

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Application of Ohio	)	
Edison Company, The Cleveland Electric	)	
Illuminating Company, and The Toledo	)	Case No. 07-551-EL-AIR
Edison Company for Authority to Increase	)	Case No. 07-552-EL-ATA
Rates for Distribution Service, Modify	)	Case No. 07-553-EL-AAM
Certain Accounting Practices and for	)	Case No. 07-554-EL-UNC
Tariff Approvals.	)	

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**OBJECTIONS TO THE STAFF REPORTS  
OF INVESTIGATION  
AND SUMMARY OF MAJOR ISSUES  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

Pursuant to R.C. 4909.19 and Ohio Adm. Code 4901-1-28(B), the Office of the Ohio Consumers' Counsel ("OCC"), an intervenor in this case, hereby submits to the Public Utilities Commission of Ohio ("Commission" or "PUCO") these objections to the PUCO Staff's Reports of Investigation ("Staff Reports"), filed on December 4, 2007, in these dockets concerning the cases submitted by the Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company ("OE," "CEI," and "TE"; collectively, "FirstEnergy" or "Company") regarding requests to increase distribution rates and make other changes to the Company's distribution tariffs.<sup>1</sup> The OCC is the statutory representative of approximately 1.9 million residential customers of FirstEnergy.

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<sup>1</sup> To the extent required for clarity, the individual reports are referred to as the "OE Staff Report," "CEI Staff Report," and the "TE Staff Report." Because these three reports contain many identical recommendations, an OCC objection to the "Staff Reports" should be understood to be objections to all three Staff Reports on the subject of the objection.

The OCC submits that these objections meet the specificity requirement of Ohio Adm. Code 4901-1-28. Additionally, the substance of many of the OCC's objections will be supplemented and/or supported with the testimony of witnesses whose testimony will be filed on or before January 10, 2008. The OCC's objections point to matters in the Staff Reports where the PUCO Staff failed to recommend against, or actively supports, rates or service terms that contravene what is reasonable and lawful for FirstEnergy's residential consumers.

The OCC reserves the right to amend, supplement, and/or otherwise state objections in the event that the PUCO Staff changes, modifies, or withdraws its position, at any time prior to the closing of the record, on any issue contained in the Staff Reports. Additionally, where PUCO Staff has indicated that its position on a particular issue is not known at the date of the Staff Reports, the OCC reserves the right to later supplement its objections once PUCO Staff's position is made known. In such an event, the OCC also reserves the right to file additional expert testimony, produce fact witnesses and introduce additional evidence. Moreover, the OCC reserves the right to submit amended and/or supplemented testimony in the event that the PUCO Staff changes, modifies, or withdraws its position on any issue contained in the Staff Reports. The OCC also submits that the lack of an objection in this pleading to any aspect of the Staff Reports does not preclude the OCC from cross-examination or introduction of evidence or argument in regard to issues on which the PUCO Staff changes, modifies, or withdraws its position on any issue contained in the Staff Reports.

Pursuant to R.C. 4903.083, the OCC submits a "Summary of Major Issues" that outlines the major issues to be determined in this proceeding. The OCC respectfully

requests that these issues be included in the notices of the local public hearings in accordance with R.C. 4903.083.

## **II. OBJECTIONS TO THE STAFF REPORTS**

### **A. Revenue Requirements**

The OCC objects to the Staff recommended revenue increases on Schedules A-1 (i.e. Schedules A-1 in each of the Staff Reports) because they are excessive due to the use of inappropriate and incorrect rate bases, operating expenses, and rates of return, as detailed below in the OCC's objections to Staff's determination regarding these matters.

The OCC objects to each component of the Staff Reports' Schedules A-1 recommended revenue increases to the extent that other OCC objections have an impact on the calculation of the recommended revenue increases (e.g. rate base, operating income, rate of return).

### **B. Rate Base: Other Rate Base Items**

#### **1. Postretirement Benefits Transition Obligation**

The OCC objects to the inclusion of the transition obligation related to Postretirement Benefits (i.e. "T&D Postretirement Benefits" Account 182.3) in rate base on Schedule B-6 in the CEI and TE Staff Reports. The transition obligation does not represent investor-supplied funds, and should be excluded from rate base to protect customers from having to pay, among other things, a rate of return on the funds.

#### **2. Deferred Taxes**

The OCC objects to the failure of the Staff Reports to exclude certain deferred tax debit balances (Account 190) on Schedules B-6 from rate base. The deferred tax debit balances at issue increase rate base and are deferred taxes directly related to reserves or

accruals that are not deducted from rate base. Consistency requires that if a given reserve or accrual is not deducted from rate base, the deferred tax debit balances that arise as a direct result of such reserves or accruals should not be included in rate base.

