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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric) Case No. 08-935-EL-SSO
Illuminating 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.)

**JOINT INTERLOCUTORY APPEAL
REQUEST FOR CERTIFICATION TO FULL COMMISSION
AND
APPLICATION FOR REVIEW**

**BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, CITY OF
CLEVELAND, THE SIERRA CLUB OHIO CHAPTER, THE NATURAL
RESOURCES DEFENSE COUNCIL, CITIZENS FOR FAIR UTILITY RATES,
NEIGHBORHOOD ENVIRONMENTAL COALITION
CLEVELAND HOUSING NETWORK, THE
EMPOWERMENT CENTER FOR GREATER CLEVELAND, OHIO SCHOOLS
COUNCIL, THE OHIO FARM BUREAU FEDERATION AND
OHIO PARTNERS FOR AFFORDABLE ENERGY**

The Joint Appellants¹ hereby submit this Interlocutory Appeal² to the Public Utilities Commission of Ohio ("PUCO" or "Commission") and respectfully request the certification of this appeal to the full Commission for review of the hearing officer's Entry scheduling local hearings,³ for an outcome that will provide the public a meaningful opportunity to learn of the local hearings in these cases, become informed on

¹ Office of the Ohio Consumers' Counsel, City of Cleveland, The Sierra Club Ohio Chapter, Natural Resources Defense Council, Citizens for Fair Utility Rates, Neighborhood Environmental Coalition, Cleveland Housing Network, The Empowerment Center for Greater Cleveland, Ohio Schools Council, The Ohio Farm Bureau Federation and Ohio Partners for Affordable Energy.

² The appeal is filed pursuant to Ohio Adm. Code 4901-1-15.

³ Entry (September 9, 2008) (hereafter "Local Hearing Entry").

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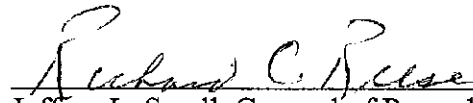
electric issues important to them and plan their schedules for attendance. The Interlocutory Appeal should be certified⁴ for an immediate determination by the Commission to prevent undue prejudice to Ohio consumers and the Joint Appellants.

Upon review,⁵ the Commission should reverse or modify the Local Hearing Entry. The Commission should establish a schedule for local hearings that affords adequate (30 days) public notice in advance of the dates of the hearings and adequate time for the public to plan for their appearances at the hearings where they can comment upon the Application by Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, "FirstEnergy" or the "Company").

The reasons for this Interlocutory Appeal, including the Request for Certification and the Application for Review, are explained in the attached Memorandum in Support.

Respectfully Submitted,

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⁴ Ohio Adm. Code 4901-1-15(B).

⁵ Ohio Adm. Code 4901-1-15(C).

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Ohio Partners for Affordable Energy

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Edison Company, The Cleveland Electric)	
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MEMORANDUM IN SUPPORT

I. BACKGROUND

Twenty-five days after FirstEnergy filed its first-ever Application for an electric security plan (“ESP”) under Ohio’s new energy law, consumer organizations moved for local hearings that the public in Northern Ohio could attend to express their viewpoints to the PUCO regarding electric rates and service. That Motion contained--among other requests for providing the public with a transparent state regulatory process--a request that the local hearings be scheduled on a timeline that would allow for notice to be published at least thirty days prior to each hearing⁶. But the Local Hearing Entry—in which the consumer organization’s Motion was not even acknowledged—provided as little as 15 days before the first of the scheduled hearings.

The Local Hearing Entry (a copy of which is attached) is the subject of this appeal.

⁶ Joint Motion for Local Public Hearings at 6.

II. CERTIFICATION OF INTERLOCUTORY APPEAL

The full Commission will review the Attorney Examiner's ruling if the Attorney Examiner (or other PUCO personnel) certifies the Appeal. The standard applicable to certifying this appeal is that "[a]n immediate determination by the commission is needed to prevent the likelihood of undue prejudice...."⁷ That standard is met in this instance and the appeal should be certified.

There is undue prejudice to the Ohio public—and its representatives—where the advance notice of the local hearings is compressed to the point, as here, that it limits the public's opportunity to learn of the hearings, prepare for testifying and adjust their schedules to appear on the day and time of the local hearings. FirstEnergy certainly had the resources available to deploy for preparation of the rate Application it filed. The public lacks such resources and should be given more time to learn about and prepare for the local hearings. The lack of adequate public notice of the local public hearings could also prevent the Commission from having a complete record in this matter to make an informed decision, under R.C. 4903.09.

Given that local hearings are imminent under the Local Hearing Entry, an "immediate determination" is needed to prevent undue prejudice in the event the Commission ultimately reverses the ruling in question. Thus, that element for certification of the Interlocutory Appeal is also met.⁸

The PUCO has recognized that more than a minimal notice can be necessary for the public:

⁷ Ohio Adm. Code 4901-1-15(B).

⁸ *Id.*

While the notice published pursuant to Section 4909.191(A), Revised Code, and Rule 4901:1-11-11(C), O.A.C, *is sufficient to satisfy legal requirements of notice, the Commission is concerned that as many customers of each company as possible receive actual notice of this hearing.*⁹ (Emphasis added.)

