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The Public Utilities Commission of Ohio
180 East Broad Street
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November 21, 2008

SUBJECT:

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

We are enclosing an Initial Brief for our clients, the Citizens Coalition, in this case.

We are faxing this. Please file it today. We are mailing twenty-three copies and the original by regular mail. Other parties are being served. We have also enclosed an envelope addressed back to us. Please time-stamp one of the enclosed copies and return this to us.

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Thank you.

Very truly yours,

JOSEPH P. MEISSNER, 0022366
ATTORNEY AT LAW

Counsel for Citizens Coalition

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

INITIAL BRIEF
FILED ON BEHALF OF THE
NEIGHBORHOOD ENVIRONMENTAL COALITION
THE EMPOWERMENT CENTER OF GREATER CLEVELAND,
CLEVELAND HOUSING NETWORK.
AND
THE CONSUMERS FOR FAIR UTILITY RATES
DATED NOVEMBER 21, 2008

Now comes The Neighborhood Environmental Coalition (hereinafter "Coalition"), The Consumers for Fair Utility Rates (hereinafter "Consumers"), Cleveland Housing Network, and The Empowerment Center of Greater Cleveland (hereinafter "Center") who, through their counsel, hereby file this Initial Brief, based on the law and rules governing PUCO procedures, the schedule set for briefing. The following four Arguments have been consistently asserted by the Citizens Coalition, not only in this case, but in the recent case filed by FE concerning distribution rates.

We state each of the Four Arguments below along with arguments and support, and urge the PUCO to use these arguments in their deliberations and decision.

ARGUMENT ONE: DESPITE BOTH THE IMPORTANCE OF THIS CASE AND OF THE NEW OHIO LAW OF SB 221, THE PUCO FAILED TO SCHEDULE AND CONDUCT PROPER PUBLIC HEARINGS INCLUDING PROVIDING ADEQUATE AND REASONABLE NOTICE FOR THESE HEARINGS. THE PUCO SHOULD STOP ALL ITS PROCEEDINGS AT PRESENT AND ESTABLISH AND CONDUCT PROPER PUBLIC HEARINGS WITH REASONABLE AND ADEQUATE NOTICE TO THE PUBLIC.

No one disputes the importance of this case for both Ohio and for FE customers as well as its companion case regarding an MRO for FirstEnergy (hereinafter "FE"). Furthermore, Ohio's new law SB 221, which is the basis for these cases, is unproven in utility case combat and its provisions, protections, and goals are very new to the public. It is thus vitally important for the PUCO to seek out the views of the public while at the same time assuring that the public has the opportunity to learn about the new law and reasonable notice of where and when the public can participate in these proceedings. The various consumer groups did move for local public hearings that would insure reasonable notice and opportunity for the public to the learn about the Companies' proposals and to participate in public hearings. The consumer organizations urged that such hearings be scheduled based on a timeline that would permit notice to be published at least thirty days prior to each hearing.

But a Commission Entry for September 9, 2008, provided as little as fifteen days of notice before the first of the scheduled hearings. This is not sufficient time based upon past experiences as well as the complexity and newness of the relevant law for citizens and customers to learn about the proceedings, prepare their positions and testimony, and

then make plans to attend. (Unlike the paid FE witnesses as well as other participants in these proceedings the pay for public witnesses is "rather low" and many of these people may have to make job arrangements in order to attend the PUCO public hearings.)

Subsequently various citizen organizations urged the PUCO to re-schedule the local public hearings and provide adequate advance notice. The Citizens Coalition in particular pointed out the absurdity of calling for public input but then rushing the hearing dates so that public involvement was greatly hindered. Unfortunately, the PUCO paid little attention to these protestations. This lack of reasonable notice has deprived citizens and customers of their ability to become involved. Even if the public hearing provisions of the Ohio Revised Code have been technically followed, more than that should have been done by the PUCO in this historic and precedent-setting case. Despite the Statutory "rush to judgment" schedule, the Commission could have provided much more notice. For example, hearing notices could have been published in late August 2008, setting hearing dates in November 2008, and thus providing almost sixty days of notice.

Furthermore, if the recent DEO rate case (see In re Application of DEO for Authority to Increase Rates for its Gas Distribution Service and Other Related Matters, Case No. 07-829-GA-AIT, et al.), is any indication with its vigorous and extensive public involvement, the public and the utility customers are very much concerned about energy issues and very much want to be involved in decisions about utility issues. The lack of adequate notice has hindered public discussion and involvement—as testified to in the limited public hearings that did take place in this proceeding.

The only way to correct this is for the PUCO to halt its present rush to judgment and schedule comprehensive public hearings with reasonable notice. The Citizens Coalition urges the Commission to adopt this course of action and insure that the public including the customers are fully heard.