The following deferred tax balances (Account 190) should be eliminated from the CEI rate base on CEI Staff Report Schedule B-6:

- Pension and Rightsizing Costs
- Vacation Accrual
- Other Taxes
- Supp Exec Retirement Program - Def Comp
- Asbestos Removal
- Incentive Compensation
- Severance Estimate
- Merger Cost Expensed
- Customer Energy Management

The following deferred tax balances (Account 190) should be eliminated from the OE rate base on OE Staff Report Schedule B-6:

- Reserve for Inventory Obsolescence
- Other Taxes
- Post Retirement Benefits
- Banked and Accrued Vacation
- Injuries & Damages
- Tax Benefit Transfer - Net
- Taxes & Property Tax Reserve
- Tree Trimming
- Executive Deferred Compensation
- Executive Deferred Compensation Interest
- ESOP - Compensation Expense
- Extraordinary Gain FIN 47

The following deferred tax balances (Account 190) should be eliminated from the TE rate base on TE Staff Report Schedule B-6:

- Asbestos Removal (FIN 47)
- Contingency - Dura Landfill Clean Up
- Deferred Compensation
- Expense Accruals - FAS 112
- Health Benefits - FAS 106 (Postretmt. Benefits)

Taxes (Misc. 190)  
Pension and Rightsizing Cost  
Property Tax Variance  
Provision for Doubtful Accounts  
Reserve for Obsolescence - Inventory  
Severance Estimate  
Vacation Pay Accrual

**3. Balance of "RCP - Distribution O&M Deferral"<sup>2</sup> in Rate Bases**

The OCC objects to the Staff Reports' quantification of the balance of deferred distribution operation and maintenance ("O&M") expense included in the rate bases (Staff Reports, Schedule B-6 for each). The Commission approved the recording of the distribution deferrals in Case No. 05-1125-EL-ATA, but only to the extent that the eligible distribution expenditures and costs are "in excess of expense amounts already included in the rate structures of each of the Companies" (Opinion and Order at 9). The Staff Reports erred in measuring the eligible distribution expenditures against the expense amounts already included in the rate structures in two respects. First, the Staff Reports incorrectly defined "distribution O&M expenses" for the purpose of comparing actual expenses to the amounts embedded in current rates by including transmission expenses, customer accounts expenses, customer information and service expenses, sales expenses, and administrative and general expense in its comparison when such amounts should have been excluded. Second, the Staff Reports incorrectly equated the O&M expenses in the test years in the last base rate cases for the companies (1995 for CEI and TE; 1989 for OE) to the operation and maintenance expenses being recovered in rates in 2006 and 2007.

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<sup>2</sup> Staff Reports, Schedule B-6 for each

The OCC objects to the Staff Reports' calculation of the post-in-service interest, depreciation, and property taxes on plant additions in its distribution O&M deferral (Staff Reports, Schedules B-6). The Staff Reports failed to properly recognize the offset to plant additions for growth in the accumulated reserve for depreciation on embedded plant in its calculation of post-in-service interest. The Staff Reports also failed to exclude property taxes in the distribution deferrals, since it has not been established that the property taxes actually paid have increased as a result of plant additions in 2006.

The OCC objects to the Staff Reports' calculation of the carrying charges on the distribution deferrals (Staff Reports, Schedules B-6). The Staff Reports failed to properly offset applicable accumulated deferred income taxes against the balances on which interest is capitalized.

#### **4. Transition Tax Deferrals**

The OCC objects to the Staff Reports' inclusion of transition tax deferrals in the rate bases (Staff Reports, Schedule B-6 for each). The settlement in Case No. 99-1212-EL-ATA, et al., filed in those dockets on April 17, 2000 ("2000 Stipulation"), did not provide for the inclusion of the transition tax deferral in rate base.<sup>3</sup> Rate base treatment is neither necessary nor appropriate since the amortization period for the transition tax deferrals, designated in the 2000 Stipulation, is for not more than five years.

The OCC objects, in the alternative, to the Staff Reports' treatment regarding the returns recommended for the transition tax deferrals. If a return on the transition tax deferrals is authorized, the rate of return should not be greater than the embedded cost of long-term debt.

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<sup>3</sup> 2000 Stipulation at 14-15.



## **C. Operating Income**

### **1. Amortization of RCP - Distribution O&M Deferrals**

The OCC objects to the Staff Reports' quantification of the balance of deferred distribution operation and maintenance ("O&M") expense included in the rate bases (Staff Reports, Schedule B-6 for each) and the amortizations of the distribution deferrals included in *pro forma* test year operating expenses (Staff Reports, Schedule C-3.5 for each). The Commission approved the recording of the distribution deferrals in Case No. 05-1125-EL-ATA, but only to the extent that the eligible distribution expenditures and costs are "in excess of expense amounts already included in the rate structures of each of the Companies" (Opinion and Order at 9). The Staff Reports erred in measuring the eligible distribution expenditures against the expense amounts already included in the rate structures in two respects. First, the Staff Reports incorrectly defined "distribution O&M expenses" for the purpose of comparing actual expenses to the amounts embedded in current rates by including transmission expenses, customer accounts expenses, customer information and service expenses, sales expenses, and administrative and general expense in its comparison when such amounts should have been excluded. Second, the Staff Reports incorrectly equated the O&M expenses in the test years in the last base rate cases for the companies (1995 for CEI and TE; 1989 for OE) to the operation and maintenance expenses being recovered in rates in 2006 and 2007.

The OCC objects to the Staff Reports' calculation of the post-in-service interest, depreciation, and property taxes on plant additions in its distribution O&M deferral (Staff Reports, Schedules B-6 and C-3.5 for each). The Staff Reports failed to properly recognize the offset to plant additions for growth in the accumulated reserve for

depreciation on embedded plant in its calculation of post-in-service interest. The Staff Reports also failed to exclude property taxes in the distribution deferrals, since it has not been established that the property taxes actually paid have increased as a result of plant additions in 2006.

The OCC objects to the Staff Reports' calculation of the carrying charges on the distribution deferrals (Staff Reports, Schedules B-6 and C-3.5 for each). The Staff Reports failed to properly offset applicable accumulated deferred income taxes against the balances on which interest is capitalized.

