**Before**

**The Public Utilities Commission of Ohio**

In the Matter of the Application of Ohio )

Edison Company, The Cleveland Electric )

Illuminating Company and The Toledo )

Edison Company for Authority to Provide ) Case No. 14-1297-EL-SSO

for a Standard Service Offer Pursuant to )

R.C. 4928.143 in the Form of an Electric )

Security Plan. )

**Industrial Energy Users-Ohio’s**

**Memorandum Contra to Joint Interlocutory Appeal,**

**Request For Certification To Full Commission**

**and Application For Review By**

**the Office Of The Ohio Consumers’ Counsel,**

**Northwest Ohio Aggregation Coalition, and**

**Ohio Manufacturers’ Association Energy Group**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Frank P. Darr (Reg. No. 0025469)

(Counsel of Record)

Matthew R. Pritchard (Reg. No. 0088070)

McNees Wallace & Nurick LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

fdarr@mwncmh.com

mpritchard@mwncmh.com

**June 10, 2016 Attorneys for Industrial Energy Users-Ohio**

**Before**

**The Public Utilities Commission of Ohio**

In the Matter of the Application of Ohio )

Edison Company, The Cleveland Electric )

Illuminating Company and The Toledo )

Edison Company for Authority to Provide ) Case No. 14-1297-EL-SSO

for a Standard Service Offer Pursuant to )

R.C. 4928.143 in the Form of an Electric )

Security Plan. )

**Industrial Energy Users-Ohio’s**

**Memorandum Contra to Joint Interlocutory Appeal,**

**Request For Certification To Full Commission**

**and Application For Review By**

**the Office Of The Ohio Consumers’ Counsel,**

**Northwest Ohio Aggregation Coalition, and**

**Ohio Manufacturers’ Association Energy Group**

# Introduction

On June 3, 2016, an Attorney Examiner of the Public Utilities Commission of Ohio (“Commission”) issued an Entry establishing a discovery and hearing schedule in this matter. Entry at 4-5 (June 3, 2016) (“June 3 Entry”). The scope of the hearing will be limited to the provisions of and alternatives to a proposal by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (“FirstEnergy”) to modify the proposed Retail Rate Stability Rider (“RRS”). *Id*. at 3.

On June 8, 2016, the Office of the Ohio Consumers’ Counsel, Northwest Ohio Aggregation Coalition, and the Ohio Manufacturers’ Association Energy Group (“Appellants”) filed a Joint Interlocutory Appeal, Request for Certification to Full Commission, and Application for Review of the June 3 Entry (“Interlocutory Appeal”). In the Interlocutory Appeal, the Appellants assert that the Attorney Examiners should certify the appeal for consideration by the Commission because the June 3 Entry presents a novel question of law and departs from past precedent. Interlocutory Appeal at 2.[[1]](#footnote-1) If the Commission grants the appeal, the Appellants request the Commission to reverse the June 3 Entry and direct FirstEnergy to withdraw its current application, thereby terminating it, and file a new standard service offer (“SSO”). *Id*.

The termination of the current electric security plan (“ESP”) sought by the Appellants is unlawful under the facts presented here and would injure customers that reasonably relied on the Commission’s order modifying and approving the ESP. Accordingly, the Commission should reject the Appellants’ request that the Commission direct FirstEnergy to withdraw its current application.

# Argument

Under R.C. 4928.143(C)(1), the Commission may approve, modify and approve, or disapprove an application. If the Commission modifies and approves an application, the electric distribution utility (“EDU”) may withdraw its application, thereby terminating it. R.C. 4928.143(C)(2)(a). If the EDU terminates an application or the Commission disapproves the application, the Commission “shall issue such order as is necessary to continue the … utility’s most recent standard service offer.” R.C. 4928.143(C)(2)(b).

In its March 31, 2016 Opinion and Order, the Commission modified and approved the application. Since then, FirstEnergy has not withdrawn its application, directly or constructively. Instead, it has filed tariffs that the Commission determined comply with the Commission’s Opinion and Order. Finding and Order at 3 (May 25, 2016). Additionally, FirstEnergy filed an Application for Rehearing to address modifications to the RRS among other things. Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company’s Application for Rehearing (“FirstEnergy Application for Rehearing”) (May 2, 2016). Because the Commission did not disapprove the application and FirstEnergy has not withdrawn its application, there is no lawful basis for the Commission to order the utility to file tariffs to continue the most recent SSO.