ARGUMENT TWO: SINCE FE HAS NEVER CONDUCTED ADEQUATE PROGRAMS RELATED TO ENERGY EFFICIENCY, DSM, ALTERNATIVE FUEL SOURCES, AND RENEWABLE FUEL SOURCES; SINCE FE HAS SHOWN LITTLE INTEREST IN SUCH PROGRAMS AS FURTHER EXEMPLIFIED BY ITS FILING IN THIS CURRENT ESP CASE; SINCE FE HAS NO PARTICULAR EXPERTISE FOR CONDUCTING SUCH PROGRAMS; AND SINCE FE POSSESSES DIRECT FINANCIAL INTERESTS CONTRADICTORY TO SUCH PROGRAMS; THEREFORE ANY SUCH PROGRAMS INVOLVING SB 221 MUST BE PLANNED, CONDUCTED, AND IMPLEMENTED BY OUTSIDE, OBJECTIVE, AND EXPERIENCED AGENCIES AND PROVIDERS. A DECISION-MAKING COLLABORATIVE FOR OVERSEEING THESE PROGRAMS SHOULD BE ESTABLISHED IMMEDIATELY CONSISTING OF THE PARTIES TO THESE PROCEEDINGS. FE WOULD BE ALLOWED TO PARTICIPATE IN THIS COLLABORATIVE AND WOULD HAVE ONE VOTE WHILE EACH OTHER PARTY WOULD ALSO HAVE ONE VOTE IN CONDUCTING COLLABORATIVE ACTIVITIES.

The new Ohio law, SB 221, sets forth very important programs and goals regarding such issues as energy efficiency, alternative sources of energy, renewable sources of energy, and other activities to help electric customers. These are indispensable programs, activities, and goals for the future of electricity in Ohio and for the well-being of Ohio electric customers, including those of the Applicant FE. These programs are also essential for our Country as we confront mammoth energy problems as well as a collapsing economic system which has left many families unemployed and lacking adequate funds for essential bills.

What is FE's response to this situation? Consider, as one example of FE's response, its "generous" proposal offering up to Five Million dollars annually for the next five years for customer energy efficiency/demand side management activities, which altogether total $25 million for the life of its proposal. (Also discussed in ARGUMENT III below.) This paltry commitment would be laughable, if it was not so detrimental to FE's customers and to our State. A sum of $100 million a year, urged by the Citizens Coalition, is more appropriate given both our energy challenges as well as FE's annual net profits which have averaged about a Billion Dollars a year for the past three years. (See ARGUMENT III below.)

Secondly, FE must meet an energy efficiency requirement for 2009 of "at least three-tenths of one percent of the total, annual average, and normalized kilowatt-hour sales of the electric distribution utility during the preceding three calendar years." FE's current efforts, unless drastically multiplied, will never meet this requirement. Our Citizens Coalition is concerned that FE, instead of trying to meet this requirement, is searching out in secret all sorts of legal tricks to avoid this obligation. FE, instead, should be researching various energy efficiency programs and activities by which it could meet this new obligation. There is little evidence, however, that FE is taking any of this very seriously.

Thirdly, FE has very little current expertise and experience in providing adequate energy efficiency programs for its customers. In the 1990's there was a type of collaborative DSM effort for which the counsel of this Brief was the chair of the Centerior DSM committee that oversaw that. Virtually none of that experience survived when Centerior became part of FE. Of course, FE's customers and the State of Ohio

could wait five years while FE builds up the necessary expertise and experience to implement and operate these programs. (Pardon any sarcasm.)

But why wait while FE flounders about? There are other experienced agencies and companies--objective, independent, and dedicated to running such programs successfully-- already able to implement, operate, and supervise these programs NOW. FE should be ordered to participate immediately in a collaborative, whose procedures and conditions are spelled out more below. This collaborative would be empowered to contract with outside, expert, and objective agencies and companies, including an independent program administrator, to insure FE meets its SB 221 obligations.

Fourthly, FE in its initial application never even mentioned a collaborative effort. It would be ludicrous to entrust such an effort to FE whose very economic interests militate against FE's conducting successful large-scale energy efficiency programs and activities. In addition to setting the required goals, the collaborative must also have decision-making capabilities as opposed to mere advisory capabilities. For some utilities, an advisory collaborative can work, such as presently is the case for the AT&T Lifeline Telephone Advisory Committee (of which this Counsel is currently the chair). For FE there is no evidence, however, that an advisory collaborative has any chance of succeeding.

The Citizens Coalition would point to the following past FE history to support this harsh judgment. In 2000 as part of the deregulation and alternative regulation, FE promised to provide $5 million a year for five years to fund programs to assist its customers. (This Counsel participated in that initial agreement.) It was the understanding of the citizen groups in that case that this funding would go for energy

efficiency, weatherization, and other energy programs as well as funds to help customers facing shutoffs despite using all other sources of help. Instead FE decided on its own to provide these funds to Habitat for Housing in Ohio. Certainly the latter is a worthy cause, but this organization was never mentioned in the negotiations nor was it ever the understanding that these funds would be used in that fashion when at the same time FE's customers, especially low income families, desperately needed help with their electric bills.

