FILE

40

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

INDUSTRIAL ENERGY USERS-OHIO'S POST HEARING BRIEF ON FIRSTENERGY'S ELECTRIC SECURITY PLAN PROPOSAL

Samuel C. Randazzo (Counsel of Record)
Lisa G. McAlister
Joseph M. Clark
MCNEES WALLACE & NURICK LLC
21 East State Street, 17[TH] Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com

November 21, 2008

Attorneys for Industrial Energy Users-Ohio

TABLE OF CONTENTS

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

POST HEARING BRIEF ON FIRSTENERGY'S ELECTRIC SECURITY PLAN PROPOSAL

I. INTRODUCTION

On July 31, 2008, Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("TE") (collectively, "FirstEnergy" or "Companies") filed their applications for approval of a standard service offer ("SSO") under Sections 4928.143 and 4928.142, Revised Code, before the Public Utilities Commission of Ohio ("Commission"). In this case, FirstEnergy proposed an electric security plan ("ESP") with a three-year term from 2009 through 2011, indicating that if the Commission so chooses, it may terminate the final year of the ESP. Simultaneous with the ESP, FirstEnergy filed a market rate offer ("MRO") in Case No. 08-936-EL-SSO that will serve as the default option should the Commission deny its ESP or modify the ESP in a manner unacceptable to FirstEnergy. Finally, within this case, FirstEnergy proposed an interim four-month ESP that FirstEnergy indicated would require Commission approval by November 14, 2008 to become effective on January 1, 2009 through April 31, 2009, in order to provide the Commission with additional time to review the longer-term ESP or work through a competitive bidding process ("CBP") as part of FirstEnergy's MRO.[1]

The issues contested in this proceeding cannot be identified, let alone resolved, without making important assumptions about context and content. For example, FirstEnergy's proposed ESP is built on a distribution rate increase foundation that will remain unknown until the Commission resolves the contested issues in the distribution rate increase proceeding. The merit of FirstEnergy's proposed ESP or lack thereof depends on assumptions regarding the expected outcome under Sections 4928.142, Revised Code, and the application of Section 4928.142 depends on the Commission's resolution of the contested issues in FirstEnergy's MRO proceeding. The resolution of the contested issues in the MRO proceeding depends on assumptions about how and when the Federal Energy Regulatory Commission ("FERC") will address issues that dictate the price, reliability and credit requirements that ripple into retail rates as a result of FERC's persistently muddled determinations. Looking back to the litigation that ensued *via* numerous appeals that took place subsequent to the rate stabilization plan ("RSP") decisions issued by the Commission, it seems unlikely that binding answers to contested issues in all of these cases will be known until after the end of the three-year term of FirstEnergy's proposed ESP. As the Commission attempts to freeze all the variables long enough to conduct the static analysis that is traditionally used by regulators and stakeholders to produce "just and reasonable" results, real-time volatility in the quantitative value of the variables demonstrate that static analysis is incapable of offering even a peek at the public interest outcomes that might actually be achievable once rates are put into effect. All of this would be bad enough without a financial crisis

[1] Since the Commission did not issue an order on the interim ESP by November 14, 2008, it was deemed withdrawn by its terms.

on Wall Street and Main Street. But, to all of this we must fold in the implications of a financial crisis that is taking large bites out of our core financial health and inflicting significant pain on both sides of the electric meter.

The interrelated, interconnected and interdependent challenges presented by all of these individual cases and the present context make case-by-case litigation and the Commission's adjudicatory process poor – perhaps the worst – tools for crafting public interest solutions. The nature of the jurisdictionally constrained process, the disability caused by misaligned stakeholder interests, the decline in integrity that would otherwise discipline the position flip-flopping and press-release frolics that have occurred as issues move through their legislative and regulatory cycle and, last but not least, crisis-induced stress have combined to make it nearly impossible to identify, implement and integrate forward looking, prudent and practical answers to very difficult questions.

Below, Industrial Energy Users-Ohio ("IEU-Ohio") offers its position on the facts, law and outcomes in a brief that has been filed because the filing is required by the procedural schedule. Without offering or intending any criticism whatsoever, the fact that the procedural schedule requires the filing of a brief well before it is possible for any party to make thoughtful and meaningful recommendations means that stakeholders are not well positioned to help the Commission make things better or at least more certain. Accordingly, and beyond and above its recommendations on particular issues, IEU-Ohio urges the Commission to use the opportunity presented by these very difficult issues to: (1) recognize that case-specific deliberations cannot and will not respond to the current challenges; (2) proactively identify and resolve bottleneck issues in ways that permit stakeholders to have appropriate and merit-based confidence in their regulatory expectations; and, (3) call upon Ohio's stakeholders to use their substantial skills and talents for their mutual benefit rather than mutual destruction.

II. PROCEDURAL POSTURE

A. Legal Framework

Amended Substitute Senate Bill 221 ("SB 221"), which, among other things, modifies Chapter 4928 of the Revised Code and requires each Ohio electric distribution utility ("EDU") to establish an SSO in accordance with Sections 4928.142 or 4928.143, Revised Code, establishes deadlines by which the Commission must act upon an SSO application.[2] Specifically, Section 4928.142(B), Revised Code, states that the Commission must determine by order whether the EDU's MRO meets all of the statutory requirements to initiate a CBP within 90 days from the date of an MRO application and Section 4928.143(C)(1), Revised Code, requires the Commission to act upon an ESP application within 150 days from the date of an ESP application.

FirstEnergy filed each of its SSO proposals on July 31, 2008. Accordingly, the Commission was required to issue a decision on the MRO by October 29, 2008 and is required to issue and order on the ESP by December 26, 2008.[3] The Commission has already missed the statutory deadline by which to issue an order on the MRO.[4] With reply briefs on this ESP due December 12, 2008 and the holiday season fast

[2] Section 4928.142, Revised Code, governs MRO plans while Section 4928.143, Revised Code, controls ESPs.

[3] Because Section 4928.143(C)(1) states "The commission shall issue an order under this division for an initial application under this section not later than one hundred fifty days after the application's filing date", and the 150th day falls on a Sunday, the Commission must issue an order by Friday, December 26, 2008.

[4] It is worth noting that the short-term ESP included at Company Exhibit 9A at 35 is effectively off the table. Specifically, FirstEnergy's application states that the Commission "must choose whether to accept this Short Term ESP by November 14, 2008 or it is deemed withdrawn from the Plan." On November 12, 2008, the Commission pulled the short-term ESP from its agenda, implicitly indicating that it would not issue a decision on the interim ESP and, thus, it expired by its own terms.

approaching, there is limited time remaining before the December 26, 2008 deadline for the Commission to undertake the review necessary to make an informed decision on the complex issues involved in these cases.[5]

To make matters worse, the statutory framework and FirstEnergy's applications are such that even if the Commission is able to issue a decision on either of FirstEnergy's SSO proposals, and even if the Commission were to issue an order approving FirstEnergy's ESP without modification (which IEU-Ohio does not believe is a reasonable result), significant work remains to be done in order to effectuate a new SSO on January 1, 2009.

If the Commission issues an order approving an ESP, it can only do so based on a finding that the ESP is, in the aggregate, more favorable than the expected results under Section 4928.142, Revised Code.[6] As discussed below, while IEU-Ohio believes there is value in the ESP approach compared to the MRO, IEU-Ohio does not believe the ESP should be approved without modification. Nonetheless, if the Commission approves the ESP without modification, FirstEnergy must still enter into an agreement with its affiliate, FirstEnergy Solutions ("FES"), and, perhaps, other wholesale providers in order to obtain generation resources sufficient to satisfy its ESP commitments.[7] No such contract currently exists between FirstEnergy and FES and, based upon the

[5] In fact, FirstEnergy indicated that to "accommodate the necessary lead times and to assure continued provision of service to customers on and after January 1, 2009, the Companies request a timely review of this Application and approval via issuance of a Commission Opinion and Order no later than December 10, 2008." Company Exhibit 9A at 40. With reply briefs due December 12, 2008, it is clear that there will not be a Commission decision prior to the date by which FirstEnergy indicated it was necessary.

[6] Section 4928.143(C)(1), Revised Code.

[7] Company Exhibit 9A at 41.

record, even the state of negotiations is unclear.[8] Further, any such supply agreement is subject to the jurisdiction of FERC. FirstEnergy has filed a request for determination by FERC that the requirement to obtain prior approvals for affiliate sales of electric energy or capacity does not apply to power sales from FES to the Companies, acknowledging that FES-owned generation in all likelihood is required to serve Ohio customers and FES intends to participate in any competitive solicitation approved by the Commission:

> And, given the magnitude of the Ohio Regulated utilities' generation needs relative to the amounts of uncommitted capacity in the regional bulk power market, it is virtually certain that [FES] will be selected to provide at least a portion of this power supply. For these same reasons, if [FES] did not participate, the liquidity and depth of the markets would suffer.[9]

Numerous parties have intervened in this FERC proceeding and many more are protesting the relief requested. FERC has not yet ruled on FirstEnergy's request and in the event FERC denies the request, FirstEnergy must then seek FERC approval of any supply contract it is able to negotiate with FES prior to its implementation. Thus, even if the Commission approved the ESP without modification, it is probable the ESP could not be immediately implemented.

