

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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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)
R.C. § 4928.143 in the Form of an)
Electric Security Plan.)

Case No. 08-935-EL-SSO

**DIRECT TESTIMONY OF JOSEPH G. BOWSER
ON BEHALF OF INDUSTRIAL ENERGY USERS-OHIO**

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Attorneys for Industrial Energy Users-Ohio

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DIRECT TESTIMONY OF JOSEPH G. BOWSER

1 I. INTRODUCTION

2 Q1. Please state your name and business address.

3 A1. Joseph G. Bowser, 21 East State Street, 17th Floor, Columbus, Ohio 43215.

4 Q2. By whom are you employed and in what position?

5 A2. I am a Technical Specialist for McNees Wallace and Nurick, LLC ("McNees"),
6 providing testimony on behalf of Industrial Energy Users-Ohio ("IEU-Ohio").

7 Q3. Please describe your educational background.

8 A3. In 1976, I graduated from Clarion State College with a Bachelor of Science
9 degree in Accounting. In 1988, I graduated from Rensselaer Polytechnic Institute
10 with a Master of Science degree in Finance.

11 Q4. Please describe your professional experience.

1 A4. I have been employed by McNees for over three years where I focus on helping
2 IEU-Ohio members address issues that affect the price and availability of utility
3 services. Prior to joining McNees, I worked with the Ohio Consumers' Counsel
4 as Director of Analytical Services. There I managed the analysis of financial,
5 accounting, and ratemaking issues associated with utility regulatory filing. I also
6 spent ten years at Northeast Utilities, where I held positions in the Regulatory
7 Planning and Accounting departments of the company, provided litigation support
8 in regulatory hearings and assisted in the preparation of the financial/technical
9 documents filed with state and federal regulatory commissions. I began my
10 career with the Federal Energy Regulatory Commission ("FERC"), where I led
11 and conducted audits of gas and electric utilities in the Eastern and Midwestern
12 regions of the United States. I am also a member of the American Institute of
13 Certified Public Accountants.

14 **Q5. Have you previously submitted testimony before this Commission?**

15 A5. Yes, I have submitted testimony in the following cases: *In the Matter of the*
16 *Application of Columbus Southern Power Company to Adjust its Power*
17 *Acquisition Rider Pursuant to its Post-Market Development Period Rate*
18 *Stabilization Plan*, Case No. 07-333-EL-UNC; *In the Matter of the Application of*
19 *The East Ohio Gas Company for Authority to Implement Two New Transportation*
20 *Services, for Approval of New Pooling Agreement, and for Approval of a Revised*
21 *Transportation Migration Rider*, Case No. 96-1019-GA-ATA; *In the Matter of the*
22 *Applications of Columbus Southern Power Company and Ohio Power Company*
23 *for Approval of Their Electric Transition Plans and for Receipt of Transition*

1 *Revenues, Case Nos. 99-1729-EL-ETP, et. al.; In the Matter of the Commission's*
2 *Investigation into the Policies and Procedures of Ohio Power Company,*
3 *Columbus Southern Power Company, The Cleveland Electric Illuminating*
4 *Company, Ohio Edison Company, The Toledo Edison Company, and*
5 *Monongahela Power Company Regarding the Installation of New Line*
6 *Extensions, Case No. 01-2708-EL-COI, et. al.; and, In the Matter of the*
7 *Application of Ohio Edison Company, The Cleveland Electric Illuminating*
8 *Company, and The Toledo Edison Company for Authority to Increase Rates for*
9 *Distribution Service, Modify Certain Accounting Practices and for Tariff*
10 *Approvals, Case No. 07-551-EL-AIR, et. al.*

11 **Q6. What does your testimony in this case address?**

12 A6. My testimony addresses two aspects of the Electric Security Plan ("ESP")
13 proposed by The Cleveland Electric Illuminating Company ("CEI"), Ohio Edison
14 Company ("OE"), and the Toledo Edison Company ("TE") (collectively,
15 "FirstEnergy" or "Companies"). Specifically, I address the Companies' failure to
16 address all of the issues raised in the distribution rate case and the need for the
17 Companies to reflect the IRS Code Section 199 tax deduction in customers'
18 generation rates.

19 **II. DISTRIBUTION RATE CASE ISSUES**

20 **Q7. Has FirstEnergy included distribution components in its ESP proposal?**

21 A7. Yes. FirstEnergy has presented the ESP proposal as a comprehensive package
22 that includes generation, transmission and distribution components and intends
23 to resolve the pending distribution rate case from Case No. 07-551-EL-AIR,

1 *et al.*, and the pending fuel deferral case from Case No. 08-124-EL-ATA.
2 However, the ESP leaves some issues raised in the distribution rate case
3 unresolved. Specifically, at paragraph (A)(3)(d) of the ESP Application the
4 Companies state that four rate case issues would be resolved by the ESP, but it
5 does not say what happens to the remainder of the contested issues; for
6 example, the treatment of pension expense.