Moreover, requiring FirstEnergy to withdraw its application and file tariffs implementing the prior ESP would have consequences for customers that have relied on the Commission’s approval of the ESP.[[2]](#footnote-2) The ESP that became effective on June 1, 2016 contains provisions expanding the interruptible program and a transmission pilot that will offer the opportunity for some customers to reduce their total energy bills by managing their demand levels. Customers have already entered into contracts in reliance on these provisions. An order terminating the ESP would disrupt this reliance without lawful basis.

Moreover, the damage caused by an order terminating the ESP would not be limited to customers that relied on the ESP. Because these programs approved as a part of the ESP may reduce system demand during peak periods, they have the potential to benefit all customers, including those represented by Appellants. For example, the benefits of the interruptible program include increased system reliability and stability, the prevention of load shedding (*i.e.,* rolling blackouts) during emergency events, and job retention. See citations to transcript in the Post-Hearing Brief of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company at 108 and n. 521-23 (Feb. 16, 2016) (“FirstEnergy Initial Brief”); Post-Hearing Brief of the Ohio Energy Group at 24-25 (Feb. 16, 2016) (“OEG Initial Brief”); and Initial Brief in Support of ESP IV Stipulation by Nucor Steel Marion, Inc. at 12-15 (“Nucor Initial Brief”). By providing eligible customers a means of reducing their electric generation expenses, continuation of a modified interruptible program also furthers Ohio industrial companies’ effectiveness in the global economy. FirstEnergy Initial Brief at 148. As the record demonstrates, an interruptible rate program advances “numerous benefits, including the promotion of economic development and the retention of manufacturing jobs.” *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO, *et al.,* Opinion and Order at 40 (Feb. 25, 2015). Thus, directing FirstEnergy to withdraw its application and file tariffs implementing the prior ESP will harm not only large energy users, but all customers of FirstEnergy.

# Conclusion

A Commission order terminating the ESP would be unlawful and would injure all customers. The Commission, therefore, should reject the Appellants’ request for an order directing FirstEnergy to withdraw its current application.

Respectfully submitted,

*/s/* *Frank P. Darr*

Frank P. Darr (Reg. No. 0025469)

Matthew R. Pritchard (Reg. No. 0088070)

McNees Wallace & Nurick LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

fdarr@mwncmh.com

mpritchard@mwncmh.com

**Attorneys for Industrial Energy Users-Ohio**

**Certificate of Service**

In accordance with Rule 4901-1-05, Ohio Administrative Code, "The PUCO's e‑filing system will electronically serve notice of the filing of this document upon the following parties." In addition, I hereby certify that a service copy of the foregoing *Industrial Energy Users-Ohio’s Memorandum Contra to Joint Interlocutory Appeal, Request For Certification To Full Commission and Application For Review By the Office Of The Ohio Consumers’ Counsel, Northwest Ohio Aggregation Coalition, and Ohio Manufacturers’ Association Energy Group* was sent by, or on behalf of, the undersigned counsel for IEU‑Ohio, to the following parties of record this 10th day of June 2016, *via* electronic transmission.

*/s/ Frank P. Darr*

Frank P. Darr

James W. Burk

(Counsel of Record)

Carrie M. Dunn

FIRSTENERGY SERVICE COMPANY

76 South Main Street

Akron, Ohio 44308

burkj@firstenergycorp.com

cdunn@firstenergycorp.com

James F. Lang

N. Trevor Alexander

CALFEE, HALTER & GRISWOLD LLP

The Calfee Building

1405 East Sixth Street

Cleveland, Ohio 44114

jlang@calfee.com

talexander@calfee.com

David A. Kutik

JONES DAY

901 Lakeside Avenue

Cleveland, Ohio 44114

dakutik@jonesday.com

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

**THE TOLEDO EDISON COMPANY**

Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

BOEHM, KURTZ & LOWRY

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

mkurtz@BKLlawfirm.com

kboehm@BKLlawfirm.com

jkylercohn@BKLlawfirm.com

**COUNSEL FOR THE OHIO ENERGY GROUP**

Steven T. Nourse

Matthew J. Satterwhite

Yazen Alami

American Electric Power Service Corporation

1 Riverside Plaza 29th Floor

Columbus, Ohio 43215

stnourse@aep.com

mjsatterwhite@aep.com

yalami@aep.com

**COUNSEL FOR OHIO POWER COMPANY**

Bruce J. Weston

Ohio Consumers' Counsel

Larry S. Sauer

(Counsel of Record)