## **2. Labor Expense**

The OCC objects to the Staff Reports' annualization of labor expense (Staff Reports, Schedule C-3.2 for each) to the extent that the annualization double counts some wage increases. To calculate *pro forma* labor expense for the Staff Reports, Staff calculated the "Average Hourly Rate" as of August 2007 and then adjusted that "Average Hourly Rate" for wage increases taking place during the test year. However, some of the test year wage increases for union employees took place prior to August 2007 and, therefore, are already included in the "Average Hourly Rate." The *pro forma* labor expense in the Staff Reports should be corrected to eliminate the double-counting of pre-August 2007 wage increases for union employees.

## **3. Incentive Compensation**

The OCC objects to the Staff Reports' inclusion of incentive compensation in the revenue requirements related to the attainment of financial goals. The cost of incentive compensation related to the attainment of financial goals should be borne by

shareholders, not customers, since such incentive compensation provides benefits to only shareholders.

#### **4. Transition Tax Deferrals**

The OCC objects to the Staff Reports' calculation of the amortization of the transition tax deferrals included in *pro forma* test year operating expenses (Staff Reports, Schedule C-3.5 for each). The settlement in Case No. 99-1212-EL-ATA (i.e. stated in the 2000 Stipulation) stated that the embedded cost of debt for the applicable company will be used to capitalize interest on such balances.<sup>4</sup> The Staff Reports failed to properly calculate the recoverable transition tax deferrals in two respects. First, the Staff Reports incorrectly used the carrying cost rates used by FirstEnergy rather than using the actual embedded cost of debt for the applicable company. Second, the Staff Reports incorrectly failed to offset applicable accumulated deferred income taxes against the balances on which interest is capitalized.

#### **5. Pension and Other Postretirement Employment Benefits**

The OCC objects to the Staff Reports' use of the estimated service cost component of the pension and Other Postretirement Employment Benefits ("OPEB") costs as the *pro forma* pension and OPEB expenses to be included in the revenue requirement for each of the companies (Staff Reports, Schedule 3.6 for each). Rather, the pension accruals (pursuant to FAS 87) and the OPEB accruals (pursuant to FAS 106) should be used as the bases for the pension and OPEB expenses in the revenue requirements. The FAS 87 pension accruals and FAS 106 OPEB accruals are based on generally accepted accounting principles and reflect the method used by the companies to

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<sup>4</sup> 2000 Stipulation at 14-15.

record these expenses on their books of account. The use of the service cost components in the Staff Reports is also inconsistent with Commission precedent on the pension and OPEB expense to be included in utilities' revenue requirements.

#### **6. Property Taxes**

The OCC objects to the Staff Reports' calculation of *pro forma* personal property tax expense (Staff Reports, Schedule C-3.10a1 for each). The Staff Reports incorrectly failed to recognize substantial exclusions from the "Net Cost of Taxable Personal Property" in the calculations. The failure to recognize these substantial exclusions results in a *pro forma* property tax expense that is excessive in relation to actual property tax expenses incurred. The Staff Reports' calculation of *pro forma* personal property tax expense should be corrected by using a "True Value Percentage" based on the ratio of actual True Value of Taxable Personal Property to personal property included in rate base for each company.

#### **7. Payroll Taxes**

The OCC objects to the Staff Reports' calculation of *pro forma* payroll tax expense (Staff Reports, Schedules C-3.10d, C-3.10e, and C-3.10f for each), since the payroll taxes should be adjusted to reflect necessary adjustments to labor expense as described in the OCC's previous objections regarding labor expense.

#### **8. Pennsylvania Capital Stock Tax Expense**

The OCC objects to the CEI Staff Report's calculation of *pro forma* Pennsylvania Capital Stock Tax expense for CEI (CEI Staff Report, Schedule C-3.10h). The CEI Staff Report failed to exclude the effect of the true-up of \$2,940,105 in March 2007 to accrue a reserve for the Pennsylvania Capital Stock Tax related to prior periods. CEI properly

removed the effect of this reserve accrual by means of its Adjustment C-3.22, and the CEI Staff Report should have removed the reserve accrual from *pro forma* Pennsylvania Capital Stock Tax expense.

#### **9. Impact of OCC Objections on Operating Income**

The OCC objects to each component of the Staff Reports' Schedules C-1 recommended net operating income to the extent that other OCC objections have an impact on the calculation of net operating income (e.g. impact on income taxes of operating expense objections).

##### **D. Rate of Return**

The OCC objects to the Staff Reports' recommendation for a common equity rate in the range of 10.06% to 11.09% (Staff Reports, page 17 for each), which is unreasonably high. The OCC objects to the Staff Reports' calculated common equity cost and rate of return on the following bases:

##### **1. Group of Comparable Utilities**

The OCC objects to the Staff Reports' inclusion of some utilities in the group of "comparable electric utilities" that served as a basis of the cost of capital analysis (Staff Reports, page 16 for each), and the exclusion of other utilities. The Staff Reports incorrectly included natural gas distribution utilities that provide no electric utility services as well as fully regulated electric utilities that do not operate in a regulatory environment that is similar to that in which FirstEnergy operates. The Staff Reports incorrectly excluded electric utilities operating in deregulated states that are more comparable to FirstEnergy distribution companies.

The OCC objects to Staff Reports' inclusion, in a proxy group (Staff Reports, page 16 for each), of utilities that receive little revenue from providing regulated electricity services (e.g. CenterPoint Energy, Inc., Constellation Energy Group, Inc., and MDU Resources Group, Inc.).

