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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 Increase Rates for Distribution Service, Modify Certain Accounting Practices and for Tariff Approvals.	))))))	Case No. 07-551-EL-AIR Case No. 07-552-EL-ATA Case No. 07-553-EL-AAM Case No. 07-554-EL-UNC

OBJECTIONS TO THE STAFF REPORTS OF INVESTIGATION AND SUMMARY OF MAJOR ISSUES OF INDUSTRIAL ENERGY USERS-OHIO

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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OBJECTIONS TO THE STAFF REPORTS OF INVESTIGATION AND SUMMARY OF MAJOR ISSUES OF INDUSTRIAL ENERGY USERS-OHIO

Pursuant to Section 4909.19, Revised Code, Rule 4901-1-28, Ohio Administrative Code, and the Attorney Examiner's Entry dated December 21, 2007, Industrial Energy Users-Ohio ("IEU-Ohio") hereby files its Objections to the Staff Reports of Investigation ("Staff Reports") in the above-captioned matters. The Staff Reports were filed with the Public Utilities Commission of Ohio ("Commission") on December 4, 2007, setting forth the Commission Staff's ("Staff") findings regarding the applications for authority to increase rates for distribution service filed by Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("TE") (collectively, "Companies", "FirstEnergy", or "FE") on June 7, 2007. In submitting the Objections listed below, IEU-Ohio specifically reserves the right to contest, through presentation of documentary evidence, testimony or cross-examination, issues on which Staff's position changes, or which are newly raised, between the issuance of the Staff Report and the closing of the record.

I. OBJECTIONS TO THE STAFF REPORT ON OHIO EDISON

IEU-Ohio objects to the Staff Report on OE in the following particulars:

A. REVENUE REQUIREMENT

1. IEU-Ohio objects to Staff's recommended revenue increase range of $56,939,104 to $65,623,537. Staff Report at 91 (Schedule A-1, line 11). The revenue increase proposed by Staff significantly overstates the magnitude of the increase to which OE is entitled and has supported. As more specifically described in the Objections to follow, Staff's recommended increase is the product of certain unreasonable, unlawful, and erroneous determinations and will result in rates that are unreasonable and provide OE excessive compensation and return for the services it provides.

B. RATE BASE

2. IEU-Ohio objects to Staff's inclusion of the deferred tax asset "Extraordinary Gain – FIN 47" in the amount of $9,258,389 in rate base. Staff Report at 130 (Schedule B-6). Among other things, this deferred tax relates to asbestos removal at retired generating plants and, as such, is not appropriately included in distribution rate base.

3. IEU-Ohio objects to Staff's inclusion of a 13-month average of working capital for Materials and Supplies inventories in the amount of $8,622,346. Staff Report at 128 (Schedule B-5). The inventory is owned by FirstEnergy Service Company, not OE and, therefore, the amount reflected on Schedule B-5 for Materials and Supplies inventories should be zero. Moreover, through the FirstEnergy Service Company billings to OE, the costs associated with the inventories are being passed on to OE and

are, therefore, being reflected in the FirstEnergy Service Company expenses that OE has included in its revenue requirements determination.

4. IEU-Ohio objects to Staff's inclusion of the deferred tax asset "Reserve for Inventory Obsolescence" in the amount of $3,970,423 in rate base. Staff Report at 130 (Schedule B-6). This deferred tax asset relates to the inventory of the generation business and is therefore not appropriately included in distribution rate base.

C. OPERATING INCOME

5. IEU-Ohio objects to Staff's failure to adjust base revenue to recognize voltage discounts that OE has inappropriately recognized as exclusively discounts to distribution revenues. In a manner similar to Staff's recommended treatment of uncollectible expense, voltage discounts should be recognized as applicable to distribution, transmission and generation revenues, rather than exclusively attributed to distribution revenues. Staff Report at 12.

6. IEU-Ohio objects to Staff's failure to adjust base revenues to recognize the appropriate treatment of discounts associated with special contract customers. OE has attributed 100% of the discount associated with special contract customers as a discount to distribution revenues. At the time OE's rates were unbundled, discounts associated with special contract customers were attributed entirely to the generation function. *See In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, Case Nos. 99-1212-EL-ETP, 99-1213-EL-ATA, 99-1214-EL-AAM, Testimony of David M. Blank at 84-85 (December 22, 1999).

7. IEU-Ohio objects to Staff's failure to adjust pension and other post-retirement employee benefits ("OPEB") expenses on Schedule C-3.6 to reflect the test year pension and OPEB expenses rather than test year service costs as proposed by OE. Staff Report at 147.

8. IEU-Ohio objects to Staff's Schedule C-3.4, which indicates that the depreciation expense adjustment was based upon proposed accrual rates and balances as of February 29, 2008 (the end of the test year), while the text of the Staff Report at page 11 states that the depreciation expense adjustment reflects Staff's recommended depreciable plant in service as of the date certain (May 31, 2007). Staff Report at 11, 145.

D. TARIFF STRUCTURE

9. IEU-Ohio objects to Staff's recommendation to approve the consolidation of OE's existing tariff rate schedules to a total of eight rate schedules [Residential (RS), General Service-Secondary (GS), General Service–Primary (GP), General Service-Subtransmission (GSU), General Service–Transmission (GT), Street Lighting (STL), Traffic Lighting (TL) and Private Outdoor Lighting (POL)] to the extent that Staff recognized that some customers will see dramatic rate increases and other anomalous results but failed to quantify the scope of this problem and failed to recommend steps to assist customers in mitigating significant rate increases other than Staff's recommended approval of Rider BDC. Staff Report at 23, 31.

10. IEU-Ohio objects to the Staff's recommended approval of OE's request to maintain the upfront payment concept for line extensions. Staff Report at 20-21. Although Staff proposed a lower upfront payment than requested by OE, Staff

recognized but disregarded the fact that the current cost recovery mechanism is the result of a series of Commission-approved stipulations in Case No. 01-2708-EL-COI and was intended to be a "stop-gap" measure to allow OE a cost recovery mechanism while its distribution rates were frozen.

E. REVENUE DISTRIBUTION AND RATE DESIGN

11. IEU-Ohio objects to Staff's conclusion that OE generally followed acceptable cost allocation guidelines in its cost of service study. Staff Report at 26. The cost of service study relied upon by OE and apparently accepted at least in part by Staff contains a number of material inaccuracies that render the results unsuitable for the intended purpose. These inaccuracies distort the calculated individual class and overall company calculated rates of return that provide the apparent basis for Staff's recommended distribution of the recommended revenue increase. These inaccuracies include, but may not be limited to:

- The cost of service study reflects the inclusion of deferred fuel costs pursuant to OE's Rate Certainty Plan (Case No. 05-704-EL-ATA *et al.*) that the Ohio Supreme Court has determined cannot be recovered under distribution rates.
- The cost of service study significantly understates the distribution revenues currently received from customers that receive a voltage or equipment discount or are served under a special contract.
- The cost of service study significantly overstates expenses associated with pension and OPEB expenses.

12. IEU-Ohio objects to Staff's recommended distribution of tariff-related increases. Staff Report at 30.

13. IEU-Ohio objects to Staff's recommended capacity charges for the General Service-Secondary (GS), General Service–Primary (GP), General Service-Subtransmission (GSU), and General Service–Transmission (GT) rate schedules. Staff Report at 33.

F. MISCELLANEOUS

14. IEU-Ohio objects to Staff's recommendation that OE provide a typical bill comparison in conjunction with final compliance tariffs filed in response to the order in this proceeding. Staff Report at 36. A typical bill comparison reflecting the Commission's determination of an appropriate revenue requirement, rate design and schedules approved in this proceeding should be submitted before a final Commission order is issued in order to help ensure the results of this proceeding do not produce anomalous results for individual customers.

15. IEU-Ohio objects to Staff's statement that its recommended rates "reflect any recommendation as to the total revenue requirement recommended by Staff in other sections of this report." Staff Report at 32. IEU-Ohio believes this is a typographical error that should state Staff's recommended rates do "**NOT** reflect any recommendation as to the total revenue requirement recommended by Staff in other sections of this report."

II. OBJECTIONS TO THE STAFF REPORT ON CLEVELAND ELECTRIC ILLUMINATING COMPANY

IEU-Ohio objects to the Staff Report on CEI in the following particulars:

A. REVENUE REQUIREMENT

16. IEU-Ohio objects to the Staff's recommended revenue increase range of $53,774,333 to $61,036,792. Staff Report at 92 (Schedule A-1, line 11). The revenue increase proposed by Staff significantly overstates the magnitude of the increase to which CEI is entitled and has supported. As more specifically described in the Objections to follow, Staff's recommended increase is the product of certain unreasonable, unlawful, and erroneous determinations and will result in rates that are unreasonable and provide CEI excessive compensation and return for the services it provides.