Maureen R. Willis

Kevin F. Moore

Ajay K. Kumar

William J. Michael

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street – Suite 1800

Columbus, Ohio 43215

Larry.sauer@occ.ohio.gov

maureen.willis@occ.ohio.gov

William.Michael@occ.ohio.gov

Kevin.moore@occ.ohio.gov

Ajay.kumar@occ.ohio.gov

**COUNSEL FOR THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Barth E. Royer

Bell & Royer Co., LPA

33 South Grant Avenue

Columbus, Ohio 43215-3927

barthroyer@aol.com

Adrian Thompson

Taft Stettinius & Hollister LLP

200 Public Square, Suite 3500

Cleveland, Ohio 44114

athompson@taftlaw.com

**COUNSEL FOR CLEVELAND MUNICIPAL SCHOOL DISTRICT**

Marilyn L. Widman

Widman & Franklin, LLC

405 Madison Ave., Suite 1550

Toledo, Ohio 43604

Marilyn@wflawfirm.com

**COUNSEL FOR IBEW LOCAL 245**

Richard C. Sahli (0007360)

Richard Sahli Law Office, LLC

981 Pinewood Lane

Columbus, OH 43230-3662

rsahli@columbus.rr.com

Michael Soules

Earthjustice

1625 Massachusetts Ave. NW,

Suite #702

Washington, DC 20036

msoules@earthjustice.org

Shannon Fisk

(Counsel of Record)

Earthjustice

1617 John F. Kennedy Blvd.,

Suite #1675

Philadelphia, PA 19103

sfisk@earthjustice.org

Tony G. Mendoza

Kristin Henry

Sierra Club

85 Second Street, Second Floor

San Francisco, CA 94105-3459

tony.mendoza@sierraclub.org

kristin.henry@sierraclub.org

**COUNSEL FOR THE SIERRA CLUB**

Jennifer L. Spinosi (0089162)

(Counsel of Record)

Direct Energy

21 East State Street, 19th Floor

Columbus, Ohio 43215

jennifer.spinosi@directenergy.com

Scott R. Dismukes, Esq.

Eckert Seamans Cherin & Mellott, LLC

U.S. Steel Tower

600 Grant Street, 44th Floor

Pittsburgh, PA 15219

sdismukes@eckertseamans.com

Daniel Clearfield, Esq.

Sarah Stoner, Esq.

Eckert Seamans Cherin & Mellott, LLC

213 Market Street, 8th Floor

Harrisburg, PA 17101

dclearfield@eckertseamans.com

sstoner@eckertseamans.com

**COUNSEL FOR DIRECT ENERGY SERVICES, LLC, DIRECT ENERGY BUSINESS, LLC AND DIRECT ENERGY BUSINESS MARKETING, LLC**

Colleen L. Mooney

(Counsel of Record)

Ohio Partners for Affordable Energy

231 West Lima Street

Findlay, Ohio 45839-1793

cmooney@ohiopartners.org

**COUNSEL FOR OHIO PARTNERS FOR AFFORDABLE ENERGY**

Joseph E. Oliker

(Counsel of Record)

IGS Energy

6100 Emerald Parkway

Dublin, Ohio 43016

joliker@igsenergy.com

**COUNSEL FOR IGS ENERGY**

Celia M. Kilgard

Devin D. Parram

Taft Stettinius & Hollister LLP

65 East State Street, Suite 1000

Columbus, Ohio 43215

ckilgard@taftlaw.com

dparram@taftlaw.com

**COUNSEL FOR THE KROGER CO.**

Richard L. Sites

Ohio Hospital Association

155 East Broad Street, 15th

Columbus, Ohio 43215

ricks@ohanet.org

Matthew W. Warnock

Bricker & Eckler LLP

100 S. Third Street

Columbus, OH 43215

mwarnock@bricker.com

**COUNSEL FOR THE OHIO HOSPITAL ASSOCIATION**

Michael K. Lavanga

Garrett A. Stone

Stone Mattheis Xenopoulos & Brew, P.C.

1025 Thomas Jefferson Street, N.W.

8th Floor, West Tower

Washington, D.C. 20007-5201

mkl@smxblaw.com

gas@smxblaw.com

**COUNSEL FOR NUCOR STEEL MARION, INC.**

Barbara A. Langhenry

Harold A. Madorsky

Kate E. Ryan (Counsel of Record)