---

[8] Tr. Vol. I at 63. Mr. Warvell states that he is not aware of whether there are negotiations between FirstEnergy and FES for generation supply. Mr. Hussing also states that he is not part of the negotiation process between FirstEnergy and FES. Tr. Vol. V at 58.

[9] *See FirstEnergy Solutions Corp., et al.*, FERC Docket Nos. ER09-134-000, ER09-135-000, ER09-136-000, ER09-137-000, Amendments to Market-Based Rate Tariffs Waiving Affiliate Restrictions in Ohio at 9 (October 28, 2008). FirstEnergy's admission regarding the significance of FES' generation adds emphasis to questions about the predictive qualities of the results of prior competitive bidding processes where FES elected to not participate.

If the Commission modifies and approves the ESP, FirstEnergy has several choices. First, it could accept the Commission's modifications and move forward to secure the generation supply necessary to meet the terms of the modified ESP.[10]

The second and third options vary depending upon whether there is a Commission-approved MRO. If the Commission has not yet ruled on the MRO or if the Commission rejects the MRO, upon Commission modification of the ESP, FirstEnergy may withdraw the ESP application thereby terminating it pursuant to Section 4928.143(C)(2)(a), Revised Code. In the event the ESP is withdrawn, Section 4928.143(C)(2)(b), Revised Code, requires the Commission to issue such an order continuing the provisions, terms and conditions of the most recent SSO with expected increases or decreases in fuel costs, until a subsequent SSO is authorized under Section 4928.142, Revised Code.

A potential problem with continuing the most recent SSO in the Companies' case is that they do not own or control generation assets. As an EDU without generating assets, the Companies must obtain the supply to serve the SSO requirements and it is not known whether such supply may be obtained at the same price, terms and conditions as the supply purchased to serve the SSO load for the period of the preceding SSO plan. Moreover, pursuant to the Supremacy Clause of the Constitution and the "filed rate doctrine," the Companies have argued that they have the opportunity to recover any FERC-approved cost of generation supply used to meet the SSO requirements. Thus, the Commission's ability to affect SSO pricing may be, in some circumstances, limited by its obligation to respect determinations made by FERC and/or a federal court.

[10] As discussed, if FirstEnergy accepts a modified ESP, it still must negotiate a supply agreement with FES, which is dependent on FERC approval.

If the Commission approves FirstEnergy's MRO and FirstEnergy withdraws the ESP upon Commission modification, FirstEnergy has technically satisfied the Section 4928.141, Revised Code, obligation to make at least one ESP application filing and may proceed to implement a Commission-approved MRO.[11] As the Commission also knows, once it approves an MRO application under Section 4928.142(C), Revised Code, the EDU is foreclosed from seeking or receiving ESP authority.[12] Thus, in this circumstance, an MRO is the only option to establish an SSO.

Regardless of whether the SSO is priced by an MRO or ESP, EDUs without generating assets, like the Companies, have the opportunity under SB 221 to recover the prudently incurred cost of generation supply used to meet their SSO obligations. Thus, from a practical standpoint, in the case of FirstEnergy, the Commission's choice between an ESP versus an MRO may have little effect on the ultimate SSO prices in Ohio.

B. Practical Realities

FirstEnergy's SSO applications (the MRO and ESP) are the first post-SB 221, fully litigated proceedings to address SSO prices for January 1, 2009 and beyond that have come before the Commission. Resolution of the issues raised in these proceedings will affect the price, service terms and conditions, and the availability of electric service for customers within the Companies' service territories. Resolution of these issues will also reflect the Commission's policy and other judgments on the

[11] As noted above, the Companies simultaneously filed a Section 4928.142, Revised Code, application and Section 4928.143, Revised Code, application, and the Commission's decision on certain threshold questions raised by the MRO application was due on October 29, 2009. Thus, if the Commission respects the statutory decision timeline, it should be known whether the MRO is approved prior to a decision on the ESP.

[12] Section 4928.142(F), Revised Code.

actions that are required to manage the obligations embedded in SB 221. In addition to this being a case of first impression under new legislation, there are other challenges that the parties to this case and the Commission must address. A few of the more immediate challenges are identified below.

FirstEnergy has a pending distribution rate case that includes significant tariff consolidation upon which both ESP proposals and the MRO are based.[13] At the start of this proceeding, the Attorney Examiners granted a motion by the Office of the Ohio Consumers' Counsel ("OCC") to sever the issues raised in this proceeding from those that are duplicative of issues raised in the pending distribution rate case.[14] However, both of the Companies' SSO proposals assume the tariff consolidation initiated in the distribution rate case is accepted by the Commission. Thus, if the Commission were to accept either of the Companies' SSO proposals, but not contemporaneously address the pending distribution rate case, there would be new rates but no corresponding rate schedules with which to attach. The converse is also true. If the Commission were to issue an order on the pending distribution rate case that accepts the proposed tariff consolidation but not issue an order on at least one of the SSO applications by

[13] *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, *et al.*, Application (May 8, 2007). Specifically, in the distribution rate case, FirstEnergy proposed significant changes in tariff design, such that each Company will have only one residential tariff, only four tariffs for commercial and industrial customers and three lighting tariffs. For the proposed general service tariff schedules applicable to large customers, eligibility is based on the voltage levels rather than usage. In addition, within the proposed tariffs, FirstEnergy proposed other changes generally including removing declining rate block structures, shifting from structures consisting of a number of demand and energy and/or hours use blocks to a single per kW or kVa rate structure, and eliminating contract term flexibility, among other proposed changes. The tariff consolidation also makes it difficult to make generalized characterizations about the impacts of FirstEnergy's ESP proposal on customers' bills. Identifying these impacts requires analysis on an individual facility basis.

[14] Tr. Vol. I at 15.

January 1, 2009, there will be a mismatch of tariffs.[15] In other words, acceptance of the distribution rate case proposal and rejection of the ESPs and MRO leaves eight distribution tariffs and approximately 117 generation tariffs. As PUCO witness Fortney testified, such a result would be an administrative nightmare.[16]

Additionally, SB 221 requires the Commission to develop and adopt rules to implement the legislation. While the Commission has begun its rulemaking process, it is not yet complete. The first set of rules has been approved by the Commission but is currently awaiting a Commission decision on rehearing.[17] The second set of rules has been issued but the time frame for Applications for Rehearing has not yet expired[18] and the third set of rules has not yet been issued by the Commission in "final" form.[19] None of the rules have completed the review process of the Joint Committee on Agency Rule Review ("JCARR") or become final. Accordingly, the application is proceeding, as permitted by Section 4928.143(A), Revised Code, but is subject to change in order to conform to any Commission rules that may prescribe specific requirements for an ESP, not addressed in FirstEnergy's application, that the Commission deems necessary.

---

[15] Tr. Vol. VIII at 130-131.

[16] *Id.* at 133.

[17] *In the Matter of the Adoption of Rules for Standard Service Offer, Corporate Separation, Reasonable Arrangements, and Transmission Riders for Electric Utilities Pursuant To Sections 4928.14, 4928.17, and 4905.31, Revised Code, as amended by Amended Substitute Senate Bill No. 221*, Case No. 08-777-EL-ORD, Finding and Order (September 17, 2008).

[18] *In the Matter of the Commission's Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-23, 4901:1-24, and 4901:1-25 of the Ohio Administrative Code*, Case No. 06-653-EL-ORD, Finding and Order (November 5, 2008).

[19] *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technologies and Resources, and Emission Control Reporting Requirements, and Amendment of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, pursuant to Chapter 4928, Revised Code, to Implement Senate Bill No. 221*, Case No. 08-888-EL-ORD, order pending.

Similarly, SB 221 required the newly-created federal energy advocate to, among other things, examine the value of the participation of Ohio's EDUs in regional transmission organizations ("RTOs") and submit a report to the Commission on whether continued participation of those EDUs is in the interest of consumers.[20] Although the Commission has employed a federal energy advocate, it is not likely that his report will be completed until after the Commission is required to issue a decision in this proceeding. Likewise, the Commission has yet to complete the evaluation of the RTOs selected by the utilities required under Section 4928.12, Revised Code, that was delayed by the Commission in the transition plan cases.[21]

As extensively discussed during the hearing, there has been turmoil in the financial markets that has negatively affected firms that have heretofore had excellent credit ratings and has affected at least the short-term electricity prices. The uncertainty resulting from disorder in the financial markets has likely increased both the risk and the cost of doing business for both customers and FirstEnergy.