While the Joint Appellants do not concede that providing 30-days notice of the public hearing is going above and beyond legal requirements, it will be unduly prejudicial to those parties representing the public if the public's voices are not heard due to lack of time to learn of the local hearings, prepare and then plan for attendance.

III. APPLICATION FOR REVIEW

Joint Appellants' Application for Review meets the terms of Ohio Adm. Code 4901-1-1-15(C), because the application has been filed "within five days after the ruling is issued" and the application does "set forth the basis of the appeal and citations of any authorities relied upon." The PUCO should reverse or modify the Local Hearing Entry, pursuant to Ohio Adm. Code 4901-1-15(E).

Joint Appellants, and the customers of FirstEnergy, will be prejudiced if the local hearings are scheduled without sufficient advance notice to the public regarding the dates, times, and location of the public hearings. That notice timing should be thirty days in advance of the hearings, as requested in the Motion of the consumer groups. The Motion was not addressed or even acknowledged in the Local Hearing Entry, so the Joint Appellants cannot provide a discussion here about the rationale of the ruling.

⁹ In re Regulation of the Electric Fuel Component Contained Within the Rate Schedules of Ohio Power Company et. al., Case No. 91-101-EL-EFC, Opinion and Order (May 16, 1991) at 3-4. (In accordance with R.C.4905.31, a public hearing shall be held to allow the Commission to review the fuel procurement practices and policies of their various electric companies.)

The Commission has recognized in a prior case that a minimal notice that could be provided to the public in a case is not necessarily the notice that is adequate for the public:

While the notice published pursuant to Section 4909.191(A), Revised Code, and Rule 4901:1-11-11(C), O.A.C, *is sufficient to satisfy legal requirements of notice, the Commission is concerned* that as many customers of each company as possible receive actual notice of this hearing.¹⁰ (Emphasis added.)

In this first-ever filing of FirstEnergy's plan under Ohio's new energy law, more than minimal notice is needed to adequately inform the public of their opportunity to testify, so that they may seek information about the issues involving their already high electric rates, prepare for testimony at hearings and arrange their schedules.

Consistent with Ohio Adm. Code 4901-1-15(E)(1), the Commission should modify or reverse the Entry of September 9, 2008, and schedule the public hearings with at least 30-days notice provided to the customers of FirstEnergy¹¹.

IV. CONCLUSION

For the reasons set forth above, this Appeal should be certified to the full Commission and the Commission should reverse or modify the Attorney Examiner's ruling by granting additional time (amounting to thirty days of advance notice) for notice of the local public hearings, and the local public hearings should accordingly be rescheduled.

¹⁰ In re Regulation of the Electric Fuel Component Contained Within the Rate Schedules of Ohio Power Company et. al., Case No. 91-101-EL-EFC, Opinion and Order (May 16, 1991) at 3-4. (In accordance with R.C.4905.31 ,a public hearing shall be held to allow the Commission to review the fuel procurement practices and policies of their various electric companies.)

¹¹ Ohio Adm. Code 4901-1-15(E)(1): "(E) Upon consideration of an interlocutory appeal, the commission may, in its discretion either: (1) Affirm, reverse, or modify the ruling."

The lack of adequate advance notice regarding the local public hearings will limit the effectiveness of these hearings in developing the record. Given the significance of this proceeding for customers' rates and service in what is FirstEnergy's first-ever proposal for an electric security plan under Ohio's new energy law , a thorough proceeding that creates an informative record is warranted. A rushed schedule for local public hearings without adequate public notice will result in undue prejudice to Ohioans and their representatives. In the interest of a transparent state regulatory process for the setting of electric rates in Northern Ohio and the PUCO's acquiring of all the facts for making a decision as part of that process, the Commission should re-schedule the local hearings with adequate advance notice.


Respectfully Submitted,

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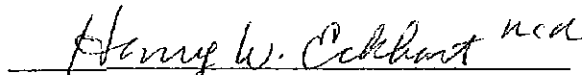


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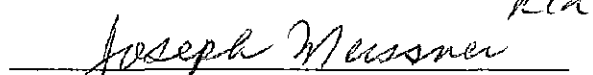
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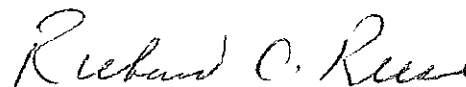
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Joint Interlocutory Appeal was served by electronic service and by U.S. Mail, prepaid, to the counsel identified below (provided electronically to the Attorney Examiners) this 15th day of September 2008.



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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 Establish) Case No. 08-935-EL-SSO
a Standard Service Offer Pursuant to)
Section 4928.143, Revised Code, in the)
Form of an Electric Security Plan.)

