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FILE

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

REPLY BRIEF OF OHIO PARTNERS FOR AFFORDABLE ENERGY

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Introduction

Critical decisions about the future of distribution service will be made as a result of the instant litigation. The three FirstEnergy Corporation Ohio operating companies – Cleveland Electric Illuminating Company ("CEI"), The Ohio Edison Company ("OE"), and The Toledo Edison Company ("TE" and collectively "FirstEnergy" or "the Companies") have returned to the Public Utilities Commission of Ohio ("PUCO" or "the Commission") for base rate cases, the first in a very long time. Significant changes have been made to the regulatory framework since the last rate cases for the Companies; FirstEnergy did not even exist when the last rate cases were litigated.

Am. Sub. SB 3 (R.C. Chapter 4928 ("SB 3")) fundamentally alters the functions and responsibilities of monopoly electric distribution utilities. Rates have been unbundled and each component – generation, transmission and distribution – has its own cost structure. The individual elements of utility service produce profits in different ways. Generation makes money by selling as much power and capacity as possible at the highest possible price. Transmission rates

are titularly regulated by the Federal Energy Regulatory Commission, but RTO market designs and administrative fees appear designed to maximize income for transmission owners, driven like generation by customer demand.

Distribution remains subject to state cost-based regulation. Test-year expenses and a return of and on rate base at date certain produce the utility's revenue requirement for the test year. The revenue requirement allows utilities to earn a reasonable return on their investment; additional profits may be gained through cutting expenses or increasing sales while the rates are in effect because the overall costs of the distribution system are relatively fixed.

The Commission needs to recognize the implications of unbundling and the different regulatory treatments of distribution, transmission and generation. Distribution rates must be just and reasonable. To meet this standard, the least-cost approach to providing reliable service for customers should be followed. R.C. §4909.15 (just and reasonable rates) R.C. §4905.70 (energy conservation), R.C. §4928.02(D) (demand side resources), R.C. §4928.03 (regulation of distribution), and R.C. 4928.31(A)(1) (unbundling) charge distribution companies with responsibility to ensure their customers minimize the use of generation and transmission. Lower demand through conservation and efficiency can reduce the investment customers will have to make to ensure a reliable distribution system, which will benefit customers short- and long-term. Reducing generation and transmission use will result in the least cost outcome. Regulated electric distribution utilities no longer have an interest in promoting energy consumption.

The imperative of affordability must be the primary focus of distribution regulation.

FirstEnergy too recognizes the need to redefine the regulatory compact but the views of the Companies are the opposite of the needs of the customers. The Companies believe that ratemaking conventions benefiting FirstEnergy should be continued. Where conventions benefits customers, FirstEnergy argues that the new regulatory paradigm should permit an approach that maximizes profit but ignores precedent. FirstEnergy is concerned only about maintaining "investor perception" in "increasingly uncertain times." *Initial Brief of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company* ("FE Brief") at 2. The two primary options to reduce customer costs and increase reliability – conservation and efficiency – are simply dismissed.

Staff does a better job of balancing the interests of customers and FirstEnergy, but not much better. The Staff appropriately seeks to apply the statutory requirements of traditional cost-of-service regulation to setting distribution rates. Staff correctly removes fuel cost deferrals from the discussion per the decision of the Ohio Supreme Court and applies a fairly rigorous analysis to the RCP reliability-related deferrals. And, Staff proposes a much more reasonable revenue requirements for the Companies.

Staff takes several approaches that are not in the best interests of customers. It dismisses customer calls for efficiency investments until current programs are evaluated. At the same time Staff sanctions a rider for an

advanced metering infrastructure which is the subject of a separate docket and of dubious benefit to customers. Staff opposition to changing the amortization period for existing meters is a positive but begs the question. AMI should not be a part of this case.

This is the time to redefine distribution service to meet the needs of customers given the evolution of regulation. Distribution regulation must change with the times. Single *function* – not single issue -- ratemaking is what is required under Ohio law to set just and reasonable distribution rates. It must be implemented in the public interest.

OPAE's failure to address any contested issues raised or discussed in this proceeding and raised in other parties' initial briefs does not equate to agreement with the positions advocated by those parties.

ISSUES

I. FirstEnergy's Positions on Rate Base, Net Operating Income, and Rate of Return will not produce Just and Reasonable Rates.