In the face of all of these uncertainties, IEU-Ohio believes that an ESP is the best means of satisfying the sometimes competing objectives in Section 4928.02, Revised Code. IEU-Ohio also understands that the Companies have much to say about whether and when an ESP might be possible and that FERC may ultimately do things that make it impossible to establish a useful ESP. IEU-Ohio members value predictable and stable electricity prices, prices that facilitate their efforts to compete in the global economy and service quality that will sustain their efforts to compete. They are

[20] Section 4928.24, Revised Code.

[21] *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 Authorization to Collect Transition Revenues,* Case Nos. 99-1212-EL-ETP, *et al.,* Opinion and Order at 54 (July 19, 2000).

generally more concerned about the level of their overall bills than the specific components that constitute an ESP. Accordingly, IEU-Ohio urges the Commission to ensure that any SSO mechanism provides certainty, ensures reliability and provides reasonable rates. In working on those goals, and given the short timeframe in which these cases must be resolved, IEU-Ohio recommends that the Commission stay focused on the overall results, avoid the trap of a myopic focus on ESP details, and try to be flexible and practical. IEU-Ohio identifies below aspects of the Companies' proposed ESP that work against these overarching objectives and would likewise do so if presented in the form of a proposed MRO.

III. MODIFICATIONS TO THE ESP

As the Commission is well aware, the time allotted subsequent to the passage of SB 221 for Ohio EDUs to design SSO proposals and for parties and the Commission to work through those proposals is limited. Accordingly, IEU-Ohio recognizes that in the short time available to design and make its ESP proposals, FirstEnergy may not have been able to capture every detail of how it intends to implement its ESP proposal. In fact, during the course of the hearing in this case, many times FirstEnergy witnesses indicated that a concept articulated by one of the parties was in line with what FirstEnergy intended despite the application being devoid of the concept. While FirstEnergy witness David Blank indicated that he (and presumably other FirstEnergy witnesses) did not have authority to and would not "negotiate this plan from the witness stand," in several instances, FirstEnergy witnesses agreed that certain modifications would be reasonable and perhaps acceptable to FirstEnergy should the Commission order such changes.[22] IEU-Ohio believes that, at a minimum, several changes to FirstEnergy's ESP, some of which FirstEnergy agreed would be acceptable, are necessary to make the ESP a reasonable option. Those changes are set forth below.

A. Term

FirstEnergy identifies average base generation rates for years 2009 through 2011 unless the Commission terminates the third year of the ESP and concludes that its proposed ESP is for a three-year term.[23] However, FirstEnergy's proposal also states that the fixed generation prices will be "phased-in by means of generation phase-in credits, with recovery of the amounts represented by the phase-in credits over a period not to exceed ten years."[24] Thus, FirstEnergy's ESP proposal has a three-year term on price but because of the deferral and subsequent recovery aspects that have an impact beyond three years, the ESP really has a term that goes beyond three years. Moreover, while Section 4928.144, Revised Code, permits EDUs to phase-in rates, it limits the resulting surcharges that amortize the cost of the phase-in such that they must apply during the term of the ESP or MRO.[25] If this is so, (and IEU-Ohio believes it is), then FirstEnergy's ESP proposal might actually be more properly characterized as an ESP having a term that lasts until the amortization clock runs.

As importantly, a three-year term will have all parties and the Commission essentially starting the next ESP/MRO death dance while probable appeals from any

[22] *See*, for example, Tr. Vol. V at 283.

[23] Company Exhibit 9A at 10.

[24] *Id.*

[25] Specifically, Section 4928.144, Revised Code, states that the order authorizing the phase-in of rates established under sections 4928.141 to 4928.143, Revised Code, must "authorize the collection of those deferrals through a nonbypassable surcharge on any **such rate or price so established.**" (emphasis added).

decision the Commission makes in this and the related MRO and other ESP cases and potential remands leave important aspects of the decision unsettled. In other words, and based on the appeal cycle of the RSP cases, it is possible that the ESP term of just three years may end before the litigation over the ESP is completely resolved. This risk is likely significantly greater in the case of a new law that will require the Commission to resolve new issues.

Also, for the Commission to make a mandatory comparison of the ESP to the MRO, the Commission must look beyond the three-year term because once an EDU utilizes the MRO option, it cannot file and the Commission cannot authorize or require it to file an ESP.[26]

Finally, there are several practical reasons that a three-year ESP is too short. First, only having rate stability for three years will make it difficult for industrial and other customers to make the business case to invest in and maintain their Ohio operations. Also, given the turmoil in worldwide financial markets, it is in FirstEnergy's and Ohio customers' mutual interests to have a longer term ESP. A longer term ESP would also provide more tools to help mitigate the significant immediate increases driven by fuel costs. Finally, on a practical level, a three-year term is simply not long enough if the Commission wants to satisfy the objectives in Section 4928.02, Revised Code. This case cannot be looked at just from the perspective of what needs to be done over the next three years. Indeed, the size and significance of the challenges ahead demand that the Commission, EDUs and other stakeholders focus on a longer term plan that will provide sufficient flexibility to adapt to the changes that are surely coming. The only possible virtue of a three-year ESP is that it avoids the mandatory earnings review in

[26] Section 4928.142(F), Revised Code.

Section 4928.143, Revised Code. In all other respects, a three-year ESP is a waste of time and resources.

B. Customer-Sited Capabilities

SB 221 imposes new portfolio requirements on EDUs that apply regardless of whether the EDU prices its SSO through an ESP or MRO. Section 4928.64(B), Revised Code, requires EDUs to provide 25% of the total number of kilowatt hours ("kWh") of electricity sold to retail customers from alternative energy resources by 2025, half of which should come from advanced energy resources and at least half should come from renewable energy resources (including .5% from solar resources). The definition of "alternative energy resource" includes:

> ... a mercantile customer-sited advance energy resource or renewable energy resource, whether new or existing, that the mercantile customer commits for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs as provided under division (B)(2)(b) of section 4928.66 of the Revised Code, including, but not limited to, any of the following:
>
> (a) A resource that has the effect of improving the relationship between real and reactive power;
>
> (b) A resource that makes efficient use of waste heat or other thermal capabilities owned or controlled by a mercantile customer;
>
> (c) Storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics;
>
> (d) Electric generation equipment owned or controlled by a mercantile customer that uses an advanced energy resource or renewable energy resource;
>
> (e) Any advanced energy resource or renewable energy resource of the mercantile customer that can be utilized effectively as part of any advanced energy resource plan of an electric distribution utility and would otherwise qualify as an alternative energy resource if it were utilized directly by an electric distribution utility.

Section 4928.64(A)(1), Revised Code.

Additionally, Section 4928.66(A)(1)(a), Revised Code, requires EDUs, beginning in 2009, to implement energy efficiency programs that achieve energy savings equal to at least 3/10 of one percent of the total, annual average, and normalized kWh sales of the EDU during the preceding three calendar years, with the percentage escalating annually until the annual energy savings exceeds 22% by the end of 2025. Similarly, Section 4928.66(A)(1)(b), Revised Code, requires EDUs, beginning in 2009, to implement peak demand reduction programs designed to achieve a one percent reduction in peak demand in 2009 and an additional 75/100 of one percent reduction each year through 2018. Section 4928.66(A)(2)(c), Revised Code, specifically prescribes that measurement of compliance with the statutory benchmarks "shall be measured by including the effects of *all* demand-response programs for mercantile customers of the subject electric distribution utility and *all* such mercantile customer-sited energy efficiency and peak demand reduction programs, adjusted upward by the appropriate loss factor" (emphasis added). Additionally, Section 4928.66(A)(2)((d), Revised Code, states that "Division (A)(2)(c) of this section shall be applied to include *facilitating* efforts by a mercantile customer or group of those customers to offer customer-sited demand-response, energy efficiency, or peak demand reduction capabilities to the electric distribution utility as part of a reasonable arrangement submitted to the commission pursuant to section 4905.31 of the Revised Code" (emphasis added).

Thus, regardless of whether the Commission allows FirstEnergy to go forward with its MRO or its ESP, FirstEnergy must meet the SB 221 requirements to meet alternative energy resource, demand-response, energy efficiency and peak demand requirements, which may be met with the use of customer-sited capabilities.

FirstEnergy included some description for compliance with the SB 221 portfolio requirements in its ESP case, but its MRO proposal lacks information regarding how FirstEnergy will comply with the same requirements should the Commission select its MRO. Neither proposal provides the Commission with enough information to make an informed comparison on how SB 221 requirements to meet alternative energy resource, demand-response, energy efficiency and peak demand requirements will be achieved.

The ESP application itself identifies that the Companies will commit to providing $5 million each year from 2009 through 2013 for investment in customer energy efficiency/demand-side improvements made after January 1, 2009.[27] The direct testimony of Gregory F. Hussing also briefly mentions the proposed demand-side management and energy efficiency rider.[28] Mr. Hussing indicates that the rider has been structured in such a way that customers may avoid a charge by implementing customer-sited programs that help the Companies comply with portfolio obligations. Language that appears in the Companies' proposed demand-side management and energy efficiency riders also addresses this issue.