B. RATE BASE

17. IEU-Ohio objects to Staff's inclusion of a 13-month average of working capital for Materials and Supplies inventories in the amount of $20,009,419. Staff Report at 129 (Schedule B-5). The inventory is owned by FirstEnergy Service Company, not CEI and, therefore, the amount reflected on Schedule B-5 for Materials and Supplies inventories should be zero. Moreover, through the FirstEnergy Service Company billings to CEI, the costs associated with the inventories are being passed on to CEI and are, therefore, being reflected in the FirstEnergy Service Company expenses that CEI has included in its revenue requirements determination.

C. OPERATING INCOME

18. IEU-Ohio objects to Staff's failure to adjust base revenue to recognize voltage discounts that CEI has inappropriately recognized as exclusively discounts to distribution revenues. In a manner similar to Staff's recommended treatment of uncollectible expense, voltage discounts should be recognized as applicable to

distribution, transmission and generation revenues, rather than exclusively attributed to distribution revenues. Staff Report at 12.

19. IEU-Ohio objects to Staff's failure to adjust base revenues to recognize the appropriate treatment of discounts associated with special contract customers. CEI has attributed 100% of the discount associated with special contract customers as a discount to distribution revenues. At the time CEI's rates were unbundled, discounts associated with special contract customers were attributed entirely to the generation function. *See In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, Case Nos. 99-1212-EL-ETP, 99-1213-EL-ATA, 99-1214-EL-AAM, Testimony of David M. Blank at 84-85 (December 22, 1999).

20. IEU-Ohio objects to Staff's failure to adjust pension and OPEB expenses in Schedule C-3.6 to reflect the test year pension and OPEB expenses rather than test year service costs as proposed by CEI. Staff Report at 148.

21. IEU-Ohio objects to Staff's Schedule C-3.4, which indicates that the depreciation expense adjustment was based upon proposed accrual rates and balances as of February 29, 2008 (the end of the test year), while the text of the Staff Report at page 11 states that the depreciation expense adjustment reflects Staff's recommended depreciable plant in service as of the date certain (May 31, 2007). Staff Report at 11, 146.

D. TARIFF STRUCTURE

22. IEU-Ohio objects to Staff's recommendation to approve the consolidation of CEI's existing tariff rate schedules to a total of eight rates schedules [Residential (RS), General Service-Secondary (GS), General Service–Primary (GP), General Service–Subtransmission (GSU), General Service–Transmission (GT), Street Lighting (STL), Traffic Lighting (TL) and Private Outdoor Lighting (POL)] to the extent that Staff recognized that some customers will see dramatic rate increases and other anomalous results but failed to quantify the scope of this problem and failed to recommend steps to assist customers in mitigating significant rate increases other than Staff's recommended approval of Rider BDC. Staff Report at 23, 31.

23. IEU-Ohio objects to the Staff's recommended approval of CEI's request to maintain the upfront payment concept for line extensions. Staff Report at 20-21. Although Staff proposed a lower upfront payment than requested by CEI, Staff recognized but disregarded the fact that the current cost recovery mechanism is the result of a series of Commission-approved stipulations in Case No. 01-2708-EL-COI and was intended to be a "stop-gap" measure to allow OE a cost recovery mechanism while its distribution rates were frozen.

E. REVENUE DISTRIBUTION AND RATE DESIGN

24. IEU-Ohio objects to Staff's conclusion that CEI generally followed acceptable cost allocation guidelines in its cost of service study. Staff Report at 26. The cost of service study relied upon by CEI and apparently accepted at least in part by Staff contains a number of material inaccuracies that render the results unsuitable for the intended purpose. These inaccuracies distort the calculated individual class and

overall company calculated rates of return that provide the apparent basis for Staff's recommended distribution of the recommended revenue increase. These inaccuracies include, but may not be limited to:

- The cost of service study reflects the inclusion of deferred fuel costs pursuant to CEI's Rate Certainty Plan (Case No. 05-704-EL-ATA *et al.*) that the Ohio Supreme Court has determined cannot be recovered under distribution rates.
- The cost of service study significantly understates the distribution revenues currently received from customers that receive a voltage or equipment discount or are served under a special contract.
- The cost of service study significantly overstates expenses associated with pension and OPEB expenses.

25. IEU-Ohio objects to Staff's recommended distribution of tariff-related increases. Staff Report at 30.

26. IEU-Ohio objects to Staff's recommended capacity charges for General Service-Secondary (GS). Staff Report at 32. IEU-Ohio objects to Staff's recommended approval of CEI's proposed capacity charges for General Service–Primary (GP), General Service–Subtransmission (GSU), and General Service–Transmission (GT) rate schedules. *Id.*

F. MISCELLANEOUS

27. IEU-Ohio objects to Staff's recommendation that CEI provide a typical bill comparison in conjunction with final compliance tariffs filed in response to the order in this proceeding. Staff Report at 35. A typical bill comparison reflecting the

Commission's determination of an appropriate revenue requirement, rate design and schedules approved in this proceeding should be submitted before a final Commission order is issued in order to help to ensure the results of this proceeding do not produce anomalous results for individual customers.

28. IEU-Ohio objects to Staff's statement that its recommended rates "reflect any recommendation as to the total revenue requirement recommended by Staff in other sections of this report." Staff Report at 32. IEU-Ohio believes this is a typographical error that should state Staff's recommended rates do "**NOT** reflect any recommendation as to the total revenue requirement recommended by Staff in other sections of this report."

III. OBJECTIONS TO THE STAFF REPORT ON TOLEDO EDISON COMPANY

IEU-Ohio objects to the Staff Report on TE in the following particulars:

A. REVENUE REQUIREMENT

29. IEU-Ohio objects to Staff's recommended revenue increase range of $50,537,643 to $53,522,408. Staff Report at Schedule A-1, line 11. The revenue increase proposed by Staff significantly overstates the magnitude of the increase to which TE is entitled and has supported. As more specifically described in the Objections to follow, Staff's recommended increase is the product of certain unreasonable, unlawful, and erroneous determinations and will result in rates that are unreasonable and provide TE excessive compensation and return for the services it provides.

B. RATE BASE

30. IEU-Ohio objects to Staff's inclusion of the deferred tax asset "Asbestos Removal – FIN 47" in the amount of $871,199 in rate base. Staff Report at 131 (Schedule B-6). This deferred tax relates to asbestos removal at retired generating plants and, as such, is not appropriately included in distribution rate base.

31. IEU-Ohio objects to Staff's inclusion of a 13-month average of working capital for Materials and Supplies inventories in the amount of $4,832,729. Staff Report at 129 (Schedule B-5). The inventory is owned by FirstEnergy Service Company, not TE and, therefore, the amount reflected on Schedule B-5 for Materials and Supplies inventories should be zero. Moreover, through the FirstEnegy Service Company billings to TE, the costs associated with the inventories are being passed on to TE and are, therefore, being reflected in the FirstEnergy Service Company expenses that TE has included in its revenue requirements determination.

32. IEU-Ohio objects to Staff's inclusion of the deferred tax asset "Reserve for Obsolescence - Inventory" in the amount of $537,496 in rate base. Staff Report at 131 (Schedule B-6). This deferred tax asset relates to the inventory of the generation business and is therefore not appropriately included in distribution rate base.

C. OPERATING INCOME

33. IEU-Ohio objects to Staff's failure to adjust base revenue to recognize voltage discounts that TE has inappropriately recognized as exclusively discounts to distribution revenues. In a manner similar to Staff's recommended treatment of uncollectible expense, voltage discounts should be recognized as applicable to

distribution, transmission and generation revenues, rather than exclusively attributed to distribution revenues. Staff Report at 12.

34. IEU-Ohio objects to Staff's failure to adjust base revenues to recognize the appropriate treatment of discounts associated with special contract customers. TE has attributed 100% of the discount associated with special contract customers as a discount to distribution revenues. At the time TE's rates were unbundled, discounts associated with special contract customers were attributed entirely to the generation function. *See In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, Case Nos. 99-1212-EL-ETP, 99-1213-EL-ATA, 99-1214-EL-AAM, Testimony of David M. Blank at 84-85 (December 22, 1999).

35. IEU-Ohio objects to Staff's failure to adjust pension and OPEB expenses on Schedule C-3.6 to reflect the test year pension and OPEB expenses rather than test year service costs as proposed by TE. Staff Report at 147.

36. IEU-Ohio objects to Staff's Schedule C-3.4, which indicates that the depreciation expense adjustment was based upon proposed accrual rates and balances as of February 29, 2008 (the end of the test year), while the text of the Staff Report at page 11 states that the depreciation expense adjustment reflects Staff's recommended depreciable plant in service as of the date certain (May 31, 2007). Staff Report at 11, 145.

D. TARIFF STRUCTURE

37. IEU-Ohio objects to Staff's recommendation to approve the consolidation of TE's existing tariff rate schedules to a total of eight rate schedules [Residential (RS), General Service–Secondary (GS), General Service–Primary (GP), General Service-Subtransmission (GSU), General Service–Transmission (GT), Street Lighting (STL), Traffic Lighting (TL) and Private Outdoor Lighting (POL)] to the extent that Staff recognized that some customers will see dramatic rate increases and other anomalous results but failed to quantify the scope of this problem and failed to recommend steps to assist customers in mitigating significant rate increases other than Staff's recommended approval of Rider BDC. Staff Report at 24, 31.

38. IEU-Ohio objects to Staff's recommended approval of TE's request to maintain the upfront payment concept for line extensions. Staff Report at 20-21. Although Staff proposed a lower upfront payment than requested by TE, Staff recognized but disregarded the fact that the current cost recovery mechanism is the result of a series of Commission-approved stipulations in Case No. 01-2708-EL-COI and was intended to be a "stop-gap" measure to allow TE a cost recovery mechanism while its distribution rates were frozen.

E. REVENUE DISTRIBUTION AND RATE DESIGN

39. IEU-Ohio objects to Staff's conclusion that TE generally followed acceptable cost allocation guidelines in its cost of service study. Staff Report at 27. The cost of service study relied upon by TE and apparently accepted at least in part by Staff contains a number of material inaccuracies that render the results unsuitable for the intended purpose. These inaccuracies distort the calculated individual class and

overall company calculated rates of return that provide the apparent basis for Staff's recommended distribution of the recommended revenue increase. These inaccuracies include but may not be limited to:

- The cost of service study reflects the inclusion of deferred fuel costs pursuant to TE's Rate Certainty Plan (Case No. 05-704-EL-ATA *et al.*) that the Ohio Supreme Court has determined cannot be recovered under distribution rates.
- The cost of service study significantly understates the distribution revenues currently received from customers that receive a voltage or equipment discount or are served under a special contract.
- The cost of service study significantly overstates expenses associated with pension and OPEB expenses.

An appropriate cost of service study requires that all known material differences in class and total company expenses and revenues be recognized. The Staff did not perform its own cost of service study, but rather suggested a limited adjustment to the revenue distribution based upon Staff's assessment of how removal of deferred fuel costs might impact the cost of service.

40. IEU-Ohio objects to Staff's recommended distribution of tariff-related increases. Staff Report at 30.

41. IEU-Ohio objects to Staff's recommended capacity charges for General Service–Secondary (GS) and General Service–Primary (GP). Staff Report at 33. IEU-Ohio objects to Staff's recommended approval of TE's proposed capacity charges

for General Service–Subtransmission (GSU), and General Service–Transmission (GT) rate schedules. Staff Report at 33.

F. MISCELLANEOUS

42. IEU-Ohio objects to Staff's recommendation that TE provide a typical bill comparison in conjunction with final compliance tariffs filed in response to the order in this proceeding. Staff Report at 35. A typical bill comparison reflecting the Commission's determination of an appropriate revenue requirement, rate design and schedules approved in this proceeding should be submitted before a final Commission order is issued in order to help to ensure the results of this proceeding do not produce anomalous results for individual customers.

43. IEU-Ohio objects to Staff's statement that its recommended rates "reflect any recommendation as to the total revenue requirement recommended by Staff in other sections of this report." Staff Report at 32. IEU-Ohio believes this is a typographical error that should state Staff's recommended rates do "**NOT** reflect any recommendation as to the total revenue requirement recommended by Staff in other sections of this report."

IV. SUMMARY OF MAJOR ISSUES

The major issues in this case will be:

1. The level of increase in rates that FirstEnergy will be authorized to implement;

2. The appropriate distribution of the revenue increase authorized in this proceeding and the associated rate design;

3. The appropriate recognition of voltage discounts in distribution base revenues;

4. The appropriate recognition of special contract discounts in distribution base revenues;

5. Whether pension and OPEB expenses should be recognized based upon test year expenses or test year service costs;

6. Whether FirstEnergy's tariff consolidation proposal should be approved as proposed without further mitigation measures to foreclose anomalous results to individual customers;

7. Whether FirstEnergy's cost of service studies recognized actual revenues and expenses; and

8. The appropriateness of the cost recovery mechanism for line extensions.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Objections to the Staff Reports of Investigation and Summary of Major Issues of Industrial Energy Users-Ohio* was served upon the following parties of record this 3rd day of January 2008, *via* electronic transmission, hand-delivery, or ordinary U.S. mail, postage prepaid.

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