## **2. Capital Asset Pricing Model ("CAPM")**

The OCC objects to the Staff Reports' inappropriate risk premium of 6.5% in the CAPM (Staff Reports, page 16 for each). The risk premium stated in the Staff Reports was based on the spread of the arithmetic mean of historical total returns between large stocks for large companies and long-term government bonds. This method of calculation artificially increased the common equity cost by using an inappropriate group of companies for comparison and by using the arithmetic mean of annual returns that inflates the estimated cost of equity because it unrealistically assumes that the relevant investment time horizon is only one year, even though investors are expected to hold their stocks for longer time horizons.

The OCC objects to the Staff Reports' use of only one source of "betas", the Value Line "betas," which use the NYMEX Index, instead of betas based upon the S&P 500 Index. The calculation of expected market returns and risk premium that are reported in the Staff Reports were based upon the S&P 500 Index. Because Value Line betas are biased upwardly, the CAPM cost of capital estimate stated in the Staff Reports is inflated.

## **3. Discounted Cash Flow ("DCF") Analysis**

The OCC objects to the Staff Reports' incorporation of a growth rate of 6.77% in DCF computations based upon the average annual change in Gross National Product

(“GNP”) for the years 1929 to 2005 (Staff Reports, page 17 and Schedule D-1.4 for each). This growth rate does not accurately reflect investors’ expectations of the long-term dividend and earnings growth in the future, and artificially increased the common equity cost reported in the Staff Reports. The economic reality is that the U.S. economy should not be expected to grow at the average growth rate for the historical period stated in the Staff Reports, and a growth rate in the GNP is inappropriate for the electric distribution industry.

#### **4. Flotation Costs**

The OCC objects to the Staff Reports’ incorporation of an excessive flotation cost adjustment to the cost of equity (see Schedules D-1.1, CEI Staff Report, page 177; OE and TE Staff Reports, page 176; adjustments approximately double the appropriate level for use in calculation of the cost of equity).

#### **5. Rate of Return Adjustment for Noncompliance with Reliability Rules**

The OCC objects to the Staff Reports’ failure to make an adjustment to reduce the recommended rate for common equity to recognize the violations of the electric service and safety standards (“ESSS”) and poor service quality provided by the Company (including those violations and service quality problems discussed in the Staff Reports’ sections on “Service Monitoring and Enforcement”).

### **E. Rates and Tariffs**

#### **1. Revenue Distribution**

The OCC objects to the Revenue Distribution delineated in the Staff Reports<sup>5</sup> since Staff failed to appropriately recognize the rate design criteria of fairness and equity

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<sup>5</sup> CEI Staff Report at 26-30, OE Staff Report at 25-30, TE Staff Report at 26-30.

when allocating demand costs to rate classes. The criteria should be recognized by either including the annual average demand in the allocation of demand-related distribution allocators, or by adjusting the allocation of the overall revenue requirement among the classes to reduce the allocation for the residential class. The Staff Reports did not recognize annual average demand since its recommendations considered only results from FirstEnergy's cost of service study<sup>6</sup> that reflected demand-related distribution allocators based solely on Coincident Peak Demand (which FirstEnergy calls "Voltage Peak").

## **2. Tariffs**

The OCC objects to the Staff Reports' acceptance of FirstEnergy's proposal to modify its tariff structure to the extent that the number of residential rate schedules will be reduced to one<sup>7</sup>. The OCC objects to the Staff Reports' acceptance of the Company's proposal to eliminate certain current residential rate schedules without providing rate relief or some other form of gradualism for new customers who would have been eligible to have been served under such rate schedules, resulting in those new customers paying higher rates. The current residential rate schedules proposed to be eliminated are the following:

### **Toledo Edison**

- "R-02" Add-On Heat Pump
- "R-06" and "R-06a" Space Heating and Water Heating
- "R-04" and "R-04a" Water Heating
- "R-07" and "R-07a" Space Heating
- "R-09" and "R-09a" Apartment Rate

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<sup>6</sup> CEI Staff Report at 26, OE Staff Report at 26, TE Staff Report at 27.

<sup>7</sup> CEI Staff Report at 23, OE Staff Report at 23, TE Staff Report at 23-24.



## Ohio Edison

- Space Heating – Sheet 11
- Time-of-Day – Sheet 12
- Controlled Service Rider – Sheet 14
- Load Management – Sheet 17
- Water Heating – Sheet 18
- Electrically Heated Apartment – Sheet 19

## Cleveland Electric Illuminating

- Add-On Heat Pump – Sheet 11
- Water Heating – Sheet 12
- Space Heating – Sheet 13
- Water Heating and Space Heating – Sheet 14
- Electrically Heated Residential Apartment – Sheet 15

The OCC objects to the Staff Reports’ failure to recommend, in considering “Credit Worthiness and Deposits” (Staff Reports, page 19 for each), that FirstEnergy’s residential tariffs should include language stating all the ways by which residential customers can establish creditworthiness.

The OCC objects to the Staff Reports’ failure to recommend, in considering “Meters, Transformers and Special Facilities”<sup>8</sup> that FirstEnergy’s residential tariff should refer to the specific rule, Ohio Adm. Code 4901:1-10-05 (F), as the rule governing the time period during which a customer is allowed one meter test.