The information provided by FirstEnergy amounts to a placeholder and the details regarding how customer-sited capabilities will be relied upon have not been provided.[29] In fact, Mr. Hussing agreed that there are not any specific details on how the Companies would use a particular energy efficiency program compared to another type of program.[30] There are also no details on how FirstEnergy's proposal to use

[27] Company Exhibit 9A at 26.

[28] Company Exhibit 4 at 10-11.

[29] Given the time that the Companies had to prepare and file their application, insertion of a placeholder is perhaps understandable.

[30] Tr. Vol. IV at 219.

customer-sited projects for its alternative energy resources will work and what value customers will receive in exchange – details necessary to determine the reasonableness of the overall proposal. As the ESP proposal does not contain enough information to make any qualitative or quantitative analysis, IEU-Ohio recommends that the Commission require FirstEnergy to supplement its application to provide additional specificity on how customer-sited resources will be accommodated under its ESP.

In addition to a lack of detail, in several instances, the information that is provided is based upon out-of-date assumptions or the language that actually implements the concept is not aligned with the stated basis for the concept. For example, Mr. Hussing suggests that avoidability of the DSE2 charges embedded in the Demand Side Management and Energy Efficiency Rider ("Rider DSE") is intended to provide customers with an incentive to implement customer-sited capabilities.[31] However, for non-residential customers, the initial DSE2 charge is zero.[32] As Mr. Hussing succinctly stated on the stand, "It doesn't provide an incentive for someone to avoid a zero charge."[33] Further, it appears that the earliest the DSE2 charge for non-residential customers could increase is January 1, 2010.[34] Thus, at least initially, the rider does not provide any economic incentives. While IEU-Ohio is certainly not advocating in favor of increasing the charges, it is worth pointing out that the justification for charges is artificial at best.

For another example, the availability of the Reasonable Arrangement Rider ("Rider RAR") is limited such that if a customer is taking service under a unique

[31] Company Exhibit 4 at 11.

[32] *See*, for example, Company Exhibit 9C, Schedule 3A for Ohio Edison at 74 of 103.

[33] Tr. Vol. IV at 221.

[34] See, for example, Company Exhibit 9C, Schedule 3A for Ohio Edison at 75 of 103.

arrangement or avoiding the DSE1 or DSE2 charges pursuant to the Rider DSE, that customer is **not** eligible for the Rider RAR.[35] Similarly, customers are not eligible to avoid the DSE2 charges under the Rider DSE if they are taking service under either a unique arrangement or the Rider RAR.[36] These limitations are in conflict with Section 4928.66(A)(2)(c), Revised Code, which requires all mercantile demand-response programs, peak demand reduction programs and all mercantile customer-sited energy efficiency programs to be included in the measurement of compliance with the statutory benchmarks.

Moreover, as FirstEnergy acknowledged, the bases for inclusion of these limitations on eligibility and benefits under the riders are no longer appropriate. Mr. Hussing indicated that he based the limitations on the Staff's draft rule 4901:1-38-07(D) in Case No. 08-777-EL-ORD that was issued on July 2, 2008.[37] He also admitted that draft rule 4901:1-38-07(D) was not included in the rules adopted by the Commission on September 17, 2008.[38] Further, Mr. Hussing agreed that there was no need to retain the limitations on availability.[39] For these reasons, IEU-Ohio recommends that the Commission also eliminate the arbitrary limitations that prohibit customers from utilizing each rider for which they are eligible.

Additionally, other parties have recommended that the Commission constrain FirstEnergy's ability to rely upon mercantile customer capabilities to meet its energy efficiency and peak demand reduction benchmarks in ways that are contrary to the law.

---

[35] *Id.* at 62.

[36] *Id.* at 75.

[37] Tr. Vol. IV at 218.

[38] *Id.*

[39] *Id.*

Specifically, the Ohio Environmental Council ("OEC") witness Gunn's prefiled testimony recommended that FirstEnergy "develop a threshold for the amount of energy savings that mercantile customers must demonstrate in order to be eligible for exemption."[40] Mr. Gunn further recommends that "only projects with an avoided contribution in excess of $10,000 should qualify for the exemption."[41] Mr. Gunn also stated that should mercantile customers be grouped together for purposes of requesting a waiver, the avoided contribution threshold would be even higher.[42]

OEC's recommendation is contrary to Ohio law, the Commission's rules, and OEC's recommendations in other cases addressing the same subject. OEC's recommendations are in conflict with Section 4928.66(A)(2)(c), Revised Code, which, as noted above, requires all mercantile demand-response programs, peak demand reduction programs and all mercantile customer-sited energy efficiency programs to be included in the measurement of compliance with the statutory benchmarks. OEC recognized that the General Assembly could have included an avoided contribution threshold as it recommended in SB 221.[43] However, the requirement ultimately adopted by the General Assembly to measure all customer-sited energy efficiency and peak demand reduction programs, coupled with the requirement to facilitate efforts by customers to dedicate their efforts towards EDU compliance, requires EDUs to rely upon customer-sited capabilities to the maximum extent available. OEC implies that the

[40] OEC Exhibit 1 at 21.

[41] *Id.* at 22.

[42] Tr. Vol. IX at 19.

[43] Tr. Vol. IX at 20. OEC fails to recognize that the General Assembly did include a threshold – "mercantile customers." Section 4928.01(A)(19), Revised Code, defines "mercantile customer" as a commercial or industrial customer consuming more than 700,000 kilowatt hours ("kWh") per year or is part of a national account involving multiple facilities in one or more states.

General Assembly may not have included its recommended threshold because "those sort[s] of details are left to the administrative rulemaking to address...."[44] Nonetheless, OEC did not recommend that that same threshold be included in the Commission's rules.[45]

The Ohio General Assembly is responsible for making public interest determinations. Section 4928.66(A)(2)(c), Revised Code, gives the Commission the ability to make case-by-case determinations on an exemption request for any "mercantile customer." OEC's recommendation, if adopted, would close the door on this opportunity for mercantile customers that cannot meet the $10,000 threshold regardless of merit. Based on the language adopted by the Ohio General Assembly, this arbitrary limit is contrary to the public interest as expressed by the General Assembly. Additionally, as noted above, the Commission has only started to implement the energy efficiency and peak demand reduction provisions in the new law. There is no real world experience with mercantile customers committing their efficiency and/or peak demand reduction capabilities towards an EDU's portfolio obligations. Therefore, arbitrarily limiting opportunities at this point, before the real world implementation experience better informs the Commission on this and other issues, is an imprudent choice regarding the implementation of the new law.

OEC's arguments in this regard are either an attempt to substitute its judgment for that of the General Assembly or untimely comments relative to the Commission's rulemaking proceeding. In either case, they should not be accepted by the

[44] *Id.*

[45] *Id.; see also,* Tr. Vol. IX at 16.

Commission, particularly at a time when the Commission should be encouraging customer-sited initiatives.

C. Default and Standby Service Charges

FirstEnergy proposes that all customers, both shopping and non-shopping, be subject to a $0.01 per kWh charge (hereinafter referred to as the "default charge").[46] Kevin T. Warvell testifies that this non-bypassable charge is intended to compensate FirstEnergy for generation-related administrative costs and hedging costs associated with FirstEnergy's obligation to serve the entire load of its retail customers.[47]

FirstEnergy also proposes a separate power supply reservation rider that would apply only to customers that switch to an alternative supplier (hereinafter referred to as the "standby charge").[48] The rider for the standby charge would be set at $0.015 per kWh in 2009, $0.020 per kWh in 2010 and $0.025 per kWh in 2011.[49] This standby charge would apply unless the customer or its governmental aggregator elects to waive the right to return to SSO service at the ESP price during the three-year term of the ESP. Mr. Warvell testifies that the standby charge is intended to compensate FirstEnergy for the costs and risks of returning customers.[50] In return for payment of the charge, FirstEnergy stands willing to provide customers that switch to an alternative supplier and subsequently return, generation at the SSO base generation price.

[46] Company Exhibit 9A at 14. For non-shopping customers, this charge would be part of the base generation price in Rider GEN. For shopping customers, this charge would be levied through the minimum default service rider.

[47] Company Exhibit 5 at 10-11.

[48] Company Exhibit 9A at 16.

[49] *Id.*

[50] Company Exhibit 5 at 21.

Customers that waive the standby charge and subsequently return to FirstEnergy for generation service are subject to a form of market-based rates.[51]

In prior cases, the Commission has approved non-bypassable charges as part of a larger package that satisfied the Commission's goals.[52] SB 221 specifically recognizes the role that limitations on shopping and non-bypassable charges can and should play in assembling a package that is, in the aggregate, better for customers than the MRO. Unfortunately, the role of the Companies' proposed non-bypassable charges has been discussed in this proceeding largely from the perspective of what they may do or not do to further "shopping" or governmental aggregation. Thus, the larger public interest potential of non-bypassable charges has been forced out of the picture to allow stakeholders to advance their litigation positions. There is no non-bypassable charge that will not negatively affect "shopping." The Commission must, however, focus on how non-bypassable charges can be used, as part of a larger package, to serve the

---

[51] Company Exhibit 9A at 16.

