("PIRR"): As noted above, AEP-Ohio will defer recovery of the PIRR until June 1, 2013, with the end date remaining as of December 31, 2018, while continuing to accrue a weighted average cost of capital carrying charge during the continued deferral period (from now until May

31, 2013). However, while the charge continues to be deferred, it will continue to accrue carrying costs.

There are 56 intervenors, including OMA Energy, with over 67 witnesses who have filed testimony. The hearing began on May 17, 2012, and will continue through June 15, 2012. After the hearing concludes, there will be written briefs filed. The PUCO has also scheduled an oral argument for July 3, 2012. Thereafter, the PUCO will issue a decision on the merits of the case.

2. AEP-Ohio's Cost of Capacity Case (Case No. 10-2929-EL-UNC)

This case will establish the price that competitive retail electric service ("CRES") providers must pay AEP-Ohio for using its capacity to serve shopping customers by establishing a state compensation mechanism for AEP-Ohio. This case was consolidated with the ESP but was separated back out when the PUCO rejected the ESP settlement (discussed above).

In the Entry on Rehearing on the ESP, the PUCO approved AEP-Ohio's requested two-tier capacity pricing scheme until May 31, 2012, which means that the first 21% of each customer class (residential, commercial and industrial) that shopped on or before September 7, 2011, is entitled to receive the market capacity price. All customers of governmental aggregations approved on or before November 8, 2011, (including mercantile customers in opt-in programs) are also entitled to receive tier-one (or market priced) capacity. For all other shopping customers, the second-tier charge for capacity is $255.00/MW-day. At AEP-Ohio's request, on May 30, 2012, the PUCO extended and increased the interim relief for AEP-Ohio. Specifically, rather than using the market price for the first tier of shopping customers, the PUCO adopted $146/MW-day as the tier one capacity price, with $255/MW-day remaining the tier two price, until the earlier of July 2, 2012, or a PUCO order. On June 1, 2012, irrespective of the PUCO's orders, the market price that otherwise would be in effect (and is in effect for the rest of Ohio) dropped to $17/MW-day.

As for the long-term state compensation mechanism to set the capacity price for shopping customers, a full hearing was conducted at the end of April 2012. AEP-Ohio argued that the PUCO does not have jurisdiction to establish a wholesale capacity cost recovery rate and that requiring AEP-Ohio to only recover the market rate would be financially devastating and confiscatory. Intervening parties, including the OMA Energy Group, argued, among other things, that authorizing AEP-Ohio to recover its full embedded capacity costs is not authorized by PJM (the regional transmission and reliability organization), not recoverable under Ohio law, and does not properly reflect AEP-Ohio's offsetting revenues. The intervenors universally recommended rejecting AEP-Ohio's proposal to recover cost-based rates as unreasonable and unlawful and having a negative impact on shopping customers and competition generally. Briefs were filed and we are expecting a decision on the merits by early July 2012.

Finally, on May 18, 2012, the PJM RPM auction results for the PJM planning year 2015 (which runs from June 1, 2015 through May 31, 2016) were issued. For the zone of

PJM that AEP-Ohio is in, the PJM RPM auction results were lower than expected at $136/MW-Day.

3. Turning Point Solar Need Case (Case No. 10-501-EL-FOR)

This case is about AEP-Ohio's demonstration that it needs the Turning Point solar project to meet its solar benchmarks through AEP-Ohio's long term forecast process. Specifically, on April 15, 2010, AEP-Ohio filed their 2010 long-term forecast report ("LTFR"), which contains information on AEP-Ohio's energy demand, peak loads, and reserves, as well as a resource plan that AEP-Ohio can implement to meet anticipated demand. On December 20, 2010, AEP-Ohio filed a supplement to its LTFR to offer supporting information concerning its intent to enter a capital leasing arrangement for a total of 49.9 MW of solar energy resources, known as the Turning Point project, to facilitate compliance with its solar energy benchmarks. On January 12, 2011, PUCO Staff filed a motion for a hearing in these cases, and the PUCO determined that as the addition of over 49 MW of solar energy resources was a significant addition in generating facilities, a hearing was required and scheduled for March 2011. On November 21, 2011, AEP-Ohio and Staff filed a settlement that would resolve all of the issues raised in these proceedings. A hearing on the reasonableness of the settlement was held in March 2012, with FirstEnergy Solutions and IEU-Ohio opposing the settlement.

A decision has yet to be issued by the PUCO. However, even if the PUCO determines that AEP-Ohio needs the Turning Point facility, there will still be an additional case to determine whether a non-bypassable rider to recover the costs is appropriate.

4. AEP's 2009 Fuel Adjustment Clause Case (09-872-EL-FAC)

AEP-Ohio's fuel adjustment clauses ("FAC") are adjusted on a quarterly basis, with an annual, hindsight audit. This case addresses the 2009 FAC audit that was conducted by Energy Ventures Analysis, Inc. ("EVA").

On January 23, 2012, the PUCO issued an order on this case that directs AEP-Ohio to credit OP customers up to $71 million in miscalculated FAC under-recovery charges. The PUCO also held that the proceeds from a settlement agreement on a 2007 coal contract should have been credited to OP ratepayers. AEP-Ohio and several of the intervening parties filed for rehearing. On June 6, 2012, the PUCO granted IEU-Ohio's application for rehearing for additional consideration regarding the PUCO's April 11 Entry. IEU-Ohio's argument was that, although the PUCO properly ordered AEP-Ohio to credit against the balance of deferred fuel costs all of the benefits AEP-Ohio received from a settlement agreement with one of its coal suppliers, the PUCO improperly limited the credit to amounts not allocable to wholesale and non-Ohio retail jurisdictions. In other words, the PUCO stated that the 2009 FAC under-recovery need only be credited for the share of the settlement agreement allocable to Ohio's retail jurisdictional customers. Additionally, on June 8, 2012, AEP-Ohio filed notice of an appeal to the

Ohio Supreme Court of the PUCO's decision directing OP to credit the benefits of the settlement to the deferred fuel balance.

5. AEP 2010 Significant Excess Earnings Test (SEET) Proceeding (Case No. 11-4571-EL-UNC)

AEP-Ohio filed its annual filing on July 29, 2011, to determine whether the operating companies [Ohio Power ("OP") and Columbus Southern Power ("CSP")] had significantly excessive earnings for 2010. Through AEP-Ohio's testimony, AEP-Ohio demonstrated that CSP's return on equity ("ROE") was 17.40% for 2010 while OP's was 9.84%. AEP-Ohio's expert witness, Dr. Makhija, determined that the mean earned ROE during 2010, for publicly traded companies that faced comparable business and financial risks as AEP-Ohio, was 11.48%. However, Dr. Makhija determined that the level at which AEP-Ohio's earned ROE may become significantly in excess of the average earned ROE of the comparable risk group of publicly traded companies is 22.6%. In other words, AEP-Ohio is claiming that CSP's ROE of 17.4% is not significantly excessive as it is under 22.6%.

Staff of the PUCO determined that a lower threshold was appropriate and recommended a $22 million refund. The other parties in the case raised several issues with the calculation of the significantly excessive earnings and, consequently recommended different refund amounts. The OCC requested that the PUCO order CSP to refund over $69 million and the Ohio Energy Group requested over $49 million. IEU-Ohio requested that the PUCO direct AEP-Ohio to start from scratch and provide additional information to determine the proper calculation. The hearing concluded on January 10, 2012. Initial briefs on the case were filed on January 31, 2012, and reply briefs were filed February 10, 2012. The PUCO will issue an order on the case within the next few months.

6. AEP's Corporate Separation Docket (PUCO Case Nos. 11-5333-EL-UNC and 12-1126-EL-UNC))

Pursuant to Ohio's original electric restructuring legislation (SB 3), all Ohio electric companies are required to separate the competitive business (generation) from the regulated portion (distribution and transmission). Pursuant to the Stipulation approved in AEP's ESP 2012-2016 case, AEP-Ohio filed an amendment to its corporate separation plan designed to achieve full structural separation, rather than simply functional separation. AEP-Ohio needs corporate separation approval prior to pricing its standard service offer through an auction process so that it can use its generating assets to compete against other suppliers.

On January 23, 2012, the PUCO issued an Order approving the proposed corporate separation subject to several conditions (that are very similar to those imposed on Duke's corporate separation). However, when the PUCO rejected the ESP stipulation, AEP-Ohio withdrew its corporate separation plan as unnecessary.

Shortly after AEP-Ohio filed its modified ESP proposal in March 2012, AEP-Ohio filed a new, separate corporate separation plan. On May 29, 2012, the PUCO issued an entry ordering that consideration of AEP-Ohio's amendments to its corporate separation plan be suspended until the PUCO specifically orders otherwise. This is likely because the capacity cost case and the ESP case have dominated the PUCO's and intervenors' time and resources.

7. AEP-Ohio 2010 Fuel Adjustment Audit Case (Case No. 10-1286-EL-FAC)

This case addresses the 2010 FAC that was also conducted by Energy Ventures Analysis, Inc. ("EVA"). Settlement negotiations may produce a resolution of the issues; however, given the negative impact on AEP-Ohio's earnings of other recent cases (ESP I, ESP II, SEET, 2009 FAC), it is unlikely that AEP-Ohio will be able to make any concessions without being ordered to do so by the PUCO. This case has not progressed given the time and resources required to litigate AEP-Ohio's other cases.

8. Duke Energy Ohio's ESP (Case Nos. 11-3549-EL-SSO et al.)

This case involves the default or Standard Service Offer ("SSO") pricing for customers who do not shop in Duke's service territory for the years 2012 - 2015. On October 24, 2011, a settlement proposal for an ESP from 2012 through May 2015 was filed by all parties to the case. Beginning on January 1, 2012, Duke will procure all of its energy, capacity, market-based transmission service, and market-based transmission ancillary services requirements for its SSO load, for the duration of the ESP, through a CBP. Duke will also recover annually, via a non-bypassable generation charge called the Electric Service Stability Charge Rider ("Rider ESSC"), $110 million per year for a period of three years commencing January 1, 2012, with the collection to be trued-up annually and the total equal to $330 million. Duke will transfer title, at net book value, to all of its generation assets on or before December 31, 2014. On November 22, 2011, the PUCO approved the stipulation.

Duke held its initial auctions for SSO service on December 14, 2011. The resulting generation price is $52.68 per megawatt hour (MWh) for January 2012 through May 2013. This equates to a reduction for a non-shopping residential customer's bill (using 1,000 kWh) by approximately 17.5% in 2012.

On February 29, 2012, the PUCO issued an Entry directing Duke to continue its procurement of its SSO supply as approved in the ESP case without modification. Also, the load cap will remain in place for the next auctions but the PUCO Staff is directed to monitor the cap and determine if it is necessary.