The OCC objects to the Staff Reports’ failure to recommend adjustments to FirstEnergy’s current interconnection tariffs, including a reduction in the excessive fees being charged by FirstEnergy.

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<sup>8</sup> CEI Staff Report at 22, OE Staff Report at 21-22, TE Staff Report at 21.

The OCC objects to the Staff Reports' failure to recommend that the technical requirements for interconnection and parallel operation of facilities in FirstEnergy's interconnection tariffs specifically reference IEEE standard 1547.

The OCC objects to the Staff Reports' failure to recommend adjustments to FirstEnergy's net energy metering riders so that a customer-generator is credited with the whole generation rate when the customer-generator feeds more kilowatt-hours of electricity back to the system than the Company supplies to the customer-generator facility during the billing period.

The OCC objects to the Staff Reports' failure to recommend adjustments to FirstEnergy's General Service Partial Service Riders that comply with the requirements of Ohio Adm. Code 4901:1-22-11.

#### **F. Service Monitoring and Enforcement**

##### **1. Ohio Adm. Code. 4901:1-10-27(D)(1). Scheduled Inspections: Circuits & Equipment**

The OCC objects to the Staff Reports' failure to find that FirstEnergy did not comply with Ohio Adm. Code 4901:1-10-03(B) regarding records retention and Ohio Adm. Code 4901:1-10-27(D)(1) regarding the requirement to "annually inspect at least one fifth of all distribution circuits and equipment," and the failure to recommend an appropriate remedy for these situations. The Staff Reports did not verify compliance with the inspection standard in 2004 due to FirstEnergy's "transitioning its records"<sup>9</sup> from hardcopy spreadsheets to an electronic database ("SAP") system, which left some inspections unaccounted for. The "transitioning" left gaps in the 2004 inspection record

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<sup>9</sup> See, e.g., CEI Staff Report at 58, OE Staff Report at 50, TE Staff Report at 61.

and, according to the Staff Reports, made it “difficult to confirm . . . compliance.”<sup>10</sup> For 2005, compliance was only confirmed through an after-the-fact audit by Staff.

Additionally, the Staff Reports are silent on FirstEnergy’s compliance in 2006. Ohio Adm. Code 4901:1-10-03(B) requires electric utilities to “maintain records for three years that are sufficient to demonstrate compliance with the rules of this chapter.” FirstEnergy failed to maintain the records necessary to confirm compliance with the rule regarding the inspection of circuits and equipment. FirstEnergy should be found in noncompliance with Ohio Adm. Code 4901:1-10-03(B) and Ohio Adm. Code 4901:1-10-27(D)(1), and an appropriate remedy (e.g. downward adjustment in rates of return and forfeitures<sup>11</sup>) should be implemented.

The OCC objects to the Staff Reports’ failure to recommend consequences for FirstEnergy’s violation of Ohio Adm. Code 4901:1-10-27(D)(1). In addition to recommending that FirstEnergy establish minimum qualifications for its line patrol inspectors, the Staff Reports recommended only that the Company incorporate its circuit information into the SAP database and centralize its records. The Staff Reports’ recommendations do not adequately deal with instances of noncompliance, and failed to propose that FirstEnergy’s noncompliance should be recognized in downward adjustments to the rates of return set in these cases as well as in forfeitures.<sup>12</sup>

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<sup>10</sup> CEI Staff Report at 58, OE Staff Report at 56, TE Staff Report at 61.

<sup>11</sup> The General Assembly gave the PUCO the statutory means to penalize companies whose actions would harm customers, to give incentives to those companies towards future compliance with regulations, and to remedy service deficiencies. These statutes provide for findings and opinions of: inadequate service pursuant to R.C. 4905.22, treble damages under R.C. 4905.61; prohibitions on the issuance of dividends under R.C. 4905.46(A); and forfeitures of up to \$10,000 per violation under R.C. 4905.54, among other statutes.

<sup>12</sup> CEI Staff Report at 58, OE Staff Report at 56, TE Staff Report at 61.

**2. Ohio Adm. Code 4901:1-10-27(E)(1)(a). Distribution Inspection, Maintenance, Repair, and Replacement Programs: Poles and Towers**

The OCC objects to the Staff Reports' failure to recommend any consequences for FirstEnergy's failure to maintain records. The Staff Report states that Staff was unable to verify that the inspection programs were completed on a company-by-company basis,<sup>13</sup> which is a violation of Ohio Adm. Code 4901:1-10-27(E)(1)(a) that requires utilities to "maintain written programs, procedures, and schedules..." regarding their pole and tower inspection programs. Staff confirmed that FirstEnergy did not follow its poles and towers inspection program in accordance with the rule. The recommendations in the Staff Reports do not adequately deal with FirstEnergy's noncompliance, and failed to propose that FirstEnergy's noncompliance should be recognized in downward adjustments to the rates of return set in these cases as well as in forfeitures.

The OCC objects to the Staff Reports' failure to recommend any specific consequences for FirstEnergy's failure to visually inspect at least 20 percent of the distribution circuits (which includes poles and towers) in each of the years 2001, 2002, 2003, and 2004, as required by Ohio Adm. Code 4901:1-10-27(D)(1).<sup>14</sup> The visual-only inspection requires that 20 percent of the distribution circuits be inspected annually; however, the Company inspected less than 5 percent of the poles.<sup>15</sup> The

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<sup>13</sup> CEI Staff Report at 59-60, OE Staff Report at 58, TE Staff Report at 63.

<sup>14</sup> "(D) Transmission and distribution facilities inspections. Unless otherwise determined by the commission, each electric utility shall, at a minimum, inspect its electric transmission and distribution facilities (circuits and equipment) to maintain safe and reliable service on the following scheduled basis: (1) Distribution - at least one-fifth of all distribution circuits and equipment shall be inspected annually. All distribution circuits and equipment shall be inspected at least once every five years." Ohio Adm. Code 4901:1-10-27(D).

<sup>15</sup> CEI Staff Report at 60, OE Staff Report at 58, TE Staff Report at 63.

recommendations do not adequately deal with the Company's instances of noncompliance, and failed to propose that FirstEnergy's noncompliance should be recognized in downward adjustments to the rates of return set in these cases as well as in forfeitures.

The OCC objects to the Staff Reports' failure to recommend any specific consequences for FirstEnergy's failure to properly inspect its poles and towers as required by Ohio Adm. Code 4901:1-10-27(E)(1)(a).<sup>16</sup> Staff's recommendations ignore FirstEnergy's inadequate inspection program, limited to less than 5 percent of poles from 2001-2004, and failed to propose that FirstEnergy's noncompliance should be recognized in downward adjustments to the rates of return set in these cases as well as in forfeitures.

The OCC objects to the Staff Reports' failure to address FirstEnergy's noncompliance with Ohio Adm. Code 4901:1-10-27(E)(1)(a) in 2005 and to propose that FirstEnergy's noncompliance should be recognized in downward adjustments to the rates of return set in these cases as well as in forfeitures.

The OCC objects to the Staff Reports' seeming acquiescence in permitting FirstEnergy to achieve compliance with Ohio Adm. Code 4901:1-10-27(E)(1)(a) through the use of contract personnel.<sup>17</sup> Employees have a vested interest in FirstEnergy's inspection programs, and are more likely to take "ownership" and to be held accountable for the outcomes of these programs. FirstEnergy's inspection programs should be placed in the hands of the Company's own permanent employees who have been properly

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<sup>16</sup> CEI Staff Report at 59, OE Staff Report at 57, TE Staff Report at 62.

<sup>17</sup> CEI Staff Report at 60, OE Staff Report at 58, TE Staff Report at 63.

trained to do these inspections and who have a long-term commitment to the Company's programs.

The OCC objects to the Staff Reports' failure to recommend further pole inspections, in addition to the "95% of scheduled pole inspections for 2006," to accommodate the Company's noncompliance for prior years.<sup>18</sup> Staff Reports should recommend a more stringent poles and towers inspection program than required to merely comply with Ohio Adm. Code 4901:1-10-27(E)(1)(a) to make up for any deficit in poles and towers inspections in prior years.

**3. Ohio Adm. Code 4901:1-10-27(E)(1)(b). Inspection, Maintenance, Repair, and Replacement Programs: Conductors.**

The OCC objects to the Staff Reports' findings that FirstEnergy complied with the requirement to "annually inspect at least one fifth of all distribution circuits and equipment."<sup>19</sup> The Staff Reports did not establish compliance with the standard in 2004. The Staff Reports did not establish compliance with the inspection standard in 2004 due to FirstEnergy's "transitioning its records"<sup>20</sup> from hardcopy spreadsheets to an electronic database (SAP) system, which left some inspections unaccounted for. Ohio Adm. Code 4901:1-10-03(B) requires electric utilities to "maintain records for three years that are sufficient to demonstrate compliance with the rules of this chapter." FirstEnergy failed to maintain the records necessary to confirm compliance with this rule. Therefore, FirstEnergy should be found in noncompliance with Ohio Adm. Code 4901:1-10-03(B) and Ohio Adm. Code 4901:1-10-27(D)(1), and FirstEnergy's noncompliance should be

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<sup>18</sup> Id.

<sup>19</sup> CEI Staff Report at 58, OE Staff Report at 56, TE Staff Report at 61.

<sup>20</sup> See, e.g., CEI Staff Report at 58, OE Staff Report at 50, TE Staff Report at 61.

recognized in downward adjustments to the rates of return set in these cases as well as in forfeitures.

The OCC objects to the FirstEnergy Staff Reports' failure to recommend consequences for the Company's violation of Ohio Adm. Code 4901:1-10-27(D)(1). In addition to recommending that FirstEnergy establish minimum qualifications for its line patrol inspectors, the Staff recommended only that the Company incorporate its circuit information into the SAP database and centralize its records. The recommendations ignore the Company's instances of noncompliance, and failed to propose that FirstEnergy's noncompliance should be recognized in downward adjustments to the rates of return set in these cases as well as in forfeitures.<sup>21</sup>

**4. Ohio Adm. Code 4901:1-10-27(E)(1)(c). Inspection, Maintenance, Repair, and Replacement Programs: Pad-Mounted Transformers.**

The OCC objects to the failure in the CEI Staff Report and the OE Staff Report to recommend any specific consequences for the failure of CEI and OE to maintain records. Staff field inspections in 2006 determined that both CEI's and OE's inspection forms did not reflect actual on-site conditions, which was required in the Company's inspection program. This violates Ohio Adm. Code 4901:1-10-27(D)(1), which requires the annual inspection of at least one fifth of all distribution circuits and equipment. In addition, Staff confirmed that CEI and OE were not following the pad mounted transformer inspection program in accordance with the rule. The recommendations do not adequately deal with the CEI's and OE's instances of noncompliance, and failed to propose that

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<sup>21</sup> CEI Staff Report at 61, OE Staff Report at 59, TE Staff Report at 64.