[52] For example, in the Opinion and Order approving, with modification, FirstEnergy's rate stabilization plan the Commission stated:

> FirstEnergy offered a RSP in response to the Commission's September 23, 2003 entry in Case No. 03-1461-EL-UNC regarding the establishment of FirstEnergy's shopping credits for 2003. In that entry, the Commission requested that FirstEnergy develop a plan that balanced three objectives: (1) rate certainty, (2) financial stability for FirstEnergy, and (3) the further development of competitive markets. The Commission finds that the RSP, as modified by the Commission, fulfills all of these goals. Under the RSP, FirstEnergy will assume the risk of continuing to supply POLR services to its Ohio customers at a fixed, market-based generation price, using its generation assets after the end of the MDP, while still maintaining its financial integrity. The RSP provides for stable rates through 2008, subject to limited Commission-approved adjustments, while continuing to support shopping. The RSP, as revised also provides FirstEnergy with the ability to maintain financial stability through the term of the Plan by adjusting kWh sales targets and extending the period for regulatory transition cost recovery to account for the lower-than-expected sales resulting from the sluggish economic conditions and the effect of the accrual of carrying charges.

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Continue and Modify Certain Regulatory Accounting Practices and Procedures, for Tariff Approvals and to Establish Rates and Other Charges Including Regulatory Transition Charges Following the Market Development Period, Case No. 03-2144-EL-ATA, Opinion and Order at 48 (June 9, 2004).

larger public interest. In this spirit, IEU-Ohio offers the following comments on the Companies' proposed default and standby charges.

FirstEnergy has not supported the specific level of either the default charge or the standby charge. The only justification initially provided for the default charge was that it was management's discretion.[53] After extensive cross-examination, Mr. Warvell stated that FirstEnergy spoke to "some brokers" and then "looked at what a put option may require" and "the opportunity costs in relationship with a fixed product for a three-year [period] and molded the shaping risks around a put option, which roughly at the time we looked at it was about ... three/quarters of a cent."[54] None of this information or any supporting calculations is provided in the application or workpapers.[55] More importantly, FirstEnergy made no attempt at all to estimate the generation-related administrative costs that are also included in the 1¢/kwh rider amount.[56] In other words, as summarized in a question by Attorney Examiner Price, FirstEnergy is "asking the Commission to give you a rider to recover costs that you have not even estimated those costs at this point."[57]

[53] In response to a question about whether the selection of the 1¢/kWh as the provider of last resort ("POLR") or default charge was the result of any analytical study, Mr. Warvell stated, "Not a written analytical study, no. It was basically based on, as I talked about before, group of management employees with expertise in that area and developed in that manner." Tr. Vol. I at 50.

[54] Tr. Vol. I at 76-79.

[55] *Id.*

[56] *Id.*

[57] *Id.* at 78.

Similarly, Mr. Warvell stated that the level of the standby charge was not based upon any analytical study, but was loosely based upon load-shaped, in the money call options.[58] Although this is not identified in the ESP application, Mr. Warvell suggested that FirstEnergy would use revenues collected through the standby charge to purchase call options or other hedging instruments for customers returning.[59] Mr. Warvell also testified that it is FirstEnergy's intent to only recover its actual prudently incurred costs of customers returning to the system.[60] Nonetheless, the standby charge rider ("Rider SBC") is not designed to recover FirstEnergy's actual costs.[61]

IEU-Ohio recommends that the Commission not approve either the default charge or standby charge as proposed by FirstEnergy. For customers that agree to waive their right to return to SSO service at ESP rates, and agree to be subject to market-based rates if they return to SSO service during the three year ESP, default and standby charges should be fully avoidable. If there are customers that switch to a third party supplier but do not waive their right to return to SSO service under ESP rates, it would be reasonable to allow FirstEnergy to recover the costs of hedging this risk, to the extent FirstEnergy actually incurs costs such as the purchase of call options. However, rather setting a standby rate to be effective January 1, 2009, the initial rate should be

[58] Tr. Vol. I at 51. In response to the question of whether the standby charge was the result of any analytical study, Mr. Warvell stated:

> Well, not an analytical study, but we did go and look at in the money call options in regards to the ability for us to supply customers returning. We also looked at load shape, shopping, and took in those risks. And when I say "in the money call options," it's the ability for us to buy power in the future at the standard service offer price and then shape that product in regards to customers coming back, and those type of risks were looked at and contemplated in coming up with that number.

[59] *Id.*

[60] Tr. Vol. I at 93.

[61] Tr. Vol. I at 91.

set at zero. The Commission should provide FirstEnergy the opportunity to file periodic requests to update the standby rate (i.e. every six months) to reflect its actual, prudently incurred hedging costs.

D. RTO Costs

FirstEnergy's ESP application addresses transmission costs as well as costs associated with FirstEnergy's participation in an RTO.[62] Specifically, FirstEnergy proposes that all transmission and transmission-related costs, which it defines as including ancillary services costs, congestion costs as well as any new charges that may be imposed upon or charged to FirstEnergy by FERC or an RTO, be collected through a rider.[63] The proposed cost recovery mechanism is similar to FirstEnergy's existing transmission and ancillary services riders. However, while FirstEnergy's current transmission and ancillary services riders are subject to Staff audit and review, there is no mention anywhere in FirstEnergy's application to make its proposed rider subject to similar audit or review. While FirstEnergy may have assumed the same audit and review process would apply to its proposed rider,[64] the Commission should be wary of automatic cost recovery mechanisms that do not contain auditing and control provisions. IEU-Ohio recommends that the Commission direct its Staff to continue the practice of reviewing RTO-incurred costs to determine if FirstEnergy is managing

---

[62] Company Exhibit 9A at 28.

[63] *Id.*

[64] Tr. Vol. I at 59-60.

controllable costs so that they are reasonable.[65] However, such a requirement alone is not sufficient to ensure that RTO-incurred costs are reasonable.

To the extent the Commission allows automatic cost recovery mechanisms for transmission and RTO-related costs, IEU-Ohio recommends that the Commission require FirstEnergy to proactively work to minimize these costs. FirstEnergy argues that transmission and ancillary services costs are items over which the company has "little to no control" and that, therefore, automatic cost recovery is appropriate.[66] But, claims that RTO costs are entirely uncontrollable are incorrect.

For example, as IEU-Ohio witness Murray noted, as both a stakeholder and a transmission-owning member of the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO" or "MISO"), FirstEnergy has the opportunity to advocate for market rules that will work to reduce electricity prices for consumers and the cost of SSO supply.[67] FirstEnergy witness Warvell provided an example where FirstEnergy has the ability to affect outcomes to ultimately reduce costs for the benefit of customers. Mr. Warvell testified that FirstEnergy worked with a MISO committee to develop a procedure where Auction Revenue Right ("ARR") credits follow shopping customers to

[65] The Commission could, for example, direct Staff to assess the Companies' operating practices within the MISO to ensure the costs that may be controlled or influenced by those operating practices have been minimized as it did in FirstEnergy's current transmission cost recovery rider case. *See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of a Rider for the Collection of RTO Costs and Transmission and Ancillary Service Costs and for Accounting Authority to Modify Their Accounting Procedures,* Case No. 04-1932-EL-ATA, Finding and Order at 2 (December 21, 2005)

[66] Company Exhibit 5 at 24. *See also*, Tr. Vol. I at 58-60.

[67] IEU-Ohio Exhibit 1 at 8. Specifically, for example, once MISO implements markets for ancillary services, load serving entities may have the option to self schedule resources to provide operating reserves. Self scheduling operating reserves, rather than obtaining operating reserves through MISO's ancillary services markets, may be a lower cost option.

benefit the customers as opposed to the EDUs.[68] While the incurrence of certain RTO costs may be unavoidable, proactive EDU engagement on RTO issues has and will impact the level of these costs. As Mr. Murray indicated, "It is simply not appropriate for EDUs to seek automatic cost recovery while at the same time they or their affiliates are advocating RTO market rules and structures designed to increase electricity costs."[69] If, as the Companies so often claim, the Companies do not own or control generation they have both a fiduciary duty to their shareholders and an obligation to their customers to proactively seek price and service outcomes from RTOs that meet their EDU business risk and financial objectives and meet the needs of their customers. It is imprudent, *per se*, for an EDU to sit on its hands while its affiliate is promoting RTO policies and practices that potentially hurt the EDU and its customers. Therefore, the Commission should limit cost recovery to prudently incurred costs and require FirstEnergy to proactively take action to minimize costs.