ENTRY

The attorney examiner finds:

- (1) On July 31, 2008, Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (FirstEnergy) filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code. This application is for an electric security plan in accordance with Section 4928.143, Revised Code.
- (2) By entry issued September 5, 2008, the attorney examiner, *inter alia*, scheduled the evidentiary hearing in this matter to commence on October 16, 2008, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-C, 180 East Broad Street, Columbus, Ohio 43215.
- (3) In order to provide customers of FirstEnergy a reasonable opportunity to provide public testimony in this proceeding, the following local public hearings will be conducted on the following dates:
 - (a) Wednesday, September 24, 2008, at 6:30 p.m., at the Springfield City Hall City Forum, 1st Floor, 76 East High Street, Springfield, Ohio 45502.
 - (b) Thursday, September 25, 2008, at 12:00 p.m., at the Cleveland City Hall Council Chambers, 2nd Floor, Room 216, 601 Lakeside Avenue, Cleveland, Ohio 44114.

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- (c) Thursday, September 25, 2008, at 6:30 p.m., at the Monticello Middle School Auditorium, 3665 Monticello Blvd., Cleveland Heights, Ohio 44121.
 - (d) Wednesday, October 1, 2008, at 6:30 p.m., at the Perkins High School Auditorium, 3714 Campbell Street, Sandusky, Ohio 44870.
 - (e) Thursday, October 2, 2008, at 12:30 p.m., at the Michael V. Disalle Government Center, One Government Center, 640 Jackson Street, Toledo, Ohio 43604.
 - (f) Thursday, October 2, 2008, at 6:30 p.m., at the Gateway Middle School, 900 Gibbs Street, Maumee, Ohio 43537.
 - (g) Tuesday, October 7, 2008, at 6:30 p.m., at the Firestone High School Auditorium, 333 Rampart Avenue, Akron, Ohio 44313.
 - (h) Tuesday, October 14, 2008, at 6:30 p.m., at the Austintown Middle School, 800 South Raccoon Road, Austintown, Ohio 44515.
 - (i) Wednesday, October 15, 2008, at 6:30 p.m., at the Geneva High School, 1301 South Ridge Road East, Geneva, Ohio 44041.
- (4) Accordingly, FirstEnergy should publish notice of the local public hearings one time in a newspaper of general circulation in each county in the companies' certified territories. The notice should not appear in the legal notices section of the newspaper. The notice should read as follows:

LEGAL NOTICE

The Public Utilities Commission of Ohio has scheduled local hearings in Case No. 08-935-EL-SSO, *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan.* In their application, the companies seek Commission approval of

their electric security plan filed pursuant to Senate Bill 221, which was signed into law on May 1, 2008. Senate Bill 221 requires an electric utility to establish a standard service offer and, as part of that process, to file an application for an electric security plan. According to the companies' application, the electric security plan would result in increases in total customer rates, including generation, transmission, and distribution, averaging 5.32% in 2009, 4.01% in 2010, and 5.99% in 2011. In addition, the companies' application proposes investment in capital improvements for the companies' energy delivery systems, energy efficiency and demand response initiatives, and economic development and job retention programs.

The local hearings are scheduled for the purpose of providing an opportunity for interested members of the public to testify in this proceeding. The local hearings will be held as follows:

- (a) Wednesday, September 24, 2008, at 6:30 p.m., at the Springfield City Hall City Forum, 1st Floor, 76 East High Street, Springfield, Ohio 45502.
- (b) Thursday, September 25, 2008, at 12:00 p.m., at the Cleveland City Hall Council Chambers, 2nd Floor, Room 216, 601 Lakeside Avenue, Cleveland, Ohio 44114.
- (c) Thursday, September 25, 2008, at 6:30 p.m., at the Monticello Middle School Auditorium, 3665 Monticello Blvd., Cleveland Heights, Ohio 44121.
- (d) Wednesday, October 1, 2008, at 6:30 p.m., at the Perkins High School Auditorium, 3714 Campbell Street, Sandusky, Ohio 44870.
- (e) Thursday, October 2, 2008, at 12:30 p.m., at the Michael V. Disalle Government Center, One Government Center, 640 Jackson Street, Toledo, Ohio 43604.
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- (h) Tuesday, October 14, 2008, at 6:30 p.m., at the Austintown Middle School, 800 South Raccoon Road, Austintown, Ohio 44515.
- (i) Wednesday, October 15, 2008, at 6:30 p.m., at the Geneva High School, 1301 South Ridge Road East, Geneva, Ohio 44041.

The evidentiary hearing will commence on October 16, 2008, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-C, 180 East Broad Street, Columbus, Ohio 43215. Further information may be obtained by contacting the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793, viewing the Commission's web page at <http://www.puc.state.oh.us>, or contacting the Commission's hotline at 1-800-686-7826.

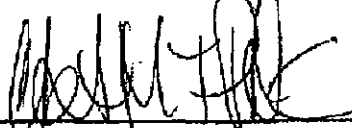
It is, therefore,

ORDERED, That local public hearings in this proceeding be held as set forth in finding (3). It is, further,

ORDERED, That FirstEnergy publish notice of the hearings as set forth in finding (4). It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



By: Christine M.T. Pirik
Attorney Examiner

/vrn^{PD}

Entered in the Journal

SEP 09 2008



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Secretary