In spite of the rate reduction, because of a rider that shifts costs from higher load factor customers to lower load factor customers, customers continue filing letters and formal complaints at the PUCO regarding the level of the increase and the load factor provision. It is possible that the PUCO may reopen Duke's ESP to adjust the load factor provision to strike a better balance.

9. The Dayton Power and Light Company's Market Rate Offer (12-426-EL-SSO)

This case involves the default or Standard Service Offer ("SSO") pricing for customers who do not shop in DP&L's service territory for the years 2013 and beyond. The ESP currently in effect through the end of 2012 provided that the parties would file a new ESP application by March 31, 2012.

On March 30, 2012, DP&L filed a market rate offer ("MRO") as its next SSO plan for the period January 1, 2013 through May 31, 2018.

As DP&L currently owns and operates generation assets that are "used and useful" in Ohio, under Ohio law, under the MRO route (which is intended to be the path to competitive market rates), DP&L is required to blend the rate resulting from a Competitive Bidding Process ("CBP") with its most recent SSO price for a minimum of five years. Consequently, DP&L's proposed MRO period is January 1, 2013 through May 31, 2018, and will be in the form of a blended rate with an increasing portion coming from the CBP. Specifically, DP&L is proposing the 5-year, 5-month blending period to bring the competitive bidding cycle in line with the PJM year.

DP&L expects that the MRO will result in a rate decrease for customers and estimates a per bill decrease of approximately 3 – 5% for most tariff classes, or an overall annual revenue decrease to DP&L of approximately $30 Million (5.24%) in the first year of the Rate Blending Plan. The subsequent three periods of the plan will also result in annual revenue decreases of approximately $33 M, $27 M, $19 M, and $6 M respectively with a slight increase to revenue occurring in the sixth period due to expected, but uncertain, increases to market prices.

DP&L is requesting the Electric Service Stability Charge ("ESSC") to replace the current Rate Stabilization Charge ("RSC"), which is essentially a provider of last resort charge. DP&L states that the ESSC is designed to compensate the company for maintaining electric service stability for customers and the company. The amount is equal to the RSC as well, so it will not result in a rate increase, but will also not allow for the rate decrease that would otherwise result from the expiration of the RSC.

DP&L is also proposing a Reconciliation Rider ("RR") as a nonbypassable designed to transition certain rate structures and functions from the current ESP environment to the MRO environment and to recover costs associated with implementing the new provisions of the MRO plan.

DP&L will continue to provide capacity through the PJM RPM market for the portion of the SSO load DP&L serves and, thus, will continue the PJM RPM Rider, which is bypassable, in its current form.

DP&L indicated that it is interested in settling and has begun negotiations with parties. In order to facilitate settlement negotiations, and given the resource drain of the AEP-Ohio and FirstEnergy cases, the PUCO has delayed the hearing on this case.

10. PUCO's Review of FirstEnergy's Participation in the May 2012 PJM RPM Auction (Case No. 12-814-EL-UNC)

On January 26, 2012, FirstEnergy announced plans to retire six coal-fired power plants (Eastlake Plant, Eastlake; Lake Shore Plant, Cleveland; Ashtabula Plant, Ashtabula; Bay Shore Plant, Units 2-4, Oregon, Ohio; Armstrong Power Station, Adrian, Pa.; and R. Paul Smith Power Station, Williamsport, Md.) for a total of 2,689 MW, by September 1, 2012. The closures will affect more than 500 employees.

On February 2, 2012, PJM posted its Initial Planning Parameters for the 2015/2016 Reliability Pricing Model ("RPM") Base Residual Auction ("BRA") to be held in May 2012. The Parameters indicate that as a result of the removal of approximately 2,200 MW of generation located in the ATSI zone, the ATSI zone for the first time would be modeled separately by PJM for purposes of setting prices in the 2015/2016 RPM BRA. PJM's forecast of ATSI zone demand and voltage parameters for the 2015/2016 RPM auction is scheduled to be completed by early April 2012.

Also, limited import capabilities and reduced generation located within the ATSI zone could produce a significant increase in capacity prices in the 2015/2016 RPM BRA. The PUCO recognized the need to take appropriate steps to reduce generation requirements, improve energy efficiency, and expand demand response resources. Accordingly, on February 29, 2012, the PUCO issued an Entry directing FirstEnergy to work with PUCO staff to develop a plan to address these issues.

On March 30, 2012, FirstEnergy filed a report with the PUCO essentially saying that as it does not have either an energy efficiency and peak demand reduction plan or an ESP plan that goes through the 2015 PJM year, FE cannot bid any demand response or energy efficiency into the April PJM auction for the 2015 PJM year. This was the impetus for filing the two-year extension of its current ESP and the related stipulation and recommendation described above.

The PJM RPM auction results for the PJM planning year 2015 (which runs from June 1, 2015 through May 31, 2016) were issued on May 18, 2012 and the prices for the ATSI zone were higher than expected. The clearing price for annual resources located in the ATSI zone was $357.00/MW-day, compared to $136.00/MW-day for such resources located in the surrounding PJM region. In other words, consumers in the ATSI zone will pay more for capacity. Conversely, generation located in the zone [the majority of which is owned by FirstEnergy Solutions Corp. ("FES")], will earn much higher capacity prices than power plants in surrounding areas.

The generation retirements are likely to eventually lead to proposals to develop new generation, transmission, demand response and energy efficiency in the zone, and some of the market response planned for the 2015-2016 delivery year may have been reflected in the results of the recent RPM base residual auction. In fact, there has been discussion that ATSI has, or will soon announce, $1 billion of investments in transmission to reduce the constraints in the ATSI footprint. PJM is also planning substantial transmission upgrades to address reliability issues raised by the retirements, but acknowledges that many of the upgrades would not be needed if existing plants are repowered or new generation is developed. It is too soon to know the impact of the loss of generation, the timing and extent of transmission upgrades, the market reaction to provide new generation, demand response and energy efficiency, and the resulting supply-demand balance for this zone, in particular for the 2013-2016 period.

11. FirstEnergy's ESP (12-1230-EL-SSO)

This case involves the default or Standard Service Offer ("SSO") pricing for customers who do not shop in FirstEnergy's (Ohio Edison, Cleveland Electric Illuminating and Toledo Edison, collectively, FirstEnergy or "FE") service territory for the years 2014-2016.

On April 13, 2012, FE filed an application for a two-year extension of its current ESP and a stipulation and recommendation. Further, FirstEnergy requested that the PUCO set an expedited procedural schedule for the stipulated ESP because, if approved by May 2, 2012, the plan includes provisions to allow FirstEnergy to bid demand response resources and energy efficiency resources into the 2015/2016 PJM base residual auction on May 7, 2012, or, if approved by June 20, 2012, to permit adequate time to implement changes to the bidding schedule to capture a greater amount of generation at lower prices for the benefit of customers. Accordingly, the PUCO set a very aggressive procedural schedule with a technical conference on April 26, 2012, testimony of intervenors due by May 4, 2012, and a hearing on May 21, 2012.

However, the PUCO denied, in part, FE's motion for waiver from the PUCO rules to provide certain information. The PUCO held that financial projections are necessary for consideration of this type of application and stipulation and in the public interest. Similarly the PUCO required FE to provide projected rate impacts; the operational support plan; information relating to governmental aggregation programs; statement regarding state policy; information regarding retail shopping; information on alternative regulation mechanisms or programs relating to distribution service; and, information concerning provisions for economic development, job retention, and energy efficiency programs.

The hearing began June 4, 2012, and concluded on June 8, 2012. The parties opposing the settlement claim that the ESP does not pass the test for approval as it is not more favorable in the aggregate than the expected results of an MRO. Parties will submit initial post-hearing briefs followed by reply briefs, and then the PUCO will issue a decision, likely late this summer.

12. FirstEnergy's 3% Compliance with Alternative Energy Requirement Case (Case No. 11-5201-EL-RDR; related to Case No. 11-2479-EL-ACP)

This case is to determine whether FirstEnergy exceeded the 3% cost cap in complying with Ohio's renewable energy portfolio requirements.

While a procedural schedule has not been set for this case yet, the PUCO did issue an Entry on January 18, 2012. The entry included a request for proposal ("RFP") for external audit services to audit FirstEnergy's procurement of renewable energy credits for purposes of compliance with Ohio's renewable energy portfolio standard. In an Entry issued on February 23, 2012, the PUCO selected Exeter Associates, Inc. to conduct the management/performance portion of the audit and Goldenberg Schneider, LPA to conduct the financial portion of the audit. The audit results should be available on June 15, 2012.

As this is the first time the PUCO is addressing this specific issue the PUCO directed Staff to work with the auditor to develop and incorporate into the audit report a range of alternative methodologies to determine FirstEnergy's status relative to the 3 percent provision.

This is a critical case for the OMAEG to be in as it will set the review process for 3% cost cap compliance. Recall, the 3% cost cap is the bright-line customer protection provision from costs associated with renewable energy mandate compliance.

AEP Ohio's Electricity Rate Case & Capacity Pricing Case: What Manufacturers & Policymakers Need to Know

AEP Ohio currently has two important cases before the Public Utilities Commission of Ohio (PUCO) that will have significant impact on electricity prices for Ohio businesses and residents:

- **Rate case.** This case deals with the default pricing, or Standard Service Offer (SSO) pricing, for customers that choose not to shop in AEP Ohio's service territory for the years 2012-2015. (It should be noted, however, that rates for customers who already are shopping or who choose to shop in the future also may be impacted.)
- **Capacity pricing case.** This case deals with the price that AEP Ohio may charge competitive retail electric service ("CRES") providers until June 1, 2015 for using its capacity to serve customers in AEP Ohio's service territory who already are shopping or who choose to shop in the future.

(While these are separate cases being adjudicated independently, there is some overlap. In particular, capacity charges are addressed in proposals submitted by AEP in both cases.)

For our state – and for a manufacturing industry that contributes more than any other to Ohio's GDP and is one of the major drivers of Ohio's economic recovery – the stakes are incredibly high. For these reasons, The Ohio Manufacturers' Association (OMA) urges affected parties, particularly manufacturers in AEP Ohio's service territory, to take the time to learn about these two cases and to evaluate their potential impact on their companies' operational costs and competitiveness. The OMA has prepared this document to assist manufacturers, policymakers and others in understanding (a) what AEP Ohio has proposed, (b) what the likely impact of those proposals would be, and (c) what outcomes would best serve the interests of manufacturers, businesses in general and our state as a whole.

Note: Throughout this document, you will see references to PJM and RPM in discussions of the capacity prices[1] AEP Ohio charges CRES providers who serve customers in AEP Ohio's service territory.