E. Generation Rate Design

Under the proposed ESP, generation charges for all customer classes are to be collected through the generation service rider assessed entirely on a per kWh basis.[70] The per kWh charges are seasonally differentiated, with proposed summer and winter rates.[71] For large customers, such as customers served at transmission, sub-transmission and primary voltages, this rate design is not appropriate because it provides no price signal that customers should control their load factor.

---

[68] Tr. Vol. I at 59.

[69] IEU-Ohio Exhibit 1 at 8.

[70] Company Exhibit 9A at 10; Company Exhibit 9C, Schedule 3A for Ohio Edison at 68 of 103.

[71] Company Exhibit 9A at 10.

Load factor is important. Often stated as a percentage, load factor is the ratio of the customer's average demand to its peak demand. A higher load factor means that fixed costs are spread over a greater quantity of usage, lowering the overall average costs per kWh. However, load factor can also affect variable costs. For example, a fossil-fuel fired generating plant may be most energy efficient when it is operated at a steady state near capacity. Repeatedly cycling this type of generating plant unit up and down may lower its energy efficiency, resulting in higher fuel costs per unit of output.

Designing generation charges to be entirely kWh based implicitly suggests that generation costs are entirely a function of energy production and usage.[72] In other words, the kWh rate design implies that there is no fixed or demand-related costs associated with providing the SSO. A uniform per kWh rate design for generation service also signals customers that their consumption in each hour has the same cost

[72] It has long been the Commission's policy to require that fixed costs be allocated to customers based on both energy (kWh) and demand, not just on energy. The Commission has previously held that volumetric allocation of fuel costs is inconsistent with the "Commission's policy that rates should reflect, to the extent practicable, the cost of serving the customer in question." *In the Matter of the Complaint and Appeal of Columbia Gas of Ohio, Inc., from Ordinance No. 1192-76, of Columbus, Ohio, on July 19, 1976, to continue the Presently Established Schedules of Rates Being charged by Columbia Gas of Ohio, Inc., for Gas Service in the City of Columbus, Ohio, until August 1, 1978,* Case No. 76-704-GA-CMR, Opinion and Order at 7 (June 29, 1977), where the Commission rejected Staff's proposal for a volumetric allocation of the cost of gas. *See also,* In the Matter of the Application of Columbus Southern Power Company to Adjust Its Power Acquisition Rider Pursuant to Its Post-Market Development Period Rate Stabilization Plan, Case No. 07-333-EL-UNC, Finding and Order at 9-10 (June 27, 2007), in which the Commission held:

> The Commission believes that allocating the PAR based on a methodology that considers both demand and energy is reasonable and supports the public interest by properly allocating the costs based on the cost to serve the customer. Furthermore, the Commission notes that this allocation methodology is consistent with the three percent annual generation increase approved in the RSP Case.

The Commission has also recently approved levelized residential rate designs for natural gas companies that recover most fixed costs through a flat monthly fee. *See, for example,* In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates, Case No. 07-589-GA-AIR, et al., Opinion and Order at 18-19 (May 28, 2008), in which the Commission stated, "The Commission also believes that a levelized rate design sends better price signals to consumers. * * *The levelized rate design also promotes the regulatory objective of providing a more equitable cost allocation among customers regardless of usage. It fairly apportions the fixed costs of service, which do not change with usage, among all customers, so that everyone pays his or her fair share."

consequence (regardless of how cost is measured), and actions taken by customers to levelize their consumption time are unwarranted.

The electric generation business is a capital-intensive business. Capital costs are generally fixed over time. Thus, a flat per kWh rate design effectively ignores the nature of fixed and variable costs (regardless of how measured) that must be incurred to provide SSO service. If the implications of FirstEnergy's proposed flat per kWh rate design were correct, the Companies would not be working so hard to establish non-bypassable charges.[73]

For these reasons, IEU-Ohio recommends that once the generation revenue requirement has been established for the transmission, sub-transmission and primary rate schedules, that the generation rider rates be structured as a two-part rate consisting of both demand and energy components. Since there is not a cost of service study, IEU-Ohio recommends a demand charge of $14 per kW, with the remainder of the revenue requirement to be collected through seasonally differentiated kWh charges.[74] The $14 per kW demand charge is comparable to the first block demand charge under Ohio Edison's current Schedule 23.[75]

FirstEnergy witness Blank stated that it is FirstEnergy's experience, based upon a change in Jersey Central Power & Light generation rates, that "the removal of demand charges from retail rates will not cause a change in the load profiles of the Companies' customers."[76] Mr. Blank explains that in 2003 the Jersey Central Power & Light generation rates went from traditionally regulated demand and energy based rates to

[73] IEU-Ohio Exhibit 1 at 10.

[74] *Id.*

[75] *Id.*

[76] Company Exhibit 20 at 18.

market-based "energy-only rates with a reconciliation rider."[77] Mr. Blank concludes that because in the Jersey Central Power & Light territory, after the change to "energy-only" rates customer load patterns were substantially identical, FirstEnergy customer load characteristics should not be expected to change with the introduction of energy-only generation rates.[78] However, Mr. Blank's comparison is substantially flawed. As he admitted on the stand, the Jersey Central Power & Light generation rates are not energy-only. They still contain a demand-related charge for capacity.[79] While Mr. Blank attempted to minimize the demand-related component by stating that the historical level of the charge was in the range of $12 to $15 per kilowatt month, they have been reduced to "a little more than $3 per kilowatt month" which Mr. Blank states amounts to the rates being "virtually energy only."[80] Although Mr. Blank characterized an 11.576¢/kW day generation demand charge as representing a minor amount, in fact, this is equal to a monthly demand charge of $3.47/kW month. For example, assuming two hypothetical customers with monthly demands of 20,000 kW and 50,000 kW, the demand charge that Mr. Blank characterized as "virtually" nothing would annually cost these customers $832,000 and $2,080,000, respectively. IEU-Ohio disagrees that these costs are so minor for customers that it would not affect their behavior. It would also be counterproductive to eliminate demand-based charges for generation when the General Assembly has established aggressive peak demand reduction benchmarks for EDUs.

---

[77] *Id.*

[78] *Id.*

[79] IEU-Ohio Exhibit 4.

[80] Tr. Vol. XII at 31, 67.

More importantly, and regardless of how customers may respond to a flat per kWh rate design, the flat per kWh rate design substantially shifts revenue responsibility to larger and more energy-intensive businesses.

F. Interruptible Service

FirstEnergy's ESP includes two interruptible service options: an Economic Load Response Program Rider ("Rider ELR") as well as an Optional Load Response Program Rider ("Rider OLR").[81] Rider ELR subjects the customer to interruptions as a result of economic considerations.[82] Under Rider OLR, interruptions are only triggered by an emergency curtailment event.[83] However, the availability of these riders is limited. Only customers served under interruptible service arrangements as of July 31, 2008 are eligible to take service under Rider ELR.[84] Additionally, under both riders, customers are foreclosed from participating in any other load curtailment program, including demand options that may be available through MISO. FirstEnergy has not offered any support for restricting service under the economic load response program rider to customers served under interruptible service arrangements as of July 31, 2008. Based upon the need to achieve peak demand reductions to meet portfolio obligations, there is no reason to support restricting the availability of interruptible service options.[85] Further, an interruptible service is, by definition, always available.

[81] Company Exhibit 5 at 22-23.

[82] *Id.*

[83] *Id.*

[84] *Id.* at 23.

[85] IEU-Ohio Exhibit 1 at 11.

Mr. Warvell indicated on the stand that FirstEnergy views Rider ELR and Rider OLR working in concert with special arrangements. Specifically, Mr. Warvell stated that while the only justification for limiting the eligibility of Rider ELR to customers that are served under interruptible service arrangements as of July 31, 2008 was to "line up the current interruptible customers with this tariff for the ELR so we could make that line up as far as their ability to use this interruptible rider,"[86] FirstEnergy offered Rider OLR for new customers to get emergency interruptible credits and then, "based on their criteria, they could apply for a reasonable arrangements rider in which they could get additional credits for items that could lead to economic interruption."[87] Mr. Warvell stated that customers may obtain reasonable arrangements that include economic interruption arrangements despite the language in the OLR rider that makes the rider unavailable to customers "participating in any other load curtailment program."[88]

While IEU-Ohio appreciates the fact that FirstEnergy believes customers may utilize the reasonable arrangement rider or a unique arrangement plus Rider OLR to cover both emergency and economic interruptions, it would be simpler and more straightforward to allow customers to elect service under both riders.[89] Moreover, as the July 31, 2008 date is arbitrary, any customer that meets other eligibility requirements should be permitted to take service under the economic load response

---

[86] Tr. Vol. I at 56.

[87] *Id.* at 56.

[88] Company Exhibit 9C, Schedule 3A for Ohio Edison at 84 of 103. Mr. Warvell stated, "A customer could be on OLR and use a reasonable arrangement rider as far as it is not to the emergency curtailment load." Tr. Vol. I at 58.

[89] IEU-Ohio Exhibit 1 at 11.

program rider rather than limiting eligibility to customers served under interruptible arrangements as of July 31, 2008.

Similarly, FirstEnergy unnecessarily restricted participation in MISO's demand response options.[90] With respect to energy usage, there is no reason why FirstEnergy needs to have exclusive use of an interruptible resource.[91] All FirstEnergy needs to have is first call on the resource.[92] Thus, for example, if a customer elects service under the proposed optional load response program rider, in which FirstEnergy may only curtail usage under an emergency curtailment event, the customer should be allowed to take advantage of economic interruption opportunities that may arise through MISO.[93]

Accordingly, for these reasons, IEU-Ohio requests that the Commission modify riders ELR and OLR to remove the unnecessary restrictions. In the alternative, the Commission should direct FirstEnergy to make explicit the fact that Rider RAR may include emergency curtailment provisions that can be combined with the ELR rider.

G. Partial Service and Cogeneration

FirstEnergy's application does not include partial service and cogeneration rate schedules similar to those currently in place. Rather, it lists these schedules as outside of the scope of the application.[94] Cogeneration is among the customer-sited options that can fulfill the alternative energy resource portfolio obligations; therefore, it is crucial

[90] *Id.* at 12.

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] Company Exhibit 9C, Schedule 3A for Ohio Edison at 3 of 103.

that partial service and cogeneration schedules not create barriers toward utilization of these options.[95] Accordingly, IEU-Ohio requests that the Commission direct FirstEnergy to include partial service and cogeneration schedules as part of the ESP subject to two modifications from the currently existing partial service and cogeneration schedules. Specifically, in accordance with IEU-Ohio witness Murray's recommendations, reservation demand charges should be dramatically reduced under the schedules to reflect a recognition that backup energy can normally be obtained from RTO power markets and the avoided cost power purchased rates should be updated to reflect present day realities.[96]

H. IRS Code Section 199 Deduction

Beginning in 2007, a deduction against federal taxable income is available for "qualified production activities income", which includes the production of electricity.[97] The deduction, known as the Internal Revenue Service ("IRS") Code Section 199 deduction, is phased-in, with the deduction equal to 6% of qualified income in years 2007 through 2009, and 9% for 2010 and thereafter.[98] However, FirstEnergy did not factor into the base generation rate any amount for the tax deduction that producers of electricity such as FES receives against federal income taxes for the production of

[95] IEU-Ohio Exhibit 1 at 13.

[96] *Id.* Mr. Murray specifically recommended that FirstEnergy:

> provide both partial service and avoided cost purchases based upon a pass-through of energy costs reflected in hourly RTO energy markets. Under this approach, there would be no demand charge for standby, supplemental or maintenance power so long as usage was not coincident with system peak. Standby, supplemental or maintenance power would reflect a pass-through of the applicable hourly RTO locational marginal prices for energy. Avoided cost purchases would also be made at the applicable hourly RTO locational marginal prices for energy for symmetry.

[97] IEU-Ohio Exhibit 2 at 5.

[98] *Id.*

electricity despite the fact that during the duration of the ESP, generation charges will be adjusted to pass on to SSO customers the costs of new taxes, among other items.[99] For the treatment of taxes to be symmetrical, if customers are being asked to pay for the costs associated with new taxes that result from the generation of electricity, SSO customers should also receive the tax benefits associated with the Section 199 deduction.[100]

Moreover, as noted above, if the ESP is approved, FirstEnergy plans to purchase the generation supply needed to serve the SSO load from FES. To the extent that the Section 199 deduction associated with the generation supplied by FES 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 despite the Companies not owning generation themselves.[101]

For these reasons, IEU-Ohio requests that the Commission adjust the price of generation to reflect the tax benefit of the Section 199 deduction. In the alternative, if the Companies are not able to demonstrate that the price of generation ultimately allowed in this proceeding is net of the Section 199 tax benefits, then the Commission should not allow the Companies to pass along the costs of new taxes associated with generation.

---

[99] Company Exhibit 9A at 14; Tr. Vol. II at 264-265; IEU-Ohio Exhibit 2 at 5-6.

[100] IEU-Ohio Exhibit 2 at 5.

[101] *Id.*

I. Pensions and Other Post-Employment Benefits

As noted above, the Attorney Examiners ruled from the bench that issues addressed in FirstEnergy's pending distribution rate case[102] should be severed from this case to the extent possible and will be dealt with by the Commission in the distribution rate case. While IEU-Ohio will comply with the bench ruling, because it is not clear from FirstEnergy's application how it intends to address employee pensions and Other Post-Employment Benefits ("OPEB") expenses, IEU-Ohio is compelled to address the matter here.

In the distribution rate case, IEU-Ohio took the position that the employee pensions and OPEB expenses should be determined based upon test year net periodic costs. This is a contested issue that has not yet been resolved in the distribution rate case as there has not yet been a Commission order in that case. It is not clear whether FirstEnergy is seeking to recover any pension or OPEB expenses that are outside of the distribution rate case test year as no such expenses are specifically identified.[103] However, to the extent that any pension or OPEB expenses are embedded in the ESP, in accordance with IEU-Ohio witness Bowser's recommendation, IEU-Ohio requests that the Commission require FirstEnergy to determine any employee pensions and OPEB expenses for which the Companies seek to recover the costs in this case based on test year net periodic costs.[104]

---

[102] *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 Approval*, Case Nos. 07-551-EL-AIR, *et al.*, Application (June 7, 2007).

[103] IEU-Ohio Exhibit 2A at 2.

[104] IEU-Ohio Exhibit 2 at 4-5.

IV. CONCLUSION

For the reasons discussed herein, IEU-Ohio believes that it is impossible to provide specific recommendations on how the Commission can best respond to the Companies' ESP application while serving the sometimes competing objectives in Section 4928.02, Revised Code. In view of the information gaps that have evaluation and outcome significance, problems with specific aspects of the ESP proposed by the Companies and the present financial crisis context, IEU-Ohio recommends that the Commission issue "an order" pursuant to Section 4928.143(C)(1), Revised Code, by December 26, 2008 that finds that there is insufficient information available in the record to evaluate the proposed ESP and to compare it to the expected outcome under Section 4928.142, Revised Code. In making this finding, the Commission should prudently observe that it is neither accepting, modifying nor rejecting the ESP application and continue to leave the record open to allow the ESP proposal to be considered further as additional information becomes available and is received into the record. IEU-Ohio urges the Commission to identify information that it needs to obtain to prudently fulfill its duties under Section 4928.02, Revised Code, and establish a process by which such information can be furnished and examined by the parties through an open and transparent process. Finally, the Commission should find that pending any order that may accept, modify or reject the ESP application or any order that may establish an SSO pursuant to Section 4928.142, Revised Code, Section 4928.141(A), Revised Code, determines the SSO that shall be in effect until an SSO is first authorized under either Sections 4928.142 or 4928.143, Revised Code.

The recommendation described above is not broad enough to meet the requirements of SB 221. Accordingly, IEU-Ohio urges the Commission to also find that it expects the Companies to promptly pursue compliance with the requirements of SB 221's portfolio obligations. As discussed above, this must be done regardless of how SSO prices are established. The Commission should encourage the Companies to accompany their compliance efforts with a proposal to address the cost of such compliance. To manage legal and other risks associated with issues that may be subject to FERC's jurisdiction, IEU-Ohio urges the Commission to also find that the Commission is willing to consider proposals to modify the SSO established by Section 4928.141(A), Revised Code, as may be necessary to respect the requirements of federal law, as well as the Constitution, as the implications of such requirements can be identified with enough specificity to permit the Commission to evaluate such proposed modifications.

Finally, the Commission must provide guidance to the Companies to address the looming consequences of any end to reasonable arrangements that have been approved pursuant to Section 4905.31, Revised Code. SB 221 modified Section 4905.31, Revised Code, to make it clear that reasonable arrangements are available when approved by the Commission to address specific needs and circumstances. SB 221 also provided a means for EDUs to address "delta revenue" issues which again arise independently of how an SSO may be established. The Commission should encourage the Companies to work with its customers to promptly submit proposed reasonable arrangements and any "delta revenue" recovery mechanisms for the Commission's consideration.

Respectfully submitted,

Samuel C. Randazzo (Counsel of Record)
Lisa G. McAlister
Joseph M. Clark
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Post Hearing Brief on FirstEnergy's Electric Security Plan Proposal* was served upon the following parties of record this 21st day of November 2008, via electronic transmission, hand-delivery or first class mail, postage prepaid.

Lisa G. McAlister

James W. Burk, Counsel of Record
Arthur Korkosz, Senior Attorney
Mark A. Hayden, Attorney
Ebony L. Miller, Attorney
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

ON BEHALF OF THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, OHIO EDISON COMPANY AND THE TOLEDO EDISON COMPANY

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

ON BEHALF OF OHIO ENERGY GROUP

Janine L. Migden-Ostrander
Consumers' Counsel
Jeffrey L. Small, Counsel of Record
Jacqueline Lake Roberts
Richard C. Reese
Gregory J. Poulos
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485

ON BEHALF OF OFFICE OF THE OHIO CONSUMERS' COUNSEL

John W. Bentine
Mark S. Yurick
Matthew S. White
Chester, Willcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, OH 43215-4213

ON BEHALF OF THE KROGER CO.