FirstEnergy's noncompliance should be recognized in downward adjustments to the rates of return set in these cases as well as in forfeitures.<sup>22</sup>

The OCC objects to the Staff Reports' failure to address CEI's and OE's noncompliance with 4901:1-10-27(E)(1)(c) in 2006. The Staff's recommendations do not adequately deal with the Company's instances of noncompliance, and failed to propose that FirstEnergy's noncompliance should be recognized in downward adjustments to the rates of return set in these cases as well as in forfeitures.<sup>23</sup>

**5. Ohio Adm. Code 4901:1-10-27(E)(1)(d) and (e).  
Inspection, Maintenance, Repair, and Replacement  
Programs: Line Reclosers and Line Capacitors.**

The OCC objects to the Staff Reports' failure to recommend consequences for violation of Ohio Adm. Code 4901:1-10-27(D)(1). FirstEnergy did not maintain sufficient documentation to verify that it conducted operation tests on switched capacitor banks as required in its 2005 and 2006 "Rule 26" reports.<sup>24</sup> The Staff recommended only that FirstEnergy initiate and continue to conduct an independent quality control audit program. The recommendations do not adequately deal with the instances of noncompliance, and failed to propose that FirstEnergy's noncompliance should be recognized in downward adjustments to the rates of return set in these cases as well as in forfeitures.<sup>25</sup>

The OCC objects to Staff Reports' failure to recommend consequences for FirstEnergy's failure to conduct quality control, random sample inspections as required

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<sup>22</sup> CEI Staff Report at 63-64, OE Staff Report at 61-62.

<sup>23</sup> Id.

<sup>24</sup> CEI Staff Report at 64-65, OE Staff Report at 62-63, TE Staff Report at 67.

<sup>25</sup> CEI Staff Report at 65-66, OE Staff Report at 63-64, TE Staff Report at 68.



by Ohio Adm. Code 4901:1-10-27 (E)(1) (d) and (e). Staff recommended that FirstEnergy develop a review process with audit checkpoints, which does not adequately deal with the Company's instances of noncompliance and failed to propose that FirstEnergy's noncompliance should be recognized in downward adjustments to the rates of return set in these cases as well as in forfeitures.<sup>26</sup>

**6. Ohio Adm. Code 4901:1-10-27(E)(1)(f). Inspection, Maintenance, Repair, and Replacement Programs: Right-of Way Vegetation Control.**

The OCC objects to the Staff Reports' failure to recommend consequences for FirstEnergy's failure to maintain accurate and complete records regarding vegetation management for all or part of the period 2003-2006. The OCC objects to the Staff Reports' failure to recommend consequences for FirstEnergy's failure to follow its vegetation management program for all or part of the period 2003-2006. The recommendations do not adequately deal with the Company's instances of noncompliance, and failed to propose that FirstEnergy's noncompliance should be recognized in downward adjustments to the rates of return set in these cases as well as in forfeitures.<sup>27</sup>

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<sup>26</sup> Id.

<sup>27</sup> CEI Staff Report at 66 - 68, OE Staff Report at 64-67, TE Staff Report at 68-71.

**7. Service Reliability Assessment: Failure to Meet Reliability Targets Pursuant to Ohio Adm. Code 4901:1-10-10 : Electric Service Performance Reliability Assessment.**

**a. System Average Interruption Frequency Index (“SAIFI”)**

The OCC objects to the OE Staff Report’s failure to recommend consequences for OE’s repeated inability to meet its SAIFI targets during each of the past three years (2004 through 2006). The recommendations do not adequately deal with OE’s instances of noncompliance, and failed to propose that OE’s noncompliance should be recognized in downward adjustments to its rate of return set in these cases as well as in forfeitures.<sup>28</sup>

The OCC objects to the CEI Staff Report’s failure to recommend consequences for CEI’s repeated inability to meet its SAIFI targets during each of the past four years (2003 through 2006). The recommendations do not adequately deal with CEI’s instances of noncompliance, and failed to propose that CEI’s noncompliance should be recognized in downward adjustments to its rate of return set in these cases as well as in forfeitures.<sup>29</sup>

**b. Customer Average Interruption Duration Index (“CAIDI”)**

The OCC objects to the CEI Staff Report’s failure to recommend consequences for CEI’s repeated inability to meet its CAIDI targets during each of the past seven years (2000 through 2007).<sup>30</sup> Despite Staff’s agreement with CEI on lower, interim targets for 2006 and 2007, CEI failed to meet any of its interim targets for 2006. Staff merely

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<sup>28</sup> OE Staff Report at 72-79.

<sup>29</sup> CEI Staff Report at 75-79.

<sup>30</sup> CEI Staff Report at 76.

selected a consultant to conduct a “focused assessment” of CEI’s reliability.<sup>31</sup> The consultant’s report, completed in October of 2007, contained a series of recommendations it deemed necessary for CEI to meet its SAIFI and CAIDI targets by the end of 2009 and maintain such performance for a number of years in the future.<sup>32</sup> The CEI Staff Report’s recommendations do not adequately deal with CEI’s instances of noncompliance, and failed to propose that CEI’s noncompliance should be recognized in downward adjustments to its rate of return set in these cases as well as in forfeitures.

The OCC objects to the CEI Staff Report’s support of the consultant’s long-term recommendation that CEI “Maintain Capital Spending at the level currently planned for 2008 (\$84.7 million) for a minimum of 5 years.”<sup>33</sup> Maintaining currently planned capital spending for the intermediate-run does not adequately deal with CEI’s level of noncompliance.