7 **Q8. Did IEU-Ohio have a position on any issues in the distribution rate case**
8 **that remain unresolved in the ESP case?**

9 A8. Yes. In the distribution rate case, IEU-Ohio argued that the employee pensions
10 and Other Post-Employment Benefits ("OPEB") expenses should be determined
11 based on test year net periodic costs, which is consistent with accounting
12 principles and past Commission practice, as opposed to using only the service
13 cost component as proposed by FirstEnergy.

14 **Q9. What is your recommendation for how the contested issues from the**
15 **distribution rate case should be addressed?**

16 A9. It is my understanding that the distribution rate case was fully litigated but a
17 determination has not yet been made by the Commission on the case. In order
18 to avoid the time and resources necessary to re-litigate identical issues, the
19 Commission should consider the full record from the distribution rate case in this
20 proceeding. In other words, FirstEnergy should not be permitted to selectively
21 adopt issues that serve only to their benefit while ignoring other issues and, thus,
22 requiring other parties to essentially duplicate their distribution rate case efforts in
23 this proceeding. In the alternative, IEU-Ohio recommends that any employee

pensions and OPEB expenses for which the Companies seek to recover the costs in this case be determined based on test year net periodic costs.

III. IRS CODE SECTION 199 DEDUCTION

Q10. What is the Internal Revenue Service ("IRS") Code Section 199 deduction?

A10. Beginning in 2007, a deduction against federal taxable income is available for "qualified production activities income", which includes the production of electricity. The deduction is phased-in, with the deduction equal to 6% of qualified income in years 2007 through 2009, and 9% for 2010 and thereafter.

Q11. Have the Companies reflected the tax benefits of the Section 199 deduction into the base generation prices in the ESP?

A11. No. In response to IEU-Ohio Interrogatory No. 1, Question 10, Set 1, the Companies indicated that there was no explicit recognition of the Section 199 tax deduction factored into the determination of base generation prices.

Q12. Why should the Companies reflect tax benefits related to the production of electricity when they no longer own generation assets?

A12. If the ESP is approved, the Companies plan to purchase from an affiliate, FirstEnergy Solutions ("FES"), the generation supply needed to serve their standard service offer ("SSO") customers. To the extent that the Section 199 deduction associated with the generation supplied by FES to the Companies can be utilized in FirstEnergy's consolidated tax return, it is appropriate that that tax benefit be reflected in the generation rates of the Companies. Moreover, the Companies have indicated that during the duration of the ESP they intend to

1 adjust base generation charges to pass on to SSO customers the costs of new
2 taxes, among other items.¹ In response to Staff Data Request PUCO-5, the
3 Companies further indicated that the costs associated with any new carbon tax
4 legislation are an example of the new taxes for which they would request
5 recovery. For the treatment of taxes to be symmetrical, if customers are being
6 asked to pay for the costs associated with new taxes that result from the
7 generation of electricity, SSO customers should also receive the tax benefits
8 associated with the Section 199 deduction.

9 **Q13. Is there any precedent for the Commission giving recognition to the**
10 **Section 199 deduction in an electric utility's rates?**

11 A13. Yes. In an Entry on Rehearing dated November 28, 2007 in Case No.
12 07-63-EL-UNC, the Commission adjusted the revenue requirement associated
13 with an increase in generation rates (generation cost recovery rider) for
14 Columbus Southern Power Company ("CSP") and Ohio Power Company ("OP")
15 to reflect the impacts of the Section 199 deduction. In that proceeding, CSP and
16 OP were permitted the recovery of carrying costs on certain incremental
17 generation- related environmental expenditures. Accordingly, the Section 199
18 deduction impact was reflected by a reduction in the carrying cost rate to be
19 applied to this generation plant investment. More specifically, the equity
20 component of the rate of return was grossed-up using a federal income tax rate
21 that was net of the Section 199 deduction. This resulted in a lower carrying cost
22 rate to be applied to the generation plant balances.

¹ Application at 14.

1 **Q14. Do you recommend the same treatment for the Section 199 deduction for**
2 **the Companies in this proceeding?**

3 A14. No. Because of the limited issue being addressed in Case No. 07-63-EL-UNC,
4 i.e., carrying costs on incremental generation investment, the Section 199 impact
5 is different in this case. In this case, the price of generation for several years is
6 at issue. Therefore, the price of generation should be adjusted to reflect the tax
7 benefit of the Section 199 deduction. If the Companies are not able to
8 demonstrate that the price of generation ultimately allowed in this proceeding is
9 net of the Section 199 tax benefits, then the Commission should not allow the
10 Companies to pass along the costs of new taxes associated with generation.

11 **Q15. Does this conclude your prepared direct testimony?**

12 A15. Yes, at the present time. However, I reserve the right to submit supplemental
13 testimony.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Direct Testimony of Joseph G. Bowser* was served upon the following parties of record this 29th day of September 2008, via electronic transmission, hand-delivery or first class mail, postage prepaid.


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