Barth E. Royer, Counsel of Record
Bell & Royer Co. LPA
33 South Grant Avenue
Columbus, OH 43215-3927

Nolan Moser
Air & Energy Program Manager
The Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449

Trent A. Dougherty
Staff Attorney
The Ohio Environmental Council
1207 Grandview Avenue, Sutie 201
Columbus, OH 43212-3449

ON BEHALF OF THE OHIO ENVIRONMENTAL COUNCIL

David C. Rinebolt, Trial Attorney
Colleen L. Mooney
Ohio Partners for Affordable Energy
PO Box 1793
Findlay, OH 45839-1793

ON BEHALF OF OHIO PARTNERS FOR AFFORDABLE ENERGY

John W. Bentine, Counsel of Record
Mark S. Yurick
Chester, Willcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, OH 43215-4213

Garrett A. Stone
Michael K. Lavanga
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, NW
8th Floor, West Tower
Washington, DC 20007

ON BEHALF OF NUCOR STEEL MARION, INC.

Leslie A. Kovacik, Lead Counsel for NOAC
Counsel for Toledo
420 Madison Avenue, Suite 100
Toledo, OH 43604-1219

Lance M. Keiffer, Lead Counsel for NOAC
Assistant Prosecuting Attorney
Counsel for Lucas County
711 Adams Street, 2nd Floor
Toledo, OH 43624-1680

Sheilah H. McAdams, Law Director
Counsel for Maumee
Marsh & McAdams
204 West Wayne Street
Maumee, OH 43537

Brian J. Ballenger, Law Director
Counsel for Northwood
Ballenger & Moore
3401 Woodville Road, Suite C
Northwood, OH 43619

Paul S. Goldberg, Law Director
Counsel for Oregon
6800 W. Central Avenue
Toledo, OH 43617-1135

James E. Moan, Law Director
Counsel for Sylvania
4930 Holland-Sylvania Road
Sylvania, OH 43560

Paul Skaff, Asst. Village Solicitor
Counsel for Holland
353 Elm Street
Perrysburg, OH 43551

Thomas R. Hays, Solicitor
Counsel for Lake Township
3315 Centennial Road, Suite A-2
Sylvania, OH 43560

ON BEHALF OF NORTHWEST OHIO AGGREGATION COALITION ("NOAC")

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008

Cynthia A. Fonner
Constellation Energy Group, Inc.
550 West Washington Blvd., Suite 300
Chicago, IL 60661

David I. Fein
VP, Energy Policy—Midwest
Constellation Energy Group, Inc.
550 West Washington Blvd., Suite 300
Chicago, IL 60661

ON BEHALF OF CONSTELLATION NEWENERGY, INC. AND CONSTELLATION ENERGY COMMODITIES GROUP, INC.

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008

ON BEHALF OF DIRECT ENERGY SERVICES, LLC, THE NATIONAL ENERGY MARKETERS AND INTEGRYS ENERGY SERVICES, LLC

Craig G. Goodman
President
National Energy Marketers Association
3333 K Street, N.W., Suite 110
Washington, DC 20007

ON BEHALF OF THE NATIONAL ENERGY MARKETERS ("NEM")

Bobby Singh
Integrys Energy Services, Inc.
300 West Wilson Bride Road, Suite 350
Worthington, OH 43085

ON BEHALF OF INTEGRYS ENERGY SERVICES, INC.

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215-3927

Gary A. Jeffries
Senior Counsel
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817

ON BEHALF OF DOMINION RETAIL, INC.

Richard L. Sites
General Counsel & Senior Director of Health Policy
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620

ON BEHALF OF OHIO HOSPITAL ASSOCIATION

Henry W. Eckhart
50 W. Broad Street, #2117
Columbus, OH 43215

ON BEHALF OF THE SIERRA CLUB AND THE NATIONAL RESOURCES DEFENSE COUNCIL ("NRDC")

Sean W. Vollman
David A. Muntean
Assistant Directors of Law
City of Akron
161 S. High Street, Suite 202
Akron, OH 44308

ON BEHALF OF THE CITY OF AKRON

Joseph P. Meissner
The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, OH 44113

ON BEHALF OF THE NEIGHBORHOOD ENVIRONMENTAL COALITION, CONSUMERS FOR FAIR UTILITY RATES, UNITED CLEVELANDERS AGAINST POVERTY, CLEVELAND HOUSING NETWORK AND THE EMPOWERMENT CENTER OF GREATER CLEVELAND ("CITIZENS COALITION")

Langdon D. Bell
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215-3927

Kevin Schmidt
The Ohio Manufacturers' Association
33 North High Street
Columbus, OH 43215-3005

ON BEHALF OF THE OHIO MANUFACTURERS' ASSOCIATION ("OMA")

Glenn S. Krassen
Bricker & Eckler LLP
1375 East Ninth Street, Suite 1500
Cleveland, OH 44114

E. Brett Breitschwerdt
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215

ON BEHALF OF NORTHEAST OHIO PUBLIC ENERGY COUNCIL ("NOPEC") AND THE OHIO SCHOOLS COUNCIL ("SCHOOLS")

Larry Gearhardt
Chief Legal Counsel
Ohio Farm Bureau Federation
280 North High Street
PO Box 182383
Columbus, OH 43218-2383

ON BEHALF OF THE OHIO FARM BUREAU FEDERATION ("OFBF")

Robert J. Triozzi, Director of Law
Steven Beeler, Assistant Director of Law
City of Cleveland
Cleveland City Hall
601 Lakeside Avenue, Room 106
Cleveland, OH 44114-1077

Gregory H. Dunn, Counsel of Record
Christopher L. Miller
Andrew T. Porter
Schottenstein Zox & Dunn Co., LPA
250 West Street
Columbus, OH 43215

ON BEHALF OF THE CITY OF CLEVELAND

Dane Stinson
Bailey Cavalieri LLC
One Columbus
10 West Broad Street, Suite 2100
Columbus, OH 43215

F. Mitchell Dutton
Senior Attorney
FPL Energy Power Marketing, Inc.
700 Universe Boulevard
CTR/JB
Juno Beach, FL 33408

On Behalf of FPL Energy Power Marketing, Inc. ("PMI") and GEXA Energy HOldings, LLC ("GEXA") (collectively "PMI/GEXA")

Theodore S. Robinson
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217

On Behalf of Citizen Power, Inc.

Damon E. Xenopoulos
Shaun C. Mohler
Brickfield, Birchette, Ritts & Stone, PC
1025 Thomas Jefferson Street, NW
Eighth Floor, Wets Tower
Washington, DC 20007

On Behalf of OmniSource Corporation

Craig I. Smith
2824 Coventry Road
Cleveland, OH 44120

On Behalf of Materials Science Corporation

Steve Millard
President and Executive Director
The Council on Small Enterprises
The Higbee Building
100 Public Square, Suite 201
Cleveland, OH 44113

Nicholas C. York
Eric D. Weldele
Tucker Ellis & West LLP
1225 Huntington Center
41 South High Street
Columbus, OH 43215

On Behalf of Council of Smaller Enterprises

Sally W. Bloomfield
Terrence O'Donnell
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215

On Behalf of American Wind Energy Association, Wind on the Wires, and Ohio Advanced Energy

Douglas M. Mancino
McDermott Will & Emery LLP
2049 Century Park East, Suite 3800
Los Angeles, CA 90067-3218

Gregory K. Lawrence
McDermott Will & Emery LLP
28 State Street
Boston, MA 02109

On Behalf of Morgan Stanley Capital Group

Douglas M. Mancino
McDermott Will & Emery LLP
2049 Century Park East, Suite 3800
Los Angeles, CA 90067-3218

Grace C. Wung
McDermott Will & Emery, LLP
600 Thirteenth Street, NW
Washington, DC 2005

On Behalf of Wal-Mart Stores East LP and Sam's Club East, LP, Macy's Inc., and BJ's Wholesale Club, Inc. (the "Commercial Group")

C. Todd Jones
General Counsel, AICUO
Christopher L. Miller (Counsel of Record)
Gregory H. Dunn
Andre T. Porter
Schottenstein Zox & Dunn Co., LPA
250 West Street
Columbus, OH 43215

On Behalf of The Association of Independent Colleges and Universities of Ohio ("AICUO")

John Jones
William Wright
Assistant Attorneys General
Public Utilities Section
180 East Broad Street
Columbus, OH 43215

On Behalf of the Public Utilities Commission of Ohio

Christine Pirik
Gregory Price
Public Utilities Commission of Ohio
180 East Broad Street
Columbus OH 43215

Attorney Examiners