- **PJM** is a neutral, independent regional transmission organization that coordinates the movement of wholesale electricity across the grid in 13 states, including Ohio, and the District of Columbia.
- **RPM** stands for Reliability Pricing Model. This is an auction process PJM uses to set market prices for capacity in the PJM region. Prices are set for three years ahead and are designed to send long-term price signals to the marketplace to attract needed investments for maintaining existing generation assets and encouraging development of new sources of capacity.

[1] "Capacity" is part of a customer's electricity generation rate (along with the cost of the energy itself) and is associated with the costs an electric utility incurs to have enough power to meet demand in its service territory. In AEP Ohio's service territory, competitive retail electric service ("CRES") providers are required to pay a "capacity charge" to AEP Ohio for the right to use the utility's generation capacity to serve customers in its territory. In other service territories, CRES providers self supply and pay a capacity charge that is determined by an auction.

Serious Shortcomings, Serious Concerns

AEP Ohio's ESP and capacity pricing proposals are problematic in a number of important ways:

- **AEP Ohio's proposed rate plan and capacity pricing would significantly restrict the ability of customers in its service territory to shop and save money.** To serve customers in AEP Ohio's service territory, competitive suppliers must pay a capacity charge to AEP Ohio – a charge that gets passed on to customers. By demanding artificially high prices for capacity – more than 20 times higher than the PJM RPM market rate in some cases – AEP Ohio will price competitive suppliers out of the market because the above-market capacity charges will offset most or all of the savings a competitive supplier can offer customers.

  As a result, few suppliers will enter AEP Ohio's service territory, which means customers will have fewer choices. **As a result, only a fraction of AEP Ohio's customers likely will be able to shop and save money – and, in many cases, customers who <u>already</u> have shopped could see significant increases or the termination of existing contracts.** This is likely even for customers who have signed multi-year, fixed-price contracts with competitive suppliers because those contracts (a) were based on the assumption – and the assurance of state policy – that CRES suppliers would have access to low PJM RPM prices, and (b) contain provisions that permit the supplier to pass on to the customer any costs required by a state regulatory body. **In effect, the capacity charges AEP Ohio has proposed would function like a tax on shopping**.

- **At a time when capacity charges are at historical lows, customers in AEP Ohio's service territory would pay prices that are substantially higher than auction-determined PJM RPM market prices readily available to customers in all other regions of Ohio.** PJM RPM prices (i.e., the market price) for capacity are as follows:
  - June 2011 – May 2012: $116/MW-D [2]
  - June 2012 – May 2013: $16/MW-D
  - June 2013 – May 2014: $28/MW-D
  - June 2014 – May 2015: $126/MW-D
  - June 2015 – May 2016: $136/MW-D

  On June 1, 2012, the market price for capacity dropped to $16/MW-D. And yet, AEP Ohio has proposed that competitive suppliers – and their customers – pay capacity charges as high as $355/MW-D, which is more than 2,000% higher than the market rate for capacity that Ohio customers outside of AEP Ohio's service territory will be paying over the next 12 months. **<u>This is why urgent action is needed to resolve the two AEP Ohio cases</u>.** Every day that goes by without resolution of these two cases is another day that customers in AEP Ohio's service territory lose out on the opportunity for significant savings presented by historic low market prices for capacity – savings that DP&L, Duke Energy Ohio and FirstEnergy customers <u>will</u> enjoy. Access to low electricity rates should not be a function of where in the state customers live or their businesses are located.

- **AEP Ohio's capacity cost proposal will deny customers access to market rates when market rates are low, but subject customers to market rates when they are high.** In the past, AEP Ohio has charged the PJM auction price for capacity when those rates were higher than AEP's capacity costs. Now, with the PJM auction prices dropping

[2] MW/D = MegaWatt day.

to historic lows over the next several years, AEP Ohio seeks to charge what it claims are its actual "costs," which would be significantly higher than the PJM auction prices for capacity. AEP Ohio seeks then to revert to using the PJM RPM mechanism to determine capacity prices starting June 1, 2015, when the PJM RPM price for capacity will rise to $136/MW-D and likely continue to rise thereafter.

- **AEP Ohio characterized its request for an "extension" of its initial interim capacity pricing as "maintaining the status quo," which is inaccurate and misleading.** The initial interim capacity pricing structure the PUCO approved in March 2012 (the then-PJM RPM price of $146/MW-D for a limited, initial block of customers and $255/MW-D for all other customers) was scheduled to expire May 31, 2012. AEP Ohio requested an "extension" of those rates to maintain what the utility called "the status quo"– and the PUCO approved extending the interim rates through July 2, 2012, or until the Commission decides the case. However, continuing the two-tier interim pricing of $146/MW-D and $255/MW-D clearly represents a significant increase for the first customer group given that the PJM RPM price dropped to $16/MW-D on June 1, 2012.
- **AEP Ohio's "discounted" capacity price would in effect be "paid for" by a new charge that all customers would be required to pay.** AEP Ohio offers what it calls "discounted" capacity pricing (i.e., lower than the $355/MG-D it says is its actual capacity cost) if the PUCO approves all other terms of the utility's Electric Security Plan (ESP). But AEP Ohio would take back a portion of the so-called "savings" through a nonbypassable Rate Stability Rider that all customers would be required to pay. The rider would be set at a level that would generate enough revenue to produce a 10.5% return on equity for AEP Ohio.
- **AEP Ohio's request to collect $284 million in transition costs through its proposed nonbypassable Rate Stability Rider is unlawful.** AEP claims it is entitled to collect transition costs (also called "stranded costs") in exchange for its commitment to move to fully competitive markets by 2015. However, Ohio's electric utilities were permitted to recover transition costs only during a clearly specified recovery period established in Ohio's electric restructuring legislation (Senate Bill 3). By law, that recovery period ended on December 31, 2010.
- **AEP Ohio has not demonstrated a need for the magnitude of economic relief it is asking customers to subsidize.** While AEP Ohio has provided estimates of the economic harm it claims it will suffer under certain shopping scenarios if its capacity pricing proposal is not approved by the PUCO, recent judicial and regulatory rulings have found that AEP Ohio has actually over-collected from its customers in recent years. In 2011, the Ohio Supreme Court found that AEP Ohio's rate plan for 2009-2011 included more than $500 million in charges not supported by the evidence presented to the PUCO. Further, in 2009, AEP Ohio's Columbus Southern Power company earned profits in excess of the PUCO's significantly excessive earnings threshold of 17.6%, resulting in the utility being ordered to return $43 million to customers.
- **This is not just an electricity issue – it's an economic development and economic recovery issue.** Ohio needs jobs now. The PUCO has stated that market prices for electricity is the policy direction that the state should take and move quickly to achieve. With that understanding, this is no time to be burdening job creators with unnecessarily high, above-market prices for electricity, which for many manufacturers, in particular, is a major cost driver. Ensuring that customers across Ohio can take advantage of historically low capacity prices and have access to the lowest possible competitive electricity rates will help stimulate and sustain economic growth.

Bottom Line Impact

The overall impact of what AEP Ohio has proposed would be to slow the transition to electricity competition, drive alternative suppliers out of Ohio and inhibit customers' ability to manage the risk of rate impacts by shopping with competitive suppliers. This, in effect, would hold customers captive to above-market rates. The combination of AEP Ohio's capacity pricing proposal and Rate Stability Rider would increase electricity costs substantially for customers, with some energy intensive manufacturers facing multi-million dollar increases – increases that would undermine companies' competitiveness and diminish the resources available for capital investments, process improvements, worker training and job retention and creation.

For companies that work diligently to remove nickels and dimes from their operational costs in order to stay competitive, AEP Ohio's proposed increases – which would add dollars to production costs – would be counterproductive and negatively impact decision-making about future Ohio investment and job creation.

Desired Outcomes

The mission of the OMA is to protect and grow Ohio manufacturing. Because manufacturing is the engine that drives Ohio's economy, a strong manufacturing sector is essential to a strong Ohio – and to our state's continued economic recovery.

Energy policy can enhance – or hinder – Ohio's ability to attract business investment, stimulate economic growth and spur job creation generally, but especially in manufacturing. And manufacturers need more than just competitively priced power – they need predictable, stable pricing, and they need strong utility partners committed to optimizing outcomes for all parties.

State leaders and the PUCO have made it clear that Ohio is committed to continuing down the path to fully competitive markets for electricity. That being the case, the OMA believes Ohio's transition to retail competition and market-based rates should be done in a way that:

1. **Moves AEP to market-based rates as quickly as possible** so customers in AEP Ohio's service territory can reap the benefits of historically low retail generation and capacity rates that are now available; and
2. **Relies on known forward capacity prices of the PJM RPM auction process** that sets capacity pricing three years ahead so businesses can effectively manage the risk associated with their electricity costs.

AEP Ohio's ESP and capacity pricing proposals contain significant obstacles to realizing these objectives. Most notably, AEP Ohio requests to (a) use a cost-based approach to set capacity prices at artificially high levels far exceeding the RPM price for capacity, which essentially would block customer shopping and negatively impact existing competitive contracts, and (b) disregard the outcomes of the PJM RPM auction process that has been expressly adopted by the PUCO as Ohio's mechanism for determining capacity pricing – and on which many business's long-term planning and electricity service contracts have been based. For these reasons, both AEP Ohio proposals should be rejected.

# # #

Two Appendices follow:

1. AEP Ohio's Rate Case: General Chronology & Selected Highlights
2. AEP Ohio's Capacity Pricing Case: General Chronology & Selected Highlights

APPENDIX 1

AEP Ohio's Rate Case: General Chronology & Selected Highlights

Background: In January 2011, AEP Ohio filed an application with the PUCO for a 29-month ESP that would establish SSO pricing for AEP Ohio customers choosing not to shop. The plan, which would have begun on January 1, 2012, featured a quasi cost-based rate approach. After extensive negotiations, a settlement offer emerged in August 2011 that reflected a market-based rate approach. In September 2011, 22 parties, including the OMA, agreed to a settlement framework. Initially, the PUCO adopted the settlement with some changes. On February 23, 2012, however, the Commission reversed its decision, rejecting the settlement, and ordered AEP Ohio to submit a new filing – while also reaffirming its commitment to competitive markets.