A. Service Company General Plant – FirstEnergy asserts that if an error by the Company is unearthed during discovery, it should be imputed to be a part of rate base.

Staff correctly excludes general and intangible plant that was not included in Companies' filing as of the date certain. It is FirstEnergy's responsibility to prepare and file the application. It is not the obligation of the PUCO Staff to ferret out additional rate base items. The components of the application as of the date certain establish the rate base; otherwise the date would be much less than certain. R.C. §4909.15(A)(1). Moreover, the excluded assets were not owned by

the distribution Companies. The fact that the assets are "reflected in the rates currently being charged" is irrelevant because the rates were set in long ago cases. The assets were owned by the Service Company as of the date certain. *FE Brief* at 4. As Staff points out, ratepayers are paying depreciation as part of the payments to the Service Company and should not pay it twice by including the assets in rate base. *Staff Post-Hearing Brief Submitted on Behalf of the Public Utilities Commission of Ohio* ("Staff Brief") at 5. Statutes and precedent should not be ignored. The statutory requirements are for the Commission to evaluate an application filed in compliance with Ohio law. Imputed evidence should not be a basis for a decision in this contested case.

Distribution Deferral – OPAE was a party and signatory to the Stipulation in Case No. 05-1125-EL-ATA *et. seq.*, the ineptly named Rate Certainty Plan ("RCP"), which authorized deferral of reliability investments in excess of funding in current rates. The Companies were permitted to defer up to $150 million per year for a total of $450 million. The Stipulation does not sanction automatic inclusion of the $450 million in rate base; the investment must be greater than the baseline of funding provided by existing rates. RCP, *Opinion and Order* at 9, and *Entry on Rehearing* at 4. Raising issues as to the proper level of expenditures to be recovered does not conflict with the terms of the Stipulation regarding the process for calculating or the type of expenses included in the deferrals. Ensuring proper determination of the deferred amounts is not 'opposing' the RCP.

The Office of the Ohio Consumers' Counsel ("OCC") and OPAE are arguing that pursuant to the RCP *Entry on Rehearing* and the terms of the stipulation in that case, the Companies have the burden of proving incremental investments as called for under the RCP agreement. The baseline expenditures are those produced by current rates multiplied by sales, not by the revenue requirement established some fifteen years ago. RCP, *Entry on Rehearing* at 4. Based on the adjustments made by OCC Witness Effron, rate base should be reduced by $36,252,000 for CEI, $65,888,000 for OE, and $19,152,000 for TERichar. OCC Post-Hearing Brief at 29; OCC Exhibit I, *Direct Testimony of David J. Effron at 23.*[1] Staff attempts to adjust the deferral upward are inappropriate. As noted by Staff, "Any projected spending is speculative and is neither known nor measurable", yet the Staff adjustment violates this simple concept. *Staff Brief* at 14. Using a compromise estimate might make sense in a settlement. This is not a settlement.

The appropriate size of the carrying charge on actual expenditures net of deductions of value for tax purposes is also an issue. Customers should not pay for taxes that are not paid. Adjustment for taxes should be equitable, flowing in both directions. OPAE supports the position taken by Staff and OCC.[2]

B. Transition Tax Deferrals -- Tax should not be included in rate base or, in the alternative, should reflect the rate for long-term debt on the deferral net of

[1] The fact that Mr. Effron was not involved in the RCP case is irrelevant to the efficacy of his interpretation of the final ruling in the case and the underlying assumptions from the standpoint of his client the OCC. The Commission has never limited potential witnesses to those involved in a previous proceeding. Moreover, Effron's calculations are based on record evidence and reflect the OCC position on the appropriate level of the deferral, a position deserving equal consideration in determining the outcome of this case.

[2] FirstEnergy attempts to deflect the Staff's opinion as a 'change in policy' is exactly what the Companies are requesting in regards to the application of 'date certain'.

tax. The impact of taxes already collected from customers as transition costs should not be collected again. Under that theory, customers would continue to pay these charges forever, like looking in a mirror that reflects a mirror behind; a diminishing figure as far as the eye can see -- a perpetual amortization.