City of Cleveland

601 Lakeside Avenue – Room 106

Cleveland, Ohio 44114

blanghenry@city.cleveland.oh.us

hmadorsky@city.cleveland.oh.us

kryan@city.cleveland.oh.us

**COUNSEL FOR THE CITY OF CLEVELAND**

Kimberly W. Bojko

Danielle M. Ghiloni

Carpenter Lipps & Leland LLP

280 Plaza, Suite 1300

280 North High Street

Columbus, Ohio 43215

Bojko@carpenterlipps.com

ghiloni@carpenterlipps.com

**COUNSEL FOR OMAEG**

Lisa M. Hawrot

Spilman Thomas & Battle, PLLC

Century Centre Building

1233 Main Street, Suite 4000

Wheeling, West Virginia 26003

lhawrot@spilmanlaw.com

Derrick Price Williamson

Spilman Thomas & Battle, PLLC

1100 Bent Creek Blvd., Suite 101

Mechanicsburg, Pennsylvania 17050

dwilliamson@spilmanlaw.com

Carrie M. Harris

Spilman Thomas & Battle, PLLC

310 First Street, Suite 1100

Roanoke, Virginia 24002-0090

charris@spilmanlaw.com

**COUNSEL FOR WAL-MART STORES EAST, LP AND SAM’S EAST, INC.**

Joseph P. Meissner

Attorney at Law

1223 W. 6th Street – 4th Floor

Cleveland, Ohio 44113

meissnerjoseph@yahoo.com

**COUNSEL FOR CITIZENS COALITION, CONSUMER PROTECTION ASSOCIATION, CLEVELAND HOUSING NETWORK, AND THE COUNCIL FOR ECONOMIC OPPORTUNITIES IN GREATER CLEVELAND**

Thomas R. Hays

8355 Island Lane

Maineville, Ohio 45039

trhayslaw@gmail.com

**COUNSEL FOR LUCAS COUNTY**

**BOARD OF COMMISSIONERS**

Leslie Kovacik

Counsel for the City of Toledo

420 Madison Avenue

Toledo, Ohio 43604

lesliekovacik@toledo.oh.gov

**COUNSEL FOR THE CITY OF TOLEDO**

Glenn S. Krassen

(Counsel of Record)

Bricker & Eckler LLP  
1001 Lakeside Ave., Suite 1350

Cleveland, Ohio 44114

gkrassen@bricker.com

Dane Stinson

Dylan Borchers

Bricker & Eckler LLP

100 South Third Street

Columbus, Ohio 43215

dstinson@bricker.com

dborchers@bricker.com

**COUNSEL FOR NORTHEAST OHIO PUBLIC ENERGY COUNCIL; OHIO SCHOOLS COUNCIL; AND, POWER4SCHOOLS**

Michael J. Settineri (0073369)

Gretchen L. Petrucci (0046608)

Vorys, Sater, Seymour and Pease LLP

52 E. Gay Street

Columbus, Ohio 43215

mjsettineri@vorys.com

glpetrucci@vorys.com

**COUNSEL FOR DYNEGY INC.**

Matthew R. Cox

Matthew Cox Law, Ltd.

88 East Broad Street, Suite 1560

Columbus, Ohio 43215

matt@matthewcoxlaw.com

**COUNSEL FOR THE COUNCIL OF SMALLER ENTERPRISES**

Madeline Fleisher

Staff Attorney

Environmental Law & Policy Center

21 W. Broad St., Suite 500

Columbus, OH 43215

mfleisher@elpc.org

**Counsel for the Environmental Law & Policy Center**

Trent Dougherty

1145 Chesapeake Avenue, Suite I

Columbus, OH 43212

tdougherty@theOEC.org

John Finnigan

128 Winding Brook Lane

Terrace Park, Ohio 45174

jfinnigan@edf.org

**COUNSEL FOR THE OHIO ENVIRONMENTAL COUNCIL AND ENVIRONMENTAL DEFENSE FUND**

Michael J. Settineri

Gretchen L. Petrucci

Vorys, Sater, Seymour and Pease LLP

52 East Gay Street

Columbus, Ohio 43216-1008

mjsettineri@vorys.com

glpetrucci@vorys.com

Cynthia Brady

Exelon Business Services

4300 Winfield Rd.

Warrenville, Illinois 60555

Cynthia.brady@exeloncorp.com

David I. Fein

Exelon Corporation

10 South Dearborn Street – 47th Fl.

Chicago, Illinois 60603

David.fein@exeloncorp.com

Lael E. Campbell

Constellation NewEnergy, Inc. and Exelon Corporation

101 Constitution Ave., NW

Washington, DC 20001

Lael.campbell@exeloncorp.com

**COUNSEL FOR EXELON GENERATION COMPANY, LLC AND CONSTELLATION NEWENERGY, INC.; PJM POWER PROVIDERS GROUP; THE ELECTRIC POWER SUPPLY ASSOCIATION; AND, RETAIL ENERGY SUPPLY ASSOCIATION**

Glen Thomas

1060 First Avenue, Suite 400

King of Prussia, Pennsylvania 19406

gthomas@gtpowergroup.com

Laura Chappelle

201 North Washington Square - #910

Lansing, Michigan 48933

laurac@chappeleconsulting.net

**ON BEHALF OF PJM POWER PROVIDERS GROUP**

Christopher J. Allwein

Kegler Brown Hill and Ritter LPA

65 East State Street – 1800

Columbus, Ohio 43215

callwein@keglerbrown.com

**COUNSEL FOR HARDIN WIND LLC, CHAMPAIGN WIND LLC AND BUCKEYE WIND LLC**

Todd M. Williams

Shindler, Neff, Holmes, Worline & Muhler, LLP

300 Madison Avenue

1200 Edison Plaza

Toledo, Ohio 43604

twilliams@snhslaw.com

Jeffrey W. Mayes

Monitoring Analytics, LLC

2621 Van Buren Avenue, Suite 160

Valley Forge Corporate Center

Eagleville, Pennsylvania 19403

Jeffrey.mayes@monitoringanalytics.com

**COUNSEL FOR INDEPENDENT MARKET MONITOR FOR PJM**

Sharon Theodore

Electric Power Supply Association

1401 New York Ave. NW 11th fl.

Washington, DC 20001

stheodore@epsa.org

**ON BEHALF OF THE ELECTRIC POWER SUPPLY ASSOCIATION**

Kevin R. Schmidt

Energy Professionals of Ohio

88 East Broad Street, Suite 1770

Columbus, Ohio 43215

Schmidt@sppgrp.com

**COUNSEL FOR THE ENERGY PROFESSIONALS OF OHIO**

Christopher L. Miller

Gregory H. Dunn

Jeremy M. Grayem

Ice Miller LLP

250 West Street

Columbus, Ohio 43215

Christopher.miller@icemiller.com

Gregory.dunn@icemiller.com

Jeremy.grayem@icemiller.com

**COUNSEL FOR THE ASSOCIATION OF INDEPENDENT COLLEGES AND UNIVERSITIES OF OHIO**

Craig I. Smith

Material Sciences Corporation

15700 Van Aken Blvd. – Suite 26

Shaker Heights, Ohio 44120

wttpmlc@aol.com

**COUNSEL FOR Material Sciences Corporation**

Joel E. Sechler

Carpenter Lipps & Leland

280 N. High Street, Suite 1300

Columbus, Ohio 43215

sechler@carpenterlipps.com

Gregory J. Poulos

EnerNOC, Inc.

471 E. Broad Street – Suite 1520

Columbus, Ohio 43054

gpoulos@enernoc.com

**COUNSEL FOR ENERNOC, INC.**

David J. Folk

Assistant Director of Law

City of Akron

161 S. High Street - Suite 202

Akron, OH 44308

dfolk@Akronohio.Gov

**COUNSEL FOR THE CITY OF AKRON**

Daniel W. Wolff

Richard LehFeldt

Crowell & Moring LLP

1001 Pennsylvania Ave., N.W.

Washington, DC 20004

dwolff@crowell.com

rlehfeldt@crowell.com

**COUNSEL FOR CPV SHORE, LLC**

Thomas McNamee

Thomas Lindgren

Attorney General's Office

Public Utilities Commission of Ohio

30 E. Broad Street, 16th Floor

Columbus, Ohio 43215-3793

thomas.mcnamee@ohioattorneygeneral.gov

thomas.lindgren@ohioattorneygeneral.gov

**COUNSEL FOR THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO**

Gregory Price

Mandy Willey Chiles

Attorney Examiner

Public Utilities Commission of Ohio

180 E. Broad Street

Columbus, Ohio 43215

Gregory.price@puc.state.oh.us

Mandy.chiles@puc.state.oh.us

**ATTORNEY EXAMINERS**

1. Industrial Energy Users-Ohio (“IEU-Ohio”) takes no position regarding the allegations supporting the Appellants’ arguments in support of the Interlocutory Appeal. [↑](#footnote-ref-1)
2. IEU-Ohio and Ohio Energy Group have raised these concerns previously. See, for example, Industrial Energy Users-Ohio’s Memorandum Contra the Application for Rehearing of the Office of the Ohio Consumers’ Counsel and Northwest Ohio Aggregation Coalition at 7-8 (June 9, 2016). [↑](#footnote-ref-2)