Highlights of AEP Ohio's revised (current) proposal: On March 30, 2012, AEP Ohio filed a revised ESP proposal with the PUCO. The plan would begin upon PUCO approval (expected later this summer) and end on June 1, 2015. Among the key provisions are the following:

- Overall rate increases, on average, of 4.50%, 3.77% and 0.25% over three years (actual increases would vary by customer)
- Limited base generation rate increases and new distribution rate increases
- Several new nonbypassable riders, most notably a Retail Stability Rider (RSR) that all customers (those who shop as well as those who don't) would pay. The RSR is designed to make AEP Ohio mostly whole for the difference between (a) what the utility says is the full actual costs of its capacity and (b) what the utility calls the "discounted" capacity charge its revised ESP proposes – a shortfall AEP Ohio estimates to be about $95 million.
- Two options for capacity costs:
    1. A $355/MW-D capacity rate for all customers – those who shop as well as those who don't (The $355/MW-D rate was originally proposed in December 2010 as part of AEP Ohio's separate capacity pricing case, described below.)
    2. A two-tiered "discounted" capacity pricing approach that features a first-come, first-served queuing process, in which capacity costs would be $146/MW-D for Tier 1 customers and $255/MW-D for Tier 2 customers
        - In 2012, Tier 1 would comprise 21% of all load by customer class, plus all existing residential government aggregation
        - In 2013, Tier 1 would comprise 31% of all load by customer class, including government aggregation
        - In 2014 and through May 2015, Tier 1 would comprise 41% of all load by customer class, including government aggregation

    AEP Ohio has indicated that if all other terms of its revised ESP and its corporate separation case are approved by the PUCO, AEP Ohio would abandon the higher-priced ($355/MW-D) Option 1 and implement the "discounted" Option 2.
- AEP Ohio would transition to market, with full corporate separation of its generating assets from its wires business, and would use a competitive bid process to determine both energy and capacity pricing, by June 1, 2015.

While the revised ESP case is being considered by the PUCO, AEP Ohio rates have reverted to December 2011 levels.

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APPENDIX 2

AEP Ohio's Capacity Pricing Case: General Chronology & Selected Highlights

Background: In November 2010, AEP Ohio filed an application with the Federal Energy Regulatory Commission (FERC) seeking to change the mechanism used to determine the capacity price AEP Ohio can charge competitive retail electric suppliers for the right to use its system to deliver electricity to shopping customers in its service territory. The current mechanism was (and still is) PJM RPM competitive auctions. AEP Ohio sought authority to change from this market-based model to a cost-based mechanism. The cost-based mechanism AEP Ohio proposed would result in a capacity pricing rate of $355/MW-D.

The FERC denied AEP Ohio's application, and the capacity issue was put on hold during negotiations related to the utility's first ESP. In February 2011, following the PUCO's rejection of the ESP, AEP Ohio asked the Commission to approve one of two proposed alternative mechanisms for establishing capacity pricing in AEP Ohio's service territory. Both options were two-tiered, first-come, first-served schemes in which Tier 1 customers would receive PJM RPM pricing and Tier 2 customers would pay capacity charges of $255/MW-D.

PUCO Response: In March 2012, the PUCO approved AEP Ohio's request for an interim period only, directing AEP Ohio to charge the following capacity prices until May 31, 2012:

- The first 21% of each customer class (residential, commercial and industrial) that shopped on or before September 2011 were entitled to receive the PJM RPM price (or market capacity price), which at the time was $146/MW-D (but which dropped to $16/MW-D on June 1, 2012).
- All customers of governmental aggregations approved on or before November 8, 2011 also were entitled to receive PJM RPM pricing for capacity.
- For all other shopping customers, AEP Ohio was permitted to charge $255/MW-D. (For customers who chose not to shop, the capacity charge remained embedded in their Standard Service Offer rate.)

On April 30, 2012, AEP Ohio asked the PUCO to approve a request to extend the interim capacity pricing framework the Commission approved in March beyond its scheduled expiration date of May 31, 2012. The utility's stated rationale for this request was twofold: (1) an extension of the temporary capacity pricing would protect AEP Ohio from significant economic harm, and (2) it would minimize customer uncertainty and confusion. It merits noting here, however, that what AEP characterized as a request to "preserve the status quo" was actually a request to charge customers significantly higher interim capacity prices than the PJM RPM price of $16/MW-D beginning June 1, 2012. Nonetheless, the PUCO approved AEP Ohio's request to extend the interim capacity rates of $146/MW-D and $255/MW-D through July 2, 2012, or until the Commission decides the case.

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Ohio General Assembly Passes Far-Reaching Energy Bill: Governor Kasich Set to Sign Bill Into Law

On March 22, 2012, Governor John Kasich proposed comprehensive energy legislation to make changes to state energy policy, many related to the shale boom in eastern Ohio. Introduced as "Senate Bill 315," nearly six weeks later, the Ohio Senate approved a revised version of the bill. On May 24, 2012, the Ohio House approved the bill, and the Senate concurred in the changes. The bill is now on its way to Governor Kasich's desk and he indicates he will sign it into law. SB 315 will take effect ninety days (90) later.

The bill addresses, among other things, Ohio's oil and gas statutes, regulatory jurisdiction over natural gas pipelines, and how to incentivize "cogeneration" facilities. A copy of the bill can be found at: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_315. This article summarizes the bill's key provisions.

I. Ohio's Oil and Gas Statutes (Ohio Revised Code Chapter 1509)

Ohio Revised Code ("R.C.") Chapter 1509 and associated regulations govern oil and gas operations in Ohio and establish the regulatory scheme under which the Ohio Department of Natural Resources ("ODNR"), through its Division of Oil and Gas Resources Management, regulates such activities. SB 315 revises R.C. 1509.01 et seq. to account for the technologies currently being used in Ohio, including horizontal drilling and hydraulic fracturing.

Definitions: In order to account for shale drilling operations in Ohio, a number of definitions were added or revised. The initial version of the bill modified the definition of "gas" to include both wet gas and dry gas. The General Assembly, however, returned to the existing definition of "gas" in the final version of SB 315. But, in order to account for the liquid hydrocarbons being produced in Ohio, SB 315 also modifies the definition of "condensate" to include "liquid hydrocarbons separated at or near the well pad or along the gas production or gathering system prior to gas processing." R.C. 1509.01(D).

Horizontal Wells: One of the overarching changes made in SB 315 was to subject horizontal well drilling operations to ODNR's existing permitting and regulatory scheme. To accomplish this task, SB 315 adopts a new definition for the phrase "horizontal well." R.C. 1509.01(A)(GG) defines a "horizontal well" as an oil and gas well "in which the wellbore reaches a horizontal or near horizontal position in the Point Pleasant, Utica, or Marcellus formation and the well is stimulated." R.C. 1509.1(GG). The references to specific geologic formations were added in the revisions made by the Ohio Senate.

Other revisions relating to horizontal well drilling activities include:

- Road Use Maintenance Agreements: A new application for a horizontal well will require the applicant to provide either: (i) a copy of a road use maintenance agreement "containing reasonable terms" with the relevant public official(s); or (ii) an affidavit indicating that the applicant was unable to enter such an agreement despite good-faith efforts. R.C. 1509.06(A)(11)(b).

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- Insurance: The owner of a horizontal well must obtain at least $5 million in liability insurance from an insurance company authorized to sell insurance in Ohio to "pay for damages for injury to persons or damage to property caused by the production operations." The insurance policy(ies) must also "include a reasonable level of coverage available for an environmental endorsement." R.C. 1509.07(A)(2). And, such coverage must be maintained for the life of the well. R.C. 1509.07(A)(3).
- Quarterly Reports: Although the as-introduced version of SB 315 required production results from horizontal wells to be submitted to ODNR on a quarterly basis, the final version of SB 315 clarifies that horizontal wells will remain subject to annual reporting requirements. R.C. 1509.11(A). Notably, amendments by the Ohio Senate removed language requiring that production reports include statistics for oil, dry gas, wet gas, condensate and brine.
- Administrative Rules: SB 315 gives ODNR the power to promulgate rules relating to horizontal wells and their production facilities. R.C. 1509.03.

Well Permits: A new requirement added to SB 315 requires ODNR to post notice on its website of each well permit within two (2) business days of permit approval. R.C. 1509.06.

Protection of Public and Private Water Supplies: Permit applications to ODNR for oil and gas drilling operations must now identify the source of groundwater and/or surface water that will be used in a well's production operations (*e.g.*, hydraulic fracturing operations), and specifically state whether the water will be withdrawn from the Lake Erie or Ohio River watersheds. R.C. 1509.06(A)(8). Estimated water withdrawal rates (including specific estimates for the amount of recycled water used) and volumes also must be stated and updated if any information changes. R.C. 1509.06(A)(8)(a). Such information must be updated if it changes prior to the commencement of production operations. R.C. 1509.16(J). ODNR is expected to promulgate additional regulations relating to the protection of public and private water supplies. R.C. 1509.03(A)(2).

Water Sampling and Testing: When submitting a well application, the applicant now must submit pre-drilling water sampling/testing results if: (i) the well is being drilled in an urbanized area; or (ii) the permit is to drill a new horizontal well. For wells drilled in an urbanized area, water sampling must be completed for all water wells located within 300 feet of the proposed horizontal well prior to the start of drilling operations. R.C. 1509.06(A)(8)(b). For new horizontal wells, water sampling must be completed for all water wells located within 1,500 feet of the proposed horizontal well. But, ODNR retains the authority to revise the distance. R.C. 1509.06(A)(8)(c). All water sampling must be done in accordance with certain best management practices for pre-drilling water sampling adopted by ODNR.

Disclosure of Fluids: R.C. 1509.10 requires any person drilling an oil and gas well to submit a well completion report to ODNR within 60 days after the completion of drilling operations. New requirements in SB 315 require the disclosure to ODNR of fluids and other products used during the hydraulic fracturing process.

The final version of SB 315 requires that certain information be submitted to ODNR regarding the fluids and other products used to facilitate and/or stimulate the well, including information about the trade name and total amount of all products, fluids and other substances (other than cement). See R.C. 1509.10(A)(9)(a) and 1509.10(A)(10)(a). Well owners also must submit a list of all chemicals intentionally added to the products, fluids and/or substances (including the chemical abstracts service number and maximum concentration), subject to an expansive trade secret exception explained below. R.C. 1509.09(A)(9)(a) and 1509.09(A)(10)(a). Such disclosures must be made as part of the well completion report submitted to ODNR or through a chemical disclosure registry (e.g., www.fracfocus.org). R.C. 1509.09(F)(2).

In terms of the trade secret exception to the disclosure requirement, the final version of SB 315 allows the owner of a well to designate certain information on the well completion report as a trade secret, including the "identity, amount, concentration, or purpose" of such fluids or products. R.C. 1509.10(I). Additional language included in the final version of SB 315 provides that a property owner or other interested person can challenge the trade secret designation by filing a civil lawsuit in the Franklin County Common Pleas Court. R.C. 1509.10(I)(2).

To the extent ODNR does not have a material safety data sheet for any fluid identified by a well owner, such a sheet must be submitted to ODNR for posting on its website. R.C. 1509.10(E) and (G). All chemical compounds provided to ODNR under R.C. Chapter 1509 also must be provided to medical professionals if requested and needed to "assist in the diagnosis of an individual who was affected by an incident associated with the production operations of a well." R.C. 1509.10(H)(1). Although such medical professionals are required to keep the trade secret information confidential, disclosure is contemplated if required by law or medical ethical standards. R.C. 1509.10(H)(2).

All records relating to the disclosure of fluids or products used to facilitate and/or stimulate the well are subject to a two-year recordkeeping requirement. R.C. 1509.10(J)(2).

Injection Wells: SB 315 adds new requirements to R.C. 1509.22 regarding applications for the injection of brine or other waste substances (*e.g.*, disposal in Class II injection wells). In particular, R.C. 1509.22(D)(2) gives ODNR the power to establish rules governing the testing of reservoirs to determine their suitability for injection, the maximum allowable injection pressure, the total depth allowed, and other issues relating to public health and safety. In addition, R.C. 1509.22(D)(1)(c) provides for the electronic reporting of information regarding shipments of brine and other waste substances on a quarterly basis.

Fees for Injection Wells: SB 315 moves the location of the fee structure associated with injection wells from R.C. 1509.221 to R.C. 1509.22(H), and modifies it. For fluids produced in the ODNR Division of Oil and Gas regulatory district where the injection well is located (or an adjoining regulatory district), the fee remains the same (5 cents per barrel), which eliminated an initial proposed increase in the fee to 10 cents per barrel. R.C. 1509.22(H)(1)(a). For fluids produced outside of the ODNR Division of Oil and Gas regulatory district where the injection well is located or an adjoining regulatory district (e.g., produced fluids from other states), the fee remains the same (20 cents per barrel), which eliminated an initial proposed increase in fees to one dollar ($1.00) per barrel. R.C. 1509.22(H)(1)(b). The maximum number of barrels per well that can be subject to the fees identified above is 500,000 barrels. R.C. 1509.22(H)(2). To the extent the owner of an injection well receives fluids from Ohio and other states, the fees are first applied to the out-of-state fluids. R.C. 1509.22(H)(2). The owner of an injection well permitted by ODNR is required to collect the injection fees, but can retain three percent (3%) of the amount collected, with the remainder being turned over to ODNR and deposited in the oil and gas well fund. R.C. 1509.22(H)(3).

<u>100-Year Floodplain</u>: SB 315 allows ODNR to evaluate the need for site-specific permit conditions for wells to be located within the 100-year floodplain or within the "five-year time of travel associated with a public drinking water system." R.C. 1509.06(H)(2).

<u>Unitization Under R.C. 1509.28</u>: For unitization applications under R.C. 1509.28, SB 315 requires a non-refundable fee to be paid to ODNR in the amount of $10,000.

<u>Reports, Test Results, Fees Submitted to ODNR</u>: One addition to SB 315 provides well owners with some leeway in submitting reports, test results and fees to ODNR that are required under R.C. Chapter 1509. More specifically, ODNR may grant an extension of time up to 60 days for submitting such reports, test results, or fees. R.C. 1509.04(B)(1)(a). And, even if a well owner fails to timely submit a report, test result, or fee, an administrative violation will only be issued by ODNR if the well owner fails to respond within thirty (30) days of notice of such non-compliance. R.C. 1509.04(B)(1)(b).

<u>Cooperative Agreements with ODNR</u>: R.C. 1509.02 now provides the Chief of ODNR's Division of Oil and Gas Management the power to enter into cooperative agreements with other state agencies for advisory and consultative purposes. The revisions to this portion of the bill in Sub-SB 315 explain that cooperating agencies do not have any authority to administer or enforce provisions in R.C. Chapter 1509.

<u>State Fire Marshal</u>: A new provision added to the final version of SB 315 gives the state fire marshal and the board of building standards exclusive authority over the adoption and enforcement of fire safety standards relating to the construction at a shale oil processing premise of any structure subject to the nonresidential building codes established in R.C. 3781.10. A shale oil processing premise is defined as "a single parcel or contiguous parcels of real estate, including any structures, facilities, appurtenances, equipment, devices, and activities…where the processing of substances extracted from the Point Pleasant, Utica, and Marcellus formations occurs at a natural gas liquids fractionation or natural gas processing facility." However, this term does not include a well pad or production operation. R.C. 3737.832.

II. PUCO and OPSB Jurisdiction Over Natural Gas Pipelines

<u>Definition of Public Utilities</u>: Modifications by the Ohio Senate to SB 315 explained that a pipeline company "engaged in the business of the transport associated with gathering lines, raw natural gas liquids, or finished product natural gas liquids" is not subject to PUCO jurisdiction. In addition, SB 315 clarified that producers or gatherers of Ohio-produced natural gas and raw natural gas liquids can apply for an exemption from jurisdiction of the Public Utilities Commission of Ohio ("PUCO"). R.C. 4905.03(A)(5). This regulatory exemption, which is set forth in R.C. 4929.041, was amended as part of Governor Kasich's midyear budget review, Amended Substitute House Bill 487 ("HB 487). As part of HB 487, the regulatory exemption was expanded to allow natural gas companies to seek a regulatory exemption (from compliance with certain portions of Chapter 4905 of the Ohio Revised Code) for investments in gathering facilities placed in service before or after January 1, 2010. R.C. 4929.041(B).

<u>PUCO Jurisdiction Over Natural Gas Gathering Pipelines and Processing Plants</u>: SB 315 updates the authority of the PUCO over gas gathering pipelines (defined as those "not regulated under the Natural Gas Pipeline Safety Act and the rules adopted by the United States Department of Transportation pursuant to the Natural Gas Pipeline Safety Act" including those "used to collect and transport raw natural gas from a well facility to the inlet of a gas processing plant" and that can be "upstream or downstream from a wet natural gas compressor station") and gas processing plants (defined as a "plant that processes raw natural gas into merchantable products, including transmission quality gas or natural gas liquids and also may include a plant that treats raw natural gas to remove impurities such as carbon dioxide, helium, nitrogen or water"). R.C. 4906.03(D) and (E).

As initially proposed in SB 315, the new regulatory scheme categorized gas gathering pipelines as either high pressure or low pressure. Modifications by the Ohio Senate, however, removed this distinction. Instead, the final version of SB 315 requires gas gathering pipelines and processing plant gas stub pipelines used for the transportation of gas from a horizontal well to: comply with the pipeline safety provisions in 49 CFR 192, subpart (C); control corrosion; establish and follow damage prevention and public education programs; establish the MAOP (maximum pressure at which a pipeline can be operated) of the pipeline; install and maintain pipeline markers; and perform leakage surveys. R.C. 4905.911(A).

OPSB Jurisdiction Over Natural Gas Gathering Pipelines: The Ohio Power Siting Board ("OPSB") retains jurisdiction over "major utility facilities." Revisions to the definition of "major utility facilities" in SB 315 expand the OPSB's jurisdiction over natural gas pipelines. Previously, the OPSB oversaw the permitting of natural gas transmission lines capable of transporting natural gas at pressures greater than 125 psi. Changes in SB 315 expand the types of natural gas pipelines subject to the OPSB's jurisdiction to include any natural gas pipeline longer than 500 feet, with an outside diameter greater than nine (9) inches and capable of transporting natural gas at pressures greater than 125 psi. A prior version of the bill also subjected natural gas pipelines designed for or capable of transporting natural gas at pressures greater than 300 psi to OPSB jurisdiction, but this was removed by the Ohio Senate.

The statutory changes also expand the list of pipelines or facilities not subject to the OPSB's jurisdiction, including: (i) gas gathering lines, gas gathering pipelines and processing plant gas stub pipelines as defined in R.C. 4905.90 as well as associated facilities; (ii) gas processing plants as defined in R.C. 4905.90; (iii) natural gas liquids finished product pipelines; (iv) pipelines transporting natural gas liquids from a processing plant to either a natural gas liquids fractionation plant; (v) natural gas liquids fractionation plants; and (vi) compressor stations used by certain pipelines. R.C. 4906.01(B)(2).

Expedited Review: A new provision in R.C. Chapter 4906 requires the OPSB to expedite its review of certain applications. More specifically, the OPSB must expedite its review of applications involving: (i) electric transmission lines shorter than two (2) miles long, primarily needed to attract or meet the requirements of a specific customer or specific customers, and necessary for reliability purposes as a result of the retirement or shutdown of an electric generation facility in Ohio; (ii) an electric generation facility "that used waste heat or natural gas" and is primarily located within an existing industrial facility's boundary; (iii) a gas pipeline shorter than five (5) miles long or primarily needed to meet the requirements of a specific customer or specific customers. R.C. 4906.03(F).

Miscellaneous OPSB Provisions: The final version of SB 315 amends an old requirement in R.C. 4906.05(A)(6) so that applicants to the OPSB are now required to file their application no more than five (5) years prior to the planned start of construction. The prior version of the statute required the application to be filed not less than one year before the planned start of construction. In addition, new language was added to R.C. 4906.10(A) allowing an applicant to withdraw its OPSB certificate if not satisfied with the conditions imposed by the OPSB.

III. Amendments to Senate Bill 221's Alternative Energy Portfolio Standard

Classification of Co-Generation Systems: SB 315 promotes "waste energy recovery" ("WER") and "combined heat and power" ("CHP") projects by qualifying them for use by Ohio's investor-owned utilities in order to meet certain portfolio standard requirements under Senate Bill 221 ("SB 221"), Ohio's energy law passed in 2008. Specifically, SB 315 allows WER systems to qualify as either "renewable energy" or "energy efficiency" resources, thereby allowing them to be used to satisfy requirements under: (i) Ohio's renewable portfolio standard ("RPS")—which requires the state's investor-owned utilities to procure twelve and one-half percent (12.5%) of their energy from renewable energy resources by 2025; or (ii) SB 221's energy efficiency standards, which require utilities to achieve cumulative energy savings of twenty-two percent (22%) by 2025.

WER and CHP Defined: SB 315 makes a clear distinction between WER and CHP. The bill defines "waste energy recovery system" as a facility that generates electricity through the conversion of energy from either: (i) exhaust heat from engines or manufacturing, industrial commercial, or institutional sites, except for exhaust heat from a facility whose primary purpose is the generation of electricity; or, (ii) reduction of pressure in gas pipelines before gas is distributed through the pipeline, provided that the conversion of energy to electricity is achieved without using additional fossil fuels." R.C. 4928.01(36). Generally, WER systems capture waste energy from an industrial or commercial process, but do not introduce additional fossil fuel sources. On the other hand, "combined heat and power system" is defined as the coproduction of electricity and useful thermal energy from the same fuel source designed to achieve thermal-efficiency levels of at least sixty percent (60%) with at least twenty percent (20%) of the system's total useful energy in the form of thermal energy. CHP systems often introduce additional fossil fuel energy sources (e.g., natural gas, oil, or coal).

The definitions of WER and CHP are important because SB 315 allows WER project owners to choose whether to qualify a system as a renewable energy or energy efficiency resource (they cannot be used for both purposes). Under the bill, CHP projects qualify to meet Ohio's energy efficiency requirements but not the renewable targets. Specifically, SB 315:

- States that the energy policy of the State includes encouraging "innovation and market access for cost-effective supply- and demand-side retail electric service including . . . waste energy recovery systems." R.C. 4928.02(D).
- Allows an electric distribution utility's energy efficiency programs to include WER systems and CHP systems placed in service or retrofitted after the effective date of the law. R.C. 4928.66(A)(1)(a). However, certain CHP systems sited at a state institution of higher education, and placed in service between January 1, 2002 and December 31, 2004, may also qualify as energy efficiency resources.
- Allows a utility to meet its renewable energy targets by counting the effects of WER systems placed in service or retrofitted after the effective date of the law. Similar to the exception for universities mentioned above, certain CHP systems sited at a state institution of higher education and placed in service between January 1, 2002 and December 31, 2004, may also qualify as renewable energy resources. R.C. 4928.64(A)(37)(a).

University of Cincinnati / Kent State University Exception: Though otherwise clearly distinguishing between WER and CHP, the bill creates a limited carve-out to allow CHP systems at two state universities to qualify as waste energy recovery systems and therefore be eligible to meet utility renewable energy targets. The bill includes in the definition of waste energy recovery "a facility at a state institution of higher education that recovers waste heat from electricity-producing engines or combustion turbines and that simultaneously uses the recovered heat to produce steam," if it was placed in service "between January 1, 2002, and December 31, 2004." This limited provision will allow the University of Cincinnati and Kent State University to sell renewable energy credits from their fossil fuel fired CHP systems.

Advanced Energy Resource: SB 221 requires twenty-five percent (25%) of all kilowatt hours of electricity sold by electric distribution utilities and electric services **c**ompanies in Ohio be obtained from "alternative energy resources" by 2025. Of the "25 percent by 2025" requirement, one-half must be generated from "advanced energy resources." Within this context, SB 315 modifies the definition of Advanced Energy Resource to include: (i) "Any new, retrofitted, refueled, or repowered generating facility located in Ohio, including a simple or combined-cycle natural gas generating facility or a generating facility that uses biomass, coal, nuclear energy, or any other fuel as its input;" or (ii) "any uprated capacity of an existing generating facility if the uprated capacity results from the deployment of advanced technology."

III. Miscellaneous

SB 315 also contains a number of other provisions relating to the state's energy and environmental policies. A brief summary of those provisions follows.

Support for Natural Gas Vehicles: The bill supports the wider adoption of natural-gas powered vehicles, including for the fleet owned by the State of Ohio. The bill orders the PUCO and Ohio Department of Transportation ("ODOT") to analyze the cost effectiveness of purchasing vehicles that run on compressed natural gas and converting certain state vehicles to natural gas engines. The PUCO and ODOT must produce a joint report on their findings for state legislators no later than January 30, 2013. The bill also authorizes the PUCO and ODOT to work with other states to develop a multi-state study on the development of compressed natural gas infrastructure for transportation. R.C. 4928.72.

Green Pricing Programs: SB 315 authorizes the PUCO to periodically review any green pricing program offered in this state as part of competitive retail electric service. At the conclusion of a review, the PUCO may make recommendations to improve or expand the program subject. R.C. 4928.70.

PUCO Study: SB 315 requires that the PUCO study whether increased energy efficiency, demand response, generation, and transmission provide increased opportunities for customer choice. The PUCO shall include in the study an evaluation of emerging technologies. The PUCO shall commence the study no later than eighteen months after the effective date of this section. At the conclusion of the study, the PUCO shall prepare a report of its findings and make the report available on its web site. R.C. 4928.71.

Energy Education Organization: The final version of SB 315 removed a provision relating to the creation of energy education organizations, which were proposed to be non-profit corporations committed to providing energy education activities.

Energy Projects for State-Owned Buildings: SB 315 updates and amends a number of provisions relating to energy- and water-saving measures in state-owned buildings. The bill provides that the life-cycle cost analysis required for state-funded facility projects include a review of co-generation as an energy source if the estimated construction cost of a project exceeds $50 million. R.C. 123.011(C). The bill also expands the definition of "energy conservation measure" to include:

- Installation or modification of trigeneration systems that produce heat and cooling, as well as electricity, for use primarily within a building or complex of buildings. R.C. 156.01(B)(9).
- Installation or modification of systems that harvest renewable energy from solar, wind, water, biomass, bio-gas, or geothermal sources, for use primarily within a building or complex of buildings. R.C. 156.01(B)(10).
- Retro-commissioning or recommissioning energy-related systems to verify that they are installed and calibrated to optimize energy and operational performance within a building or complex of buildings. R.C. 156.01(B)(11).
- Consolidation, virtualization, and optimization of computer servers, data storage devices, or other information technology hardware and infrastructure. R.C. 156.01(B)(12).

The phrase "water conservation measure" is modified to include any other modification, installation, or remodeling approved by the Director of the Department of Administrative Services ("DAS") as a water conservation measure for one or more buildings owned by either the state or a state institution of higher learning that implements the water conservation measure in consultation with the Director of DAS. R.C. 156.01(F)(7). The approval of the board of trustees of a state institution of higher education is no longer required. Any installment payment contract entered into for the implementation of one or more energy- or water-saving measures will be eligible for financing provided through the Ohio Air Quality Development Authority. R.C. 156.04(D).

Alternative Fuel Transportation Program: SB 315 expands the alternative fuel transportation grant program to allow the Director of Development to issue loans. R.C. 122.075(B). The program will now receive additional funding from investment earnings in the advanced energy research and development taxable fund. R.C. 122.075(E).

PUCO Review: SB 315 established that the PUCO shall consult with electric distribution utilities to review the distribution infrastructure in this state and shall consult with regional transmission organizations and entities that own or control transmission facilities to review the transmission infrastructure in this state. The PUCO shall evaluate the distribution and transmission infrastructure and shall order any necessary upgrades, additions, or improvements to ensure adequate and reliable service, enable new electric generation, and promote new industry in this state. R.C. 4928.111. However, the final version of SB 315 removed the PUCO's ability to order such upgrades, additions, and improvements.

DJFS Office of Workforce Development: SB 315 provides that the Office of Workforce Development within the Ohio Department of Job and Family Services shall comprehensively review the direct and indirect economic impact of businesses engaged in the production of horizontal wells in this state and, based on its findings, prepare an annual Ohio workforce report. R.C. 6301.12.

Phase-In-Recovery Property: An addition to the final version of SB 315 provides that, although the transfer and ownership of phase-in-recovery property and the imposition, charging, collection, and receipt of phase-in-recovery revenues by public utilities under R.C. 4928.33 are exempt from taxes and similar charges, such an exception does not prohibit the levying of the commercial activity tax. R.C. 4928.314.

Anhydrous Ammonia for Agricultural Purposes: The final version of SB 315 mandates that the director of agriculture adopt and enforce uniform rules governing the storing and handling of fertilizers, and for safety in the design, construction, location, installation, or operation of equipment for storing, handling, transporting, and utilizing anhydrous ammonia, aqueous ammonia, or other solutions for use as agricultural fertilizers. Such rulemaking previously was discretionary for the director. Specifically to anhydrous ammonia used for agricultural purposes, SB 315 requires that such rules establish standards and procedures for the approval/disapproval relating to the design and construction of storage facilities. Accordingly, on and after the effective date of SB 315, no person shall construct an anhydrous ammonia storage facility used for agricultural purposes without applying for and receiving approval from the director of agriculture. R.C. 905.40 and R.C. 905.41.

For more information on Substitute Senate Bill 315, please contact Terrence O'Donnell at 614.227.2345 (todonnell@bricker.com), Glenn Krassen at 216.523.5469 (gkrassen@bricker.com), Chris Slagle at 614.227.8826 (cslagle@bricker.com), Matt Warnock at 614.227.2388 (mwarnock@bricker.com), or Thomas Siwo at 614.227.2389 (tsiwo@bricker.com).

THE HILL

INVITES YOU TO AN

"Ohio Energy Jobs Summit"

#energyjobssummit

Wednesday, May 2, 2012

8:30 a.m. Breakfast

9:00 a.m. - 1:00 p.m. Program (lunch will be served)

Join us for a half-day, balanced discussion of
the economic benefits of energy production in Ohio.

Featuring A.B. Stoddard,
Associate Editor for The Hill and on-air host for TheHill.com

State Elected Official Panel:

Ohio Senate President Tom Niehaus (R)

Ohio House Speaker Bill Batchelder (R)

Ohio Senator Lou Gentile (D), Ranking Minority Member of the Senate Agriculture & Natural Resources Committee

State Representative Dave Hall (R), Chairman of House Agriculture and Natural Resources Committee

Special Remarks by:

Congressman Bill Johnson (R-OH)

Energy Jobs Summit Policy Panel:

Doug Matthews, Vice President, Tubular Operations, US Steel Corporation

Jeff Daniels, Professor, School of Earth Sciences, The Ohio State University

Jerry James, President, Ohio Oil and Gas Association

Jack Shaner, Deputy Director, Ohio Environmental Council

CEO Roundtable Discussion:

with introductory remarks by Joseph A. Carrabba,
Chairman, President, & CEO of Cliffs Natural Resources Inc.;
Vice Chairman, AISI

Gary R. Heminger, President and CEO, Marathon Petroleum Corporation

Ward J. "Tim" Timken, Jr., Chairman, The Timken Company

Jody Bevilaqua, Executive Vice-President, Momentive Performance Materials Holdings

Luncheon Keynote:

Governor John Kasich (R-OH)

Sponsored by

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American Iron and Steel Institute

American Chemistry Council

Ohio Petroleum Council

OCTC Ohio Chemistry Technology Council

OHIO ENERGY RESOURCE ALLIANCE

Providing information on powering Ohio's economy, job growth and energy security

News To Use And Share

Ohio Shale Energy Highlights

From the Ohio Energy Resource Alliance June 4, 2012

Contact:

Rebecca Heimlich

(513) 703-6227

heimlichr@api.org

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New Study: Fracking Does Not Impact Drinking Water

Chesapeake Energy Corp. has released a new report by a consulting firm that looks at drinking water in Pennsylvania's Bradford County and finds no links between natural gas drilling and water impacts. The 360-page study was done for Chesapeake Energy by Weston Solutions.

Weston Solutions drew split samples from 15 Bradford County drinking water wells that were being collected and tested by the U.S. Environmental Protection Agency in late 2011. The agency is conducting a multi-year study of hydraulic fracturing or fracking and drinking water.

A preliminary analysis is due out in late 2012 -- with a final report scheduled to be released in 2014. You can read more including the full Weston Solutions' report by clicking here. The Akron Beacon Journal (5/31/12)

Doing Latest Big Thing Right

Kasich, others talk shale drilling

YANKEE LAKE - People in the Mahoning and Shenango valleys have long hoped for something to take the place of the steel industry that once was the area's economic lifeblood.

The natural gas and other resources trapped in the Utica shale thousands of feet beneath the region is the latest big thing billed to cause a boom here. It's time to get prepared for the "gas rush" that's coming, but, "I don't think we should get ahead of ourselves," Ohio Gov. John Kasich said.

The forum was organized by state Rep. Sean O'Brien, Brookfield, D-63rd District, and was sponsored by the American Petroleum Institute. There were 250 people invited to the forum, and they included township, county and state officials, business leaders and oil and gas industry executives. "The idea is to get everybody on the same page," O'Brien said. "We know we have a big opportunity. How do we maximize the benefits while trying to minimize the risks? Our idea is 'How to develop this resource?'" The Sharon Herald (6/1/12)

Shale Gas Boom Could Bring Manufacturing Jobs Back To U.S., Economists Say

CLEVELAND -- The shale gas boom hitting Ohio, Pennsylvania and several other states could provide a major advantage to manufacturers in the United States -- cheap energy that could significantly cut the costs to produce goods here, according to a group of economists.

Cleveland Fed President and Chief Executive Sandra Pianalto said manufacturing businesses have been leading the economic recovery in the United States for the past two years, but she added that job growth hasn't been as strong as profit and sales growth. To add jobs, the sector needs to attract new manufacturers and bring production back to the United States from other countries. That's where shale gas and cheap energy could come in. The Cleveland Plain Dealer (6/1/12)

Jobs, Jobs, Jobs!

Youngstown Vindciator Editorial

The Mahoning Valley is positioned to benefit greatly in terms of job creation as the shale boom commences. These new jobs can be broken into four classifications: drilling operations, supply chain production, supply chain transportation, and ancillary support positions. Drilling operations jobs refer to rig operators, to land men that get leases signed, to injection well operators. Many of these jobs are currently being performed by workers experienced in the industry and many are imported into the area to perform this specialized work.

Supply chain production jobs are related to the manufacturing of supplies and tools needed to facilitate drilling and brine disposal operations. The most widely reported example in the valley is V&M Steel expansion project, which supplies steel pipe used in horizontal well drilling. V&M has stated they will create roughly 350 new manufacturing jobs once this expansion is complete. Exterran Energy Solutions LP of Houston is expected to create a new manufacturing facility on Salts Springs Road. Exterran is expected to employ 400 to 500 workers. These are but two examples. Many supply chain production jobs are filled by Valley residents with specialized, technical and manufacturing skills. The Youngstown Vindicator (5/31/12)

Scio Area Lands Major Natural-Gas Processing Hub

The facility is expected to be one of the largest of its kind in eastern Ohio

CADIZ - A natural-gas processing hub being developed in a partnership between Chesapeake Midstream Development, M3 Midstream and EV Energy Partners will be located on state Route 151 northwest of Scio, a North Township trustee has told Harrison County commissioners.

According to the companies, the Harrison facility will consist of natural-gas gathering and compression facilities constructed and operated by Chesapeake, as well as processing natural-gas liquid fractionation, loading and terminal facilities constructed and operated by Momentum. The hub will receive and process natural-gas liquids, such as propane and butane, that are being extracted from Ohio's Utica Shale. The facility is expected to be one of the largest of its kind in eastern Ohio and will create 50 to 125 jobs. The Times Leader (6/1/12)

Shale Of The Century

The "golden age of gas" could be cleaner than greens think

AMERICA'S "unconventional" gas boom continues to amaze. Between 2005 and 2010 the country's shale-gas industry, which produces natural gas from shale rock by bombarding it with water and chemicals-a technique known as hydraulic fracturing, or "fracking"-grew by 45% a year. As a proportion of America's overall gas production shale gas has increased from 4% in 2005 to 24% today. America produces more gas than it knows what to do with. Its storage facilities are rapidly filling, and its gas price (prices for gas, unlike oil, are set regionally) has collapsed. Last month it dipped below $2 per million British thermal units (mBtu): less than a sixth of the pre-boom price and too low for producers to break even.

Those are problems most European and Asian countries, which respectively pay roughly four and six times more for their gas, would relish. America's gas boom confers a huge economic advantage. It has created hundreds of thousands of jobs, directly and indirectly. And it has rejuvenated several industries, including petrochemicals, where ethane produced from natural gas is a feedstock. (The Economist (6/2/12)

The Ohio Energy Resource Alliance is comprised of Ohio Petroleum Council (OPC), a division of the American Petroleum Institute (API); the Ohio Oil & Gas Association (OOGA); the Ohio Oil & Gas Energy Education Program (OOGEEP); Energy In Depth - Ohio (EID OHIO), and the Buckeye Energy Forum.

A NiSource Company

Ohio Manufacturers Association

Scott Phelps, Director
Large Customer Relations
June 13, 2012

Agenda

2

- Weather
- Storage
- Supply
- Demand
- Price
- Summary

A NiSource Company

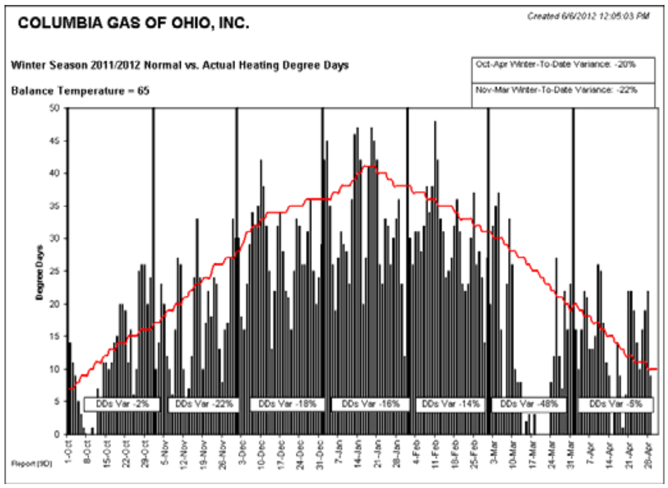
Columbia Gas of Ohio – Degree Days

3

A Record Breaking Warm Winter

Percentage of degree days less than normal.

November	-22%
December	-18%
January	-16%
February	-14%
March	-48%
Nov-Mar	**-22%**



Columbia Gas of Ohio
A NiSource Company

Weather

Summer 2012 - Temperature & Hurricane Forecast

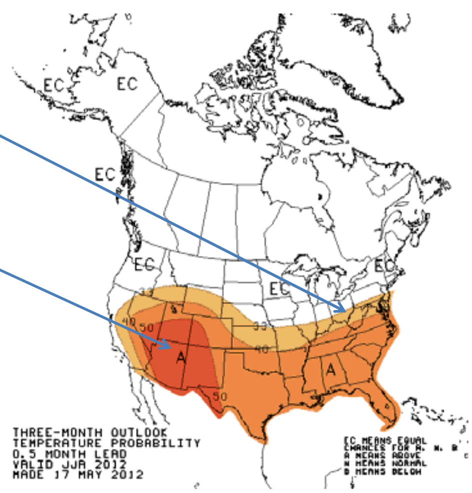
4

National Oceanic & Atmospheric Association (NOAA)

NOAA's currently is forecasting normal to slightly warmer than normal temperatures this summer in Ohio.

They expect warmer than normal temps in the southwest.

An average Hurricane season is predicted by NOAA.
9-15 Named Storms,
4-8 Hurricanes
1-3 Major Hurricanes



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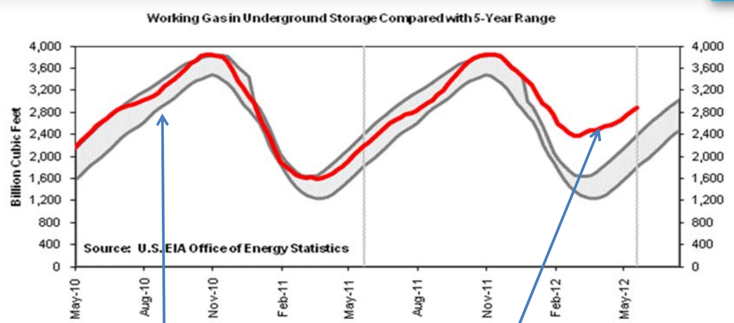
Weather

U.S. Natural Gas in Storage

5



Shaded area represents the min and max during the five year period 2007 – 2011.

Storage levels are currently at very high levels coming out of our extremely mild winter.

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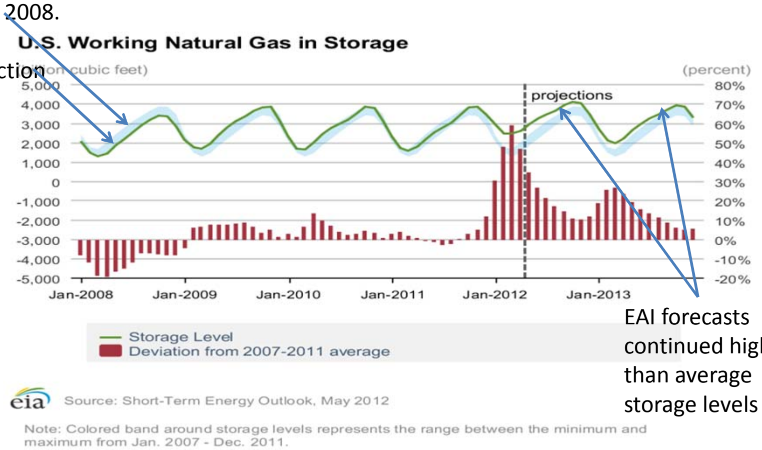
Storage

Projected U.S. Natural Gas in Storage

6

Extremely high prices of 2008.

Low injection rates.



EAI forecasts continued higher than average storage levels in US.

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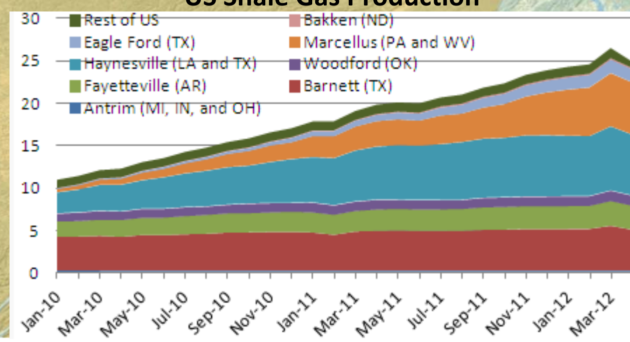
Storage

Shale; the "Game Changer"

7

The advance in Shale Gas drilling technology, horizontal drilling and hydraulic fracturing, has become the game changer in the gas industry.

US Shale Gas Production



EIA Graph

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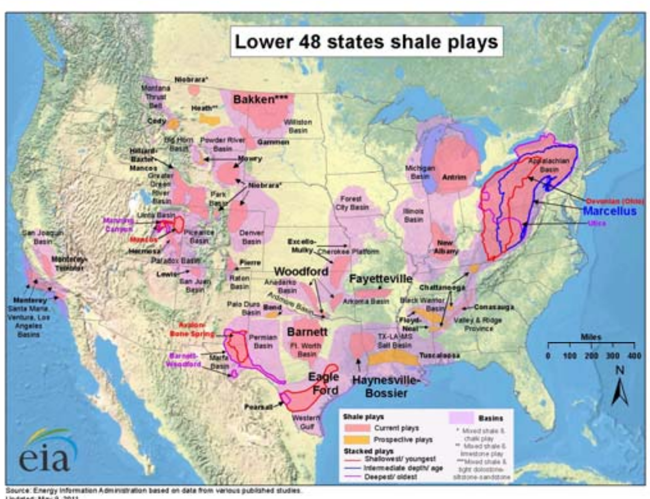
Supply

Shale Plays within the U.S.

8



There are significant Shale plays beyond Marcellus within the U.S.

Eagleford
Barnett
Haynesville
Bakken
Etc.

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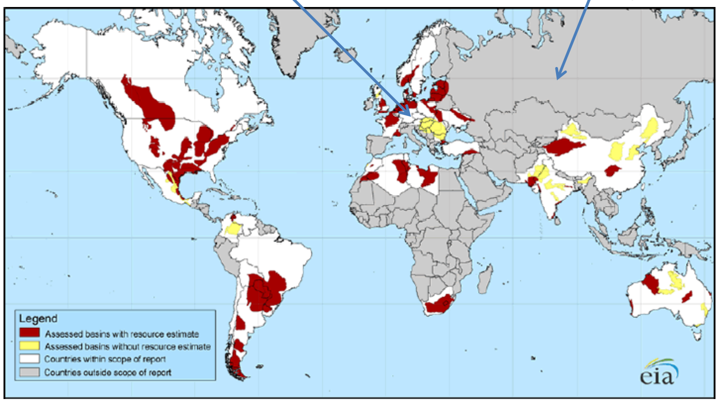
Supply

Potential Shale Plays Around the World

9

Significant potential in Europe could impact Russian gas supply leverage.

Shaded areas are outside bounds of report.



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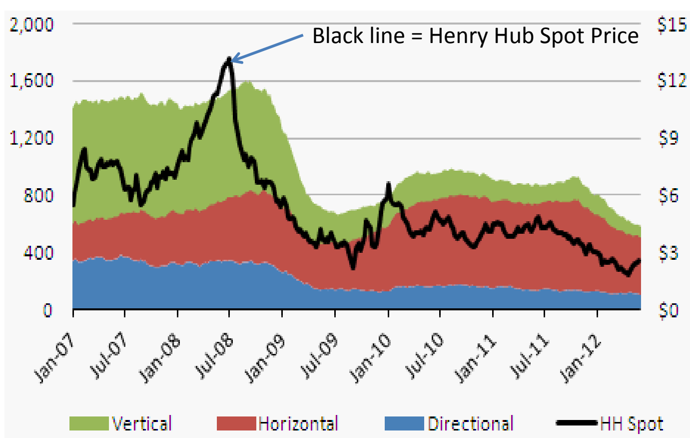
Supply

Rotary Drilling Rig Count – North America

10



Markets work. As Supply exceeds demand and prices drop, the rig count follows.

Graph from EIA

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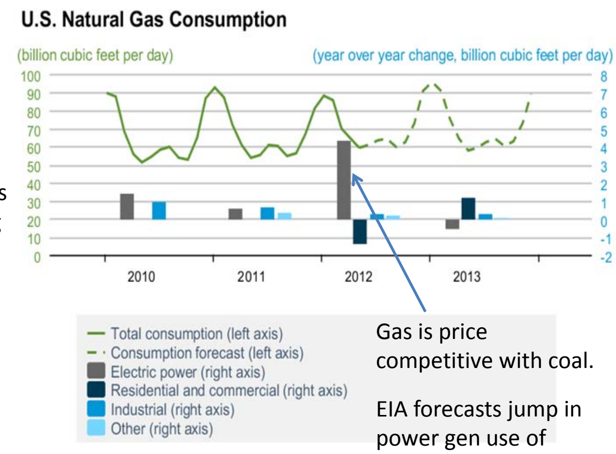
Supply

Changing Demand Characteristics

11

Residential Load Fairly Flat

Maximum Achievable Control Technology (MACT) – EPA Regs driving many of the remaining large commercial and industrial facilities to consider conversion to natural gas in their boilers.



Gas is price competitive with coal.

EIA forecasts jump in power gen use of natural gas this coming summer.

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Demand

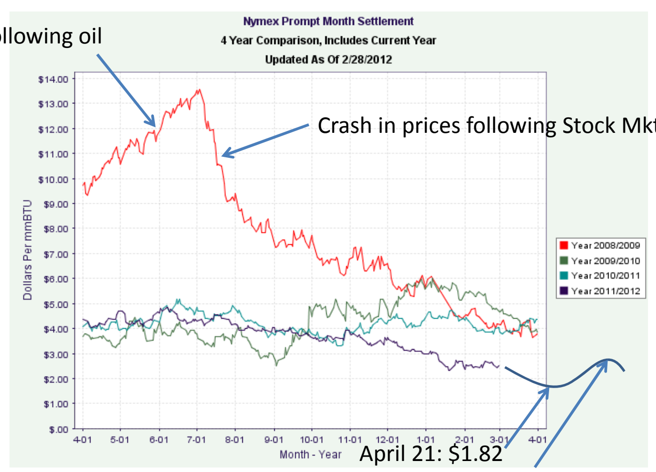
Historic NYMEX Prompt Month Close

12

2008 Run-up following oil

Crash in prices following Stock Mkt

Very stable (relatively) and low prices since the onset of the recession and the development of shale plays.



April 21: $1.82

May 25: $2.665

June 11: Close $2.215

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Price

Change in Basis Value

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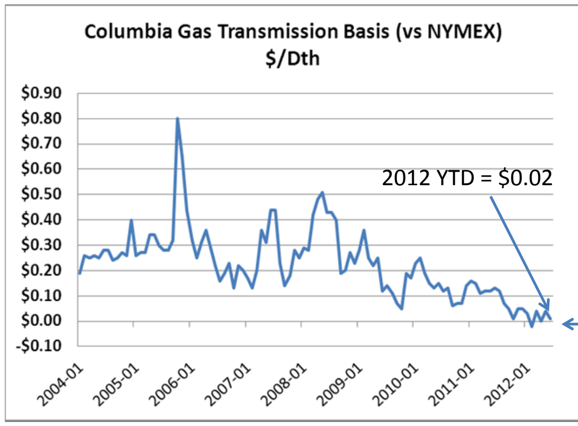
Year	Ave Basis
2004	$0.27
2005	$0.38
2006	$0.24
2007	$0.26
2008	$0.34
2009	$0.18
2010	$0.14
2011	$0.10



$0.00

Another impact of additional supplies in our area (Crossroads pipeline and Marcellus shale) is seen by the reduction in the difference in price between the Gulf Coast and Ohio.

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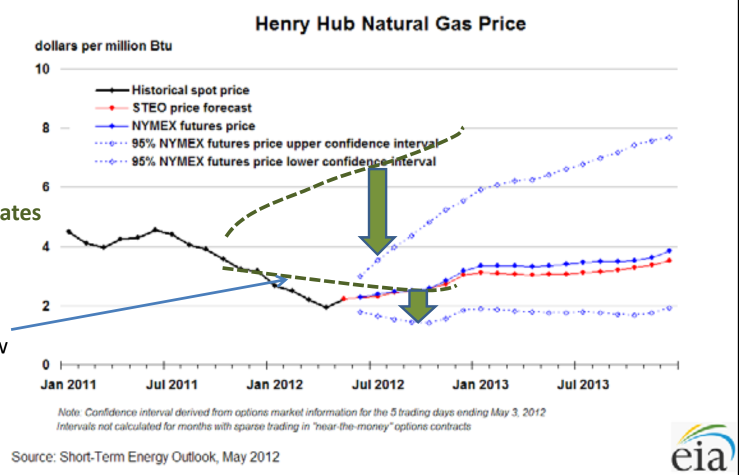
Price

EIA Gas Price Forecast

14

EIA's October Estimates

EIA's low price scenario from last October wasn't low enough.



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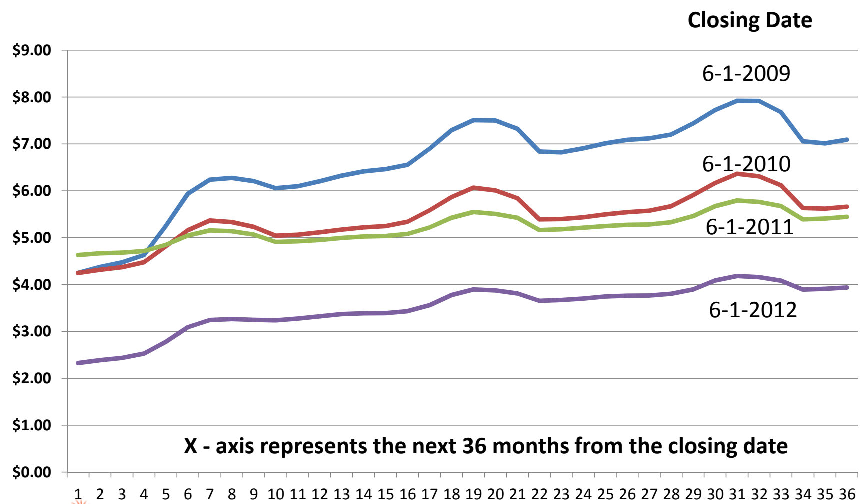
Price

Gas Futures – Market Perspective Across Time

15



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Price

An Interesting Time for Energy

16

- **Short term: Temperatures have put storage injection way ahead of schedule, further softening demand and prices this summer.**
- **Longer term: The boom in the shale gas exploration is expanding supply.**
  – Pricing has stayed down across the board and locational differences (basis) begin to change.
  – Consideration being given to converting Liquefied Natural Gas (LNG) receipt terminals to liquefaction export terminals.
  – Plans being made to reverse direction of some long haul pipelines to move gas west and south.
- **With plentiful supply and related low prices, rig counts have dropped.**
- **Natural gas is directly price competitive with Coal causing greater expectations for gas power generation.**
- **EPA regulations push the use of gas over coal for industrial and institutional gas boiler users.**

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Summary