Even worse, over the years since then, citizens groups have tried to find out whether any homes were ever built by these FE funds, and, if so, where were these houses located. There were efforts to find out how low-income families could apply for such houses. FE failed to provide any of this information.

In 2005, the initial alternative regulation cases came to a close. In its filing at that time for a new plan for utility rates, FE offered only about One and a Half Million Dollars annually as opposed to the Five Million promised in 2000. This almost seventy percent reduction was accompanied by an increase in the salary for FE's Chief Executive which went from One Million Dollars a year in 2000 to Five Million Dollars a year in 2005, (This Chief Executive Salary today has skyrocketed to some $15 million annually. See pending distribution rate case. Cases 07-551-EL-ATA, et al., the Distribution Rate Case. What seems to have happened is that the needs of tens of thousands of FE customers were sacrificed on the altar dedicated to one person, the FE Chief Executive and his soaring salary. In the Distribution case, there was testimony that the average industry salary for this kind of CEO position was about Two Million Dollars, thirteen million less than enjoyed by FE's CEO.)

In 2005 in the final Order, even the PUCO felt compelled to increase FE's funding of these various energy programs by Five Million dollars. This itself should have been a warning to FE for the present case.

Besides these experiences with FE's undermining past energy efficiency programs, FE's other activities also provide little confidence that FE will meet its SB 221 obligations. Witness FE's probably causing of the largest blackout of electricity in America's history in 2003. Witness the Company's failures to note what was happening to the decaying of the lid of its Davis-Besse atomic energy plant over a period of several years. If this had continued unnoticed and corrected, it is possible (even if this is very slight) a part of Northern Ohio would be an atomic wasteland. The slightness of the risk is far outweighed by the potential consequences of the risk.

In conclusion, a collaborative with decision-making authority should be established immediately. The members of the collaborative would be open to the present parties in this case. FE would, of course, be invited to join such a collaborative and given one vote on the collaborative board along with one vote provided to each of the other members. The Collaborative would also be free to invite others to join its board in order to help carry out the goals of SB 221.

ARGUMENT THREE: GIVEN THAT FE IS ONLY OFFERING AN ANEMIC $25 MILLION FOR VARIOUS PROGRAMS INVOLVING SB 221 OVER A FIVE YEAR PERIOD, THE PUCO SHOULD ORDER FE TO PROVIDE AT LEAST ONE HUNDRED MILLION DOLLARS ANNUALLY FOR THESE NECESSARY PROGRAMS. THERE SHOULD ALSO BE A SUM OF NINE MILLION RPOVIDED ANNUALLY TO ESTABLISH A LAST RESORT PAYMENT POOL WHICH WOULD HELP LOW-INCOME FAMILIES WHO ARE FACING IMMINENT SERVICE TERMINATION AND WHO HAVE EXHAUSTED ALL OTHER RESOURCES FOR PAYING THEIR ELECTRIC BILLS. A. FURTHERMORE, ALL FUNDING FOR SUCH PROGRAMS MUST BE PROVIDED NOW, AS OPPOSED TO ALLOWING THE COMPANY TO HAVE AN OPTION OF DELAYING, FRUSTRATING, AND UNDERMINING SUCH PROGRAMS BY DIVERTING AND "PLAYING GAMES" WITH NEEDED FUNDS.

As already discussed FE has offered to provide up to Five million dollars annually for the next five years for customer energy efficiency/demand side management activities, totaling $25 million for the life of its proposal. This amount is grossly insufficient. (See ARGUMENT II above.). This squalid commitment will never establish the programs required to meet the goals of SB 221. A sum of $100 million a year, as recommended by the Citizens Coalition, is more suitable for meeting Ohio's energy challenges and needs. This sum does not seem that great when we consider FE's annual net profits which have averaged about a Billion Dollars a year for the past three years. (See ARGUMENT II above.)

Furthermore, as part of the collaborative, necessary funds should be provided so that community groups could provide help to low-income families. One particular need is to set up the necessary funds to help those families who have exhausted all other resources and who are still facing electric service termination. The Citizens Coalition urges that Nine Million Dollars a year be available for this purpose with three million going to each service area of the three FE service companies.

Most importantly, these funds should all be provided upon the initiation of the Collaborative. It has been the unfortunate experience of various community groups that FE in the past has been less than cooperative in providing funds for programs despite PUCO orders. One community group--virtually on its hand and knees—"begged" FE to abide by its agreement to provide funds for community programs. When FE proved unwilling, the community group was forced to file for PUICO help. Naturally, this wasted both the group's resources as well as the resources of the PUCO. Hearing time even had to be set aside by the PUCO when FE at first did not relent after the group filed. The Commission should not be placed in such a predicament when its resources are so precious. The best way to avoid such problems is for FE to be ordered immediately by the PUCO to set these moneys aside in a special fund accessible by the Collaborative.

ARGUMENT FOUR: THE PUCO, IN IMPLEMENTING SB 221, WHETHER THROUGH AN MRO OR ESP, MUST INSURE THAT UTILