

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 ) Case No. 08-935-EL-SSO  
Company and The Toledo Edison Company for )  
Authority to Establish a Standard Service Offer )  
Pursuant to R.C. 4928.143 in the Form of an )  
Electric Security Plan. )

**APPLICANTS' MEMORANDUM CONTRA**  
**JOINT MOTION FOR LOCAL PUBLIC HEARINGS**

The Joint Motion for Local Public Hearings filed by the Office of the Ohio Consumers' Counsel ("OCC"), Northwest Ohio Aggregation Coalition, Ohio Partners for Affordable Energy, and the Ohio Environmental Counsel (collectively "Movants") seeks an order in this proceeding scheduling six public hearings to be held concurrently with public hearings to be scheduled in Case No. 08-936-EL-SSO (the "MRO Case") filed by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies"). Movants also request that the Commission publish a notice in northern Ohio newspapers at least thirty days prior to each public hearing, and also that all hearings be completed prior to the evidentiary hearing scheduled to commence on October 2, 2008 in this proceeding. Thus, practically speaking, Movants want public hearings that commence no earlier than October 6, 2008<sup>1</sup> and that end no later than October 1, 2008.

The Motion should be denied because hearings of the sort requested are not required by law and cannot be conducted in the timeframe requested. Moreover, Movants have failed to

<sup>1</sup> Assuming a Commission order at the earliest on September 3 and publication at the earliest on September 5.

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demonstrate any regulatory benefit to be achieved through their request. Thus, the Companies respectfully request that the Commission deny the Motion.

## **I. Introduction**

The Companies filed their long-anticipated Electric Security Plan (“ESP”) application on July 31, 2008, the earliest date such a filing would be accepted by the Commission. More than three weeks later, on August 25, 2008, Movants filed their Joint Motion for Local Public Hearings in the above captioned case and the MRO Case. Movants request that residential consumers be given the opportunity to “participate” in this case and the MRO Case via six public hearings, which Movants believe should include public comments on a laundry list of issues unrelated to the well-defined ESP and MRO review criteria to be applied by the Commission. *See* Motion at 2, 6. Contemporaneously herewith, the Companies have filed objections in the MRO Case explaining why public hearings in that case would be unjustified, impractical and irrelevant. Similarly, hearings of the sort requested by Movants are unnecessary and impractical here.

## **II. Movants Cite No Authority Requiring The PUCO To Conduct Local Hearings and Can Show No Benefit To Be Gained From Public Hearings.**

The Motion does not contain any authority requiring the PUCO to conduct public hearings and, indeed, neither R.C. § 4928.141 nor R.C. § 4928.143 require public hearings in ESP proceedings. Only an evidentiary hearing is required (*see* R.C. § 4928.142(B)), which makes sense given that the Commission’s review of an ESP application is limited to determining, within 150 days, whether the ESP is “more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142 of the Revised Code.” *See* R.C. § 4928.143(C)(1). Notably, the OCC will serve as the statutory representative of residential

consumers at that hearing, and numerous other parties have intervened, representing a broad range of interests. Thus, there is neither a requirement nor a need for public hearings.

Because Movants lack any legal or factual basis for their Motion, they take the curious approach of relying instead upon a press release issued by the Strickland administration in August 2007. Of course, a press release issued nearly one year prior to the effective date of Am. Sub. S.B. 221 does not and cannot define the authority of this Commission or even serve as persuasive authority. Moreover, if the OCC simply carries out its statutory responsibility, the Commission can be assured that the needs and preferences of consumers will be heard. Indeed, the “transparency” promoted by Governor Strickland is more than satisfied by the Companies’ public filing of their ESP and all related work papers with the Commission, the discovery process already taking place, and by the hearing currently scheduled to commence on October 2, 2008.

While Movants also cite several statutes in support of their request for public hearings (*see* Motion at 3), these statutes are nothing more than evidence of the transparency of Commission proceedings. Section 4901.12 of the Revised Code makes all Commission proceedings and records public, while Section 4901.13<sup>2</sup> declares that all hearings shall be open to the public. Neither of these statutes supports Movants’ request that the Commission schedule six non-evidentiary hearings to solicit public opinion regarding the Companies’ ESP. Instead, these statutes require that the public be able to access information submitted by the Companies and other parties to this case, which can be done through the Commission’s website.

Movants appear to believe that giving members of the public an “opportunity to participate in the hearing process” is a benefit in and of itself, as they do not even attempt to

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<sup>2</sup> Movants mistakenly cite to R.C. § 4903.13.

show how such participation will aid the Commission in its review of the Companies' ESP application. Putting aside the ironic point that Movants themselves, who profess to speak for all 1.9 million customers of the Companies, give the public an opportunity to participate in the hearing process, the technical issues before the Commission are best resolved through fact-based testimony presented in an evidentiary hearing. General statements of public opinion will not assist the Commission in determining whether the standard in R.C. § 4928.143(C)(1) is satisfied by the ESP. Indeed, Movants do not even attempt to explain how these hearings will contribute to a resolution of the issues. Although Movants identify several "major issues" which customers may want to address (Motion at 6), these issues are either beyond the scope of this proceeding, are procedural issues that have been addressed by the Commission, or have already been the subject of previous public hearings. For example, "[w]hat is a fair case process and timeline that should be used" was already decided in Am. Sub. S.B. 221 and the August 5, 2008 Entry in this proceeding. Whether rates should be "increased or decreased" will be determined by the evidence in the case, not by popular vote. In addition, whether "improvements are needed in the quality of the electric utility's service to customers" was recently discussed in the Companies' distribution rate cases. Movants have failed to demonstrate that local public hearings will assist the Commission in completing its review of the Companies' ESP Application within 150 days.

Because Movants have failed to provide any authority or justification for such public comment, the request for local public hearings should be denied.

### **III. Movants' Motion Is Both Untimely and Unjustified.**

Even if the Commission wished to hold local hearings, Movants' delay in filing the Motion has made the issue moot. Movants' Motion requests that extensive public notice be provided, and that such notice be given at least thirty days prior to the hearing currently

scheduled for October 2, 2008. See Motion at 6. Yet Movants' delay of more than three weeks after the ESP filing before requesting public hearings has rendered the request practically impossible to grant. Because the Motion was filed on August 25, 2008, it simply is not feasible to obtain locations for the six requested public hearings, provide adequate public notice of the sort demanded by Movants, and conduct the hearings prior to the previously scheduled hearing in Columbus. Indeed, as Movants themselves note, "[w]ithout such sufficient notice, the effectiveness of the public hearings will be diminished." *Id.* at 7. As the requested relief cannot be granted, the Motion should be denied.

Although Movants have not requested public hearings that would take place after the October 2 hearing in this proceeding, the Commission has indicated in its materials that it would consider scheduling local public hearings after the conclusion of the evidentiary hearings in each of the ESP cases has concluded. Notably, however, the General Assembly, perhaps cognizant of the compressed time schedule available for review of ESP and MRO applications, did not require local public hearings in these types of cases. Given that initial ESP proceedings filed by the Companies, AEP and Duke all must be completed in parallel within the same abbreviated time frame,<sup>3</sup> the General Assembly must have understood that local public hearings scheduled for each of these utilities would not necessarily be appropriate or necessary. If the Commission elects to proceed with local public hearings in each of these cases, the Companies suggest that the Commissioners and/or hearing examiners attending those hearings, as well as all parties to this proceeding, would benefit from having a procedure established that would avoid the open-ended type of hearings apparently contemplated by Movants. *See* Motion at 6.

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<sup>3</sup> The Commission must issue an order not later than 150 days after the filing date of the initial application. R.C. § 4928.143(C)(1). In contrast, ESP applications filed in future years will proceed under a 275-day schedule. *Id.*

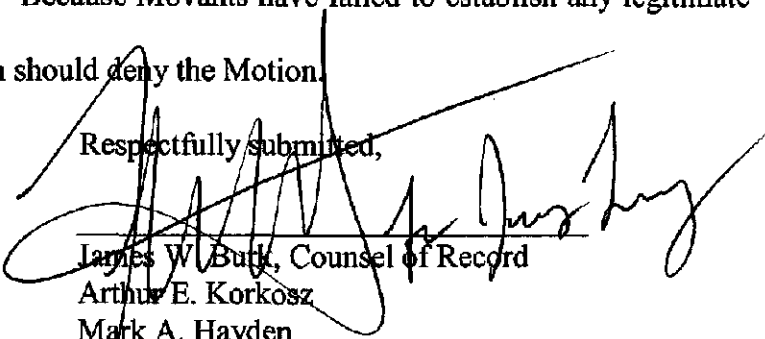
#### **IV. The Public's Interest Is Adequately Protected Under Current Procedures**

As noted above, the public has an ample opportunity to participate in this proceeding through intervening parties. To the extent that consumers have information that is relevant to the Commission's R.C. § 4928.143(C)(1) review, that information also may be submitted through written testimony. Given the opportunities already available to consumers to participate in this proceeding, Movants have failed to demonstrate a need for six public hearings occurring prior to October 2, 2008. Because the Commission only has 150 days to issue an order on the Companies' ESP, the limited time available to the Commission and the parties, including Movants, is best spent focusing on the statutory requirements set forth in R.C. § 4928.141 and R.C. § 4928.143.

#### **V. Conclusion**

The Motion should be denied because the public hearings sought by Movants are not required by law and not justified by the facts. Moreover, the public hearings cannot be conducted in the timeframe requested. Because Movants have failed to establish any legitimate basis for their request, the Commission should deny the Motion.

Respectfully submitted,

  
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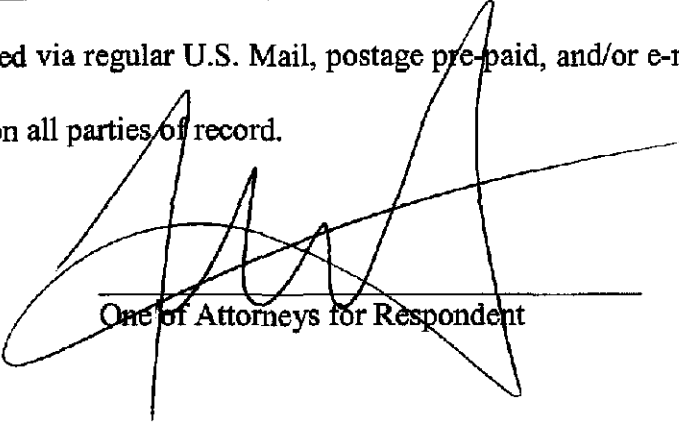
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**CERTIFICATE OF SERVICE**

The foregoing Brief was served via regular U.S. Mail, postage pre-paid, and/or e-mail on this 2nd day of September, 2008, upon all parties of record.



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