If this element is somehow accepted into rate base, the Staff and OCC agree the carrying charges should be calculated net of taxes for reasons discussed in the previous section. The assertion by Company Witness Wagner that the Commission implicitly authorized applying the rate of return to the deferrals because the Commission did not order otherwise is wrong. That logic would require the PUCO to anticipate every possible divergent interpretation and foreclose them. This is the case for the Commission to decide the appropriate carrying charge for this unique deferral. Given the nature of the issue, using the long-term debt rate is appropriate.

C. *SFAS 106 OPEB Balances* – OPAE supports the approach taken by OCC and the Industrial Energy Users – Ohio ("IEU-OH").

D. *Storm Damage Deferral* – The Commission should not pre-authorize deferral of expenses caused by storm damage.[3] Utilities have been granted recovery after the fact for incremental costs. Equity requires that customer liability for storm damage be limited to actual costs. Storm damage expenses are already reflected in base rates because utilities must have at least some capacity to respond, so any deferral should be net of expenses already capture in rates.

[3] A pre-approved deferral would represent a significant reduction in risk which should be reflected in the rate of return.

E. *True Value Calculations* -- OPAE applauds the acquiescence of FirstEnergy to the Staff and OCC adjustments.

F. *Post Date Certain Balances* -- Projected expenses should not be used to calculate net operating income. As the Companies note, "the test year concept is to set rates based on conditions (costs) that are representative of the period when rates set will be in effect." *FE Brief* at 28. This is true of the depreciation, amortization of limited term property, and property tax expense on plant in service. FirstEnergy chose the timing of this case and the date certain. This provides a snapshot that is representative of their costs going forward. Changes in expenses – up and down – are a byproduct of this ratemaking convention. Deferrals cannot be projected nor can the number of employees. The Companies provide no justification for ignoring traditional ratemaking principles. OPAE supports the position of Staff and OCC that the adjustments should be rejected.

G. *Incentive Compensation* – OPAE joins OCC and Staff in urging adjustments to incentive compensation. OPAE joins with OCC in rejecting the inclusion of all incentive compensation, including stock based compensation, to calculate net operating income. Customers are paying the utility for cost-effective, reliable, and safe service. Shareholders are rewarded when executives decrease expenses by cutting the cost to serve customers and thus increasing earnings. Advantage shareholders. Customers will not have the opportunity to realize the benefits of these cost reductions until the next rate case which can be

a long-time coming. Shareholders should pay for costs that create profits to their benefit.

H. *Pension and OPEB Expense* – OPAE supports the position of OCC and IEU-OH that these expenses be calculated consistent with Commission precedent.

I. *Annualized Labor Expense* – As noted above, employment levels cannot be projected and should be included as of the test year. FirstEnergy certainly has far fewer employees than it had at the time of the Companies' last rate cases. If history is our guide, the employee levels will go down, not up. The test year labor expense should be used to calculate net operating income.

J. *Advertising Expense* – It is improper to require customers to subsidize FirstEnergy's corporate image advertising, especially when, as noted by the Staff, the advertising touts service quality improvements that have not occurred. *Staff Brief* at 15-16.

K. *Steam Plant Expenses* – Customers should not pay costs associated with retired plants that are no longer used and useful. *See* R.C. §4909.15. Unless FirstEnergy will share the profits with customers when these properties are redeveloped, rates should not reflect the expenses. Expenses may not be a component of rate base, but they are reflected in rates. When retired plant is excluded from rate base because it is no longer used and useful, the expenses associated with those plants should not be considered test-year expenses.

L. *Effective Tax Rate* – OPAE supports the adjustments recommended by Staff, reducing the gross revenue by deducting state and local taxes. However,

OPAE further recommends that the full 35% nominal rate not be applied to determine the revenue requirement. Rather, the effective federal tax rate of the distribution company should be used to determine the revenue requirement. Normalization is an option, not a requirement. *See* R.C. §4909.15.

M. *Capital Structure* – OPAE supports the traditional approach advanced by OCC for establishing the capital structure. Precedent establishes the appropriate procedure to determine the capital structure. Staff's argument that a one-day workshop and internal discussions are adequate justification for overturning precedent is unconvincing.[4] Using the average capital structure of the three utilities is unrepresentative and violates precedent. The argument of FirstEnergy that restructuring has somehow altered precedent regarding the determination of capital structure is also not persuasive. The fact that generation assets are now in a different company means a change in rate base, not in the process of determining capital structure. Precedent should be followed.

N. *Rate of Return* – The experimental method, ATWACC, proposed by the Company and Witness Cahaan in testimony (though not in the Staff Report) violates regulatory precedent. FirstEnergy acknowledges that this approach is based on the expectations of investors rather than the PUCO. *Initial Post-Hearing Brief by the Office of the Ohio Consumers' Counsel, ("*OCC Brief") at 79. FirstEnergy Witness Vilbert admits that no state regulatory authority has ever adopted this approach; the Ohio Commission should not be the first to establish an ROR based on investor expectations, something akin to reading tea leaves.

[4] The testimony of Staff Witness Cahaan indicates the workshop came to no conclusions on altering existing approaches to determining capital. Tr. VII at 194.

Tr. IX at 16. Corporate operations should drive stock price levels rather than customer guarantees through an excessive rate of return. Distribution is still a regulated function and cost-of-service ratemaking conventions still apply.

The Provider of Last Resort function ("POLR") is irrelevant to the risk of FirstEnergy and should not be reflected in the Return on Equity. *OCC Brief* at 86. Staff and OCC join in rejecting the inclusion of POLR as a risk factor. POLR risks are caused by shopping customers, not distribution service. The Companies currently recover POLR costs through generation-related fees on all ratepayers. If this method continues, or if the cost is properly allocated to the shopping customers that cause the cost, the distribution company remains insulated from liability for the cost as it will be recovered through generation.

A distribution-only company has significantly less risk than a vertically integrated company. The size of the rate base is much diminished. The amount of revenue affected by variations in sales is reduced. In the context of the entire holding company, a regulated distribution company represents far less risk to investors than other components of the holding company, particularly unregulated generation affiliates. Distribution customers should not compensate or insure shareholders from the risk that occur from FirstEnergy Corporation choice to spin-off its generation or enter into other unregulated businesses. The result is less risk for the distribution company, though it may represent greater risk for the holding company. Again, this is a distribution rate case. The holding company is on its own. The risk is reflected in the rate of return by using the holding company capital structure as recommended by OCC. It need not be

reflected twice through an adjustment based on speculation about the future which will likely not affect the regulated distribution company.

O. *Reliability and Return on Equity* – FirstEnergy represents that it should be rewarded for poor service by an inequitably high Return on Equity. OCC establishes the continuing failure of the Companies to meet even the most modest reliability standards even when the bar is set lower than current rules, something the Staff and the Companies acknowledge. *OCC Brief* at 72-75. R.C. §4909.15 requires that the PUCO "shall consider the management policies, practices and organization" in setting just and reasonable rates. There is precedent supporting the reduction of rate of return for poor service. *OCC Brief* at 86. Staff asserts that this is an application of policy that should be decided by the Commission. *Staff Brief* at 84. Staff does attempt to argue that failure to provide reliable service is not the equivalent of providing inadequate service. Then what constitutes inadequate service for a distribution company? Reliability is the essence of adequate service and should be recognized as such by the Commission.

FirstEnergy consistently fails to provide adequate and reliable service. The Companies should not be rewarded for providing customers with poor service. The ROE should be lowered appropriately. Regulation is designed to mimic the competitive market; an unregulated company that provides shoddy products or services will lose sales and revenue. A lower ROE will send the proper price signal, a concept which FirstEnergy, the Staff, and other parties

support. Perhaps that will cause FirstEnergy to make the necessary investments. Those can be reflected in base rates in the next case if warranted.

II. FirstEnergy's successful low-income efficiency programs must be continued.

FirstEnergy refuses to acknowledge any responsibility to provide customers with adequate service through cost-effective energy efficiency programs. It is uncontroverted that the number of low-income customers in the FirstEnergy system has increased as have the numbers of payment troubled customers. OPAE Witness Smalz, provides expert testimony describing this situation. The testimony shows that investments in energy efficiency are financially advantageous to the Company and its ratepayers. *Direct Testimony of Michael R. Smalz,* ("Smalz") at 5-6. The Company and ratepayers are best served by keeping customers on the system and minimizing costs associated with unaffordable electric bills – collection costs, disconnection and reconnection costs, bad debt, customer service costs, and the need for bill payment assistance programs. Customers also face the specter of rising environmental compliance costs for SO2, NOX, fine particulates, and greenhouse gasses. Ratepayers are best served by reducing these expenses through cost-effective energy efficiency programs.

FirstEnergy, through its operating companies, has provided funding for low-income energy efficiency since at least their last rate cases.[5] FirstEnergy

[5] FirstEnergy suggests because none of the companies have had rates cases in the last 13-18 years and electric bills have not risen, though the number of poor households served by the Companies certainly has. *FirstEnergy Brief* at 120. Customers know full well that overall rates

committed $5 million per year for low-income efficiency programs in its ETP case. It committed another $1.25 million per year as a part of its rate stabilization plan and another $1.5 million in its rate certainty plan. The Commission approved these funding levels. There is more than adequate precedent for ratepayer investment to help achieve affordability for the most vulnerable customers.[6]

OPAE is not suggesting that it is FirstEnergy's responsibility to unilaterally solve a social problem, although the public interest standard and the concept of just and reasonable rates includes an imperative that customers be assisted in affording their bills and efforts be made to mitigate rate increases.[7] The Ohio Revised Code also approves and promotes these investments. R.C. §4905.70 (energy conservation), and R.C. §4928.02(D) (demand side resources). The reason that FirstEnergy should use ratepayer funds to make these investments is because unaffordable rates create costs that ratepayers bear. State and federally funded energy efficiency programs and bill payment assistance programs benefit customers by reducing these costs, though FirstEnergy appears aware and interested only in programs that help pay bills, not programs

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have risen, including distribution rates. This case will further increase distribution rates, justifying additional investments to mitigate the *impact on* vulnerable households.

[6] Staff Witness Rack, who has no background in energy efficiency programs, asserts that FirstEnergy has agreed to provide additional funding low-income efficiency programs operated by OPAE. *Prefiled Testimony of Francis Rack* (Rack) at 4. However, FirstEnergy acknowledges that it has not contracted with OPAE to provide those services nor does it acknowledge that the money is for services to low-income customers. Tr. IX at 78 and 80-81. When there is no contract, there is no program.

[7] FirstEnergy has chosen to heap costs on all residential customers associated with special contracts because rates for manufacturers and other businesses would otherwise be unaffordable. Low-income households deserve similar consideration. A company may be less competitive, but low-income customers face living without heat, lights, and refrigeration.

that reduce usage and bills.[8] Funding for these programs is currently inadequate to meet the need, as noted by OPAE Witness Smalz, and given the budget pressures faced by government generally, there is no support for the Companies' position that relying on government funding is a practical option. Company Witness Oullette acknowledges that government funding has not increased, though he is unsure. Tr. IX at 78.[9] Funding a system cost through the system is consistent with regulatory principles and support by Ohio law. *See* R.C. §§4905.70 and 4928.02.

FirstEnergy does not dispute that the successful Community Connections Program as managed by OPAE is a cost-effective approach to addressing affordability problems of its low-income customers and ratepayers generally. Evaluations support this assessment. FirstEnergy Witness Oullette agrees that OPAE's administrative costs are three percent (3%), far below the costs of for-profit companies it has hired to manage programs similar though less effective programs. Tr. IX at 83. The program has leveraged $20,513,949 in funding from other sources, providing significant savings to ratepayers. *Smalz* at 8.

There are numerous reasons to fund low-income efficiency programs using ratepayer funds. All ratepayers, not just low-income customers, benefit from these investments. The Staff has long supported these programs in electric and natural gas cases. The Companies have consistently funded these programs in cases approved by the Commission. OPAE is only asking for a ten

[8] FirstEnergy attempts to repair the testimony of Mr. Oullette, their expert, who could not name any programs assisting low-income customers. Tr. IX at 77; *FirstEnergy Brief* at 120-121.
[9] FirstEnergy's own witness cannot support the Companies' assertion that government funding is the panacea for affordability problems. *FirstEnergy Brief* at 119-121.

percent increase over the funding for Community Connections provided by FirstEnergy in the ETP case, a reasonable increase given the benefits to ratepayers.

This is not the time to stop funding low-income assistance programs. The Community Connections program is an effective, well managed low-income efficiency program. There is no substantive reason to terminate the program and no practical reason not to expand it. The weight of the evidence justifies ratepayer investments in ensuring utility bills are affordable for low-income households, resulting in savings to all customers.

III. FirstEnergy must include a process to establish and fund Demand Side Management Programs.

FirstEnergy currently is committed to funding Demand Side Management ("DSM") Programs at the $25 million level over a two-year period. As a result, it is appropriate to include funding for continued DSM investments in this case. Staff Witness Rack acknowledges that a collaborative to design programs has "had success in formulating and guiding utility company DSM programs in the past and Staff believes FirstEnergy...could benefit via a collaborative process on DSM issues. *Rack* at 4. OCC and OPAE make the reasonable suggestion that a rider be established to fund DSM into the future as determined by a collaborative to ensure customers invest in and reap the benefits of the cost-effective DSM.[10]

[10] Given acknowledgement by Company Witness Oullette that Company-managed programs have spent little of the funding committed under the RCP and Staff Witness Rack that despite having the programs in place for a year, they are still in their infancy, the Commission should consider ordering a third-party administrator independent of the Companies be made responsible for operating FirstEnergy DSM programs. The collaborative is the appropriate entity to hire providers and oversee the DSM program because FirstEnergy has been proven unable or uninterested in operating effective programs or even execute a contract with OPAE as required by the RCP stipulation. See Tr IX at 80, and *Rack* at 3.

Given the statutory imperative to establish and promote DSM and the public interest which requires DSM be a component of just and reasonable rates, the recommendations of customer advocates OPAE and OCC should be adopted.

IV. FirstEnergy must eliminate the Use of Payday Lenders as Authorized Payment Stations.

FirstEnergy incorrectly asserts that the General Assembly is the appropriate body to determine whether payday lenders should be permitted to serve as authorized payment stations. The Commission is charged with protecting the public interest. The testimony of OPAE Witness Faith makes clear that the typical user of payday loans takes out more than 10 loans annually because the initial loan traps them into a never ending spiral of debt. *Testimony of Bill Faith* ("Faith") at 3. FirstEnergy's use of payday lenders as authorized payment stations encourages customers to take out these loans which have an astonishing 391 percent annual interest rate. *Faith* at 4-5; *Shaker Heights Hearing Transcript* at 20 (March 13, 2008). Rates are higher because these loans promote bad debt because the borrowers wind up paying large amounts of household income to service the interest on the debt. FirstEnergy provides no evidence to indicate that its interests in ensuring access to authorized payment stations necessitates using payday lenders. FirstEnergy does not offer any evidence disputing the conclusion of OPAE's expert witness and public hearing witnesses that payday lenders trap consumers in a spiral of debt. The Commission, consistent with the public interest, should prohibit FirstEnergy from using payday lenders as authorized payment stations.

V. Miscellaneous Issues

A. *Fuel Deferrals* – The Staff appropriately excludes fuel deferrals from the calculation of distribution base rates. FirstEnergy argues that the Commission should ignore a Supreme Court decision forbidding inclusion of generation-related costs in distribution rates in contravention of the provisions of SB 3 because it will reduce regulatory uncertainty and be administratively efficient. Those considerations do not justify ignoring the law of Ohio and are the subject of a separate docket.

B. *Uncollectibles* – Though not specifically at issue, generation-related uncollectibles are subject to the recent Supreme Court decision and should also be excluded from distribution rates. As FirstEnergy notes, it no longer owns generation and its current RCP expires the end of the year. In addition, the General Assembly is currently considering legislation that will likely affect the relationship between distribution and generation. Generation-related uncollectible expenses are most appropriately dealt with in a subsequent proceeding. The outcome of the debate in the General Assembly cannot be anticipated. This issue is not ripe for a decision.

C. *Service Quality* – OPAE agrees generally with the Staff and OCC regarding the need to mandate a rigorous effort to increase service quality and supports approval of appropriate remedies to ensure customers receive adequate service.

D. *Advanced Metering* -- Staff requests that an advanced metering rider be included in the Companies' rates. There are two problems. First, advanced

meters are the subject of a separate proceeding so establishing a rider in this case is putting the cart before the horse. Second, the FirstEnergy has not submitted a plan. *Staff Brief* at 78. Establishment of a rider is premature.[11]

E. *Net Metering* – OPAE supports the Staff recommendation to clarify in tariff language that net metering customers are not required to have a dedicated telephone line. As the Companies note, net metering is the subject of a separate proceeding. If the Commission finds that a dedicated line is warranted, tariffs can be modified in the context of that proceeding.

F. *Meter Reading and Attorney Fees* – Customers already guarantee the Companies collect the allowable costs of attorneys in base rates. It is inappropriate to require any customer to pay these costs twice. The fact that a judicial officer rarely awards attorney fees indicates that customers need not subsidize collection-related activities beyond the cost for those services collected in rates.

G. *Field Collection Fees* – Again, FirstEnergy requests to collect costs twice. The cost of collection activities are covered in base rates and reconnection fees. Moreover, the proposal is so open-ended that the Companies could send out a collection agent daily, causing the fee to escalate out of control. PUCO rules dictate disconnection and collection procedures. FirstEnergy must follow those procedures. Allowable compensation for those costs is in base rates.

[11] At least one other case has considered this question. While the Commission has yet to rule, the proposed rider is a component of a stipulation and if approved does not provide any precedent applicable to a fully litigated case.

H. *Annual Escalator Charge* – Fee escalators, as acknowledged by the Companies, are only a proxy for cost increases and do not reflect the actual cost. FirstEnergy at 75-76. If costs do increase, then the Companies can file a rate case.

VI. Conclusion

The regulatory paradigm was significantly altered by SB 3. This is the first distribution rate case since passage of the law. It is time for the Commission to determine how to adapt cost-of-service ratemaking to a single element of electric rates: distribution.

A regulated electric distribution utility should not longer be concerned with maximizing sales of generation and use of the transmission system. A distribution company that fails to encourage efficiency is running afoul of the strictures in R.C. §4928.02 that prohibit subsidizing an unregulated service with a regulated service. In order to serve the needs of its customers and comply with state policy, it should focus on reliability, efficiency, and customer service.

FirstEnergy has failed to a large degree to provide adequate service because of its poor record of reliability. The market sends a price signal to companies that fail to provide a quality product. The regulatory system, designed to mimic competition, should penalize the Companies through a reduction in ROE to send the proper price signal.

FirstEnergy should not be permitted to pad its rate base. Expenses should not be adjusted inappropriately. Rate of return established through a regulatory proceeding should follow existing precedent. Rate design should not

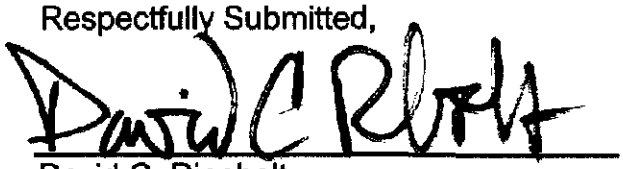
penalize customers through excessive reconnection charges or annual escalators that are not cost-based. Expenses that are the subjects of other dockets -- so-called smart metering and fuel deferrals -- should not be included as a part of the final order in this proceeding.

The major change in policy required by Ohio law is to invest ratepayer funds in energy efficiency. FirstEnergy should be required to continue and expand the effectively managed Community Connections Program to reduce the bills of vulnerable customers and ratepayers generally. This funding should be included in base rates.

A rider should be authorized to fund DSM programs. Serious consideration should be given to replacing FirstEnergy as the manager of the programs given its demonstrated indifference to the success or failure of current DSM initiatives. Rather, responsibility for program management should be transferred to a collaborative of interested parties, as recommended by Staff. The collaborative should be charged with designing, implementing and evaluating programs, and recommending funding levels to the Commission in future proceedings.

The Commission order must ensure that rates are just and reasonable and serve the public interest as required by law. Distribution remains regulated. Traditional regulatory principles apply. OPAE urges the Commission to ensure customers are provided with adequate service at reasonable rates.

Respectfully Submitted,



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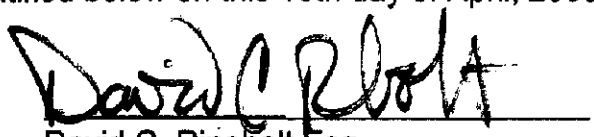
CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply Brief was served by electronic means upon the parties of record identified below on this 18th day of April, 2008.



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