The OCC objects to the CEI Staff Report’s support of the consultant’s long-term recommendation that CEI maintain “reliability-related” investments “at levels, percentage-wise, commensurate to those for 2007.”<sup>34</sup> Such investment levels will be inadequate to maintain long-term reliability.

## **8. Customer Service Audit**

The OCC objects to the Staff Reports’ failure to recommend, reporting on the Staff’s audits of the Company’s customer service practices, that FirstEnergy immediately

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<sup>31</sup> Id.

<sup>32</sup> Id. at 77-79.

<sup>33</sup> Id. at 78.

<sup>34</sup> Id.

post on its website additional information regarding credit establishment options such as the use of a customer deposit, guarantor, and payment record history.<sup>35</sup>

The OCC objects to the Staff Reports' failure to recommend, while recognizing "many customer complaints," a reversal in the Company's reduction in the hours for customers to make a payment and to have service restored the same day.<sup>36</sup>

The OCC objects to the Staff Reports' failure to recommend an immediate-term update by FirstEnergy to its computer systems to permit residential customers to use the one-third payment plan.<sup>37</sup> In addition, the OCC objects to the Staff Reports' failure to recommend that the Company use an alternative until FirstEnergy updates its computer system for residential customers regarding the one-third payment so that the burden on the residential customer to contact the Company each month is removed.

**G. Management and Operation Review: Energy Efficiency/Demand-Side Management and the DSM Rider<sup>38</sup>**

The OCC objects to the Staff Reports' failure, regarding the Company's demand-side management ("DSM") riders, to increase the energy efficiency/demand-side management investments required of FirstEnergy to obtain a verified energy usage reduction of one and one-half percent over the next 3 years<sup>39</sup> (or approximately \$49 million per year) as part of a comprehensive program that should consider a larger list of energy efficiency programs that have been recommended in studies of such programs

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<sup>35</sup> CEI Staff Report at 79-80, OE Staff Report at 79, TE Staff Report at 79-80.

<sup>36</sup> CEI Staff Report at 80, OE Staff Report at 79, TE Staff Report at 79-80.

<sup>37</sup> CEI Staff Report at 80, OE Staff Report at 80, TE Staff Report at 80.

<sup>38</sup> CEI Staff Report at 82-87, OE Staff Report at 81-86, TE Staff Report at 82-87.

<sup>39</sup> The sales volume benchmark should be the total end-use delivery column of PUCO Form FE 4-D2 of the FirstEnergy 2007-Electric Long-Term Forecast Report to the Public Utilities Commission of Ohio, Case No. 07-504-EL-FOR ( page 4-13).

(e.g. the American Council for an Energy Efficient Economy's list of exemplary energy efficiency programs). Such investments can deliver many benefits to customers and should not be limited to current levels or current energy efficiency measures.

The OCC objects to the Staff Reports' failure, regarding the Company's DSM riders, to recommend a collaborative process involving interested stakeholders that would analyze the potential for direct investment by FirstEnergy in energy efficiency resources; design programs; facilitate the implementation of such programs; and periodically evaluate such programs.

### **III. SUMMARY OF MAJOR ISSUES**

R.C. 4903.083 requires (i.e. regarding the scheduling of local public hearings) that the Commission must list in the notice to customers "a brief summary of the then known major issues in contention . . ." by the parties. For this notice, the Commission should include the major issues in a form that is understandable and accurate for customers. To accomplish the General Assembly's objective to notify customers of their opportunity to participate in hearings, the Commission should include the following as major issues in this proceeding:

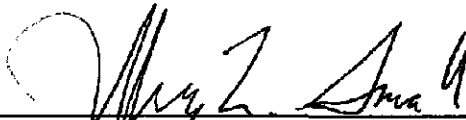
1. The amount of additional revenue that FirstEnergy companies of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company will be authorized to collect through increasing its distribution rates charged to consumers, including the proper treatment of various taxes, the eligibility of some distribution expenditures for special regulatory treatment, and the treatment of labor expense.

2. The appropriate profit the FirstEnergy companies will have an opportunity to earn from the charges for distribution service to consumers, including the appropriate profit that should be considered in connection with the service quality provided to distribution customers of the FirstEnergy companies;
3. The adequacy of distribution service provided by the FirstEnergy companies under Ohio law;
4. The fair and equitable amount of any increase in revenue that residential customers should pay, and the fair and equitable amount of revenue that should be paid by residential customers who would have been eligible for rate schedules that the FirstEnergy companies propose to eliminate;
5. The level of commitment by the FirstEnergy companies to the design, implementation, and evaluation of energy efficiency programs.

The OCC respectfully requests that these issues be included in the notices of the local public hearings in accordance with R.C. 4903.083.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

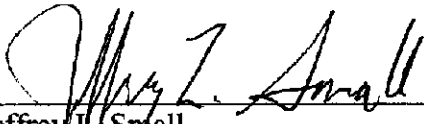
A handwritten signature in black ink, appearing to read "Jeffrey L. Small", is written over a horizontal line.

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## **CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing *Objections to the PUCO's Staff Reports and Summary of Major Issues by the Office of the Ohio Consumers' Counsel*, was served by Regular U.S. Mail Service, postage prepaid, to all parties this 3<sup>rd</sup> day of January, 2008.

  
\_\_\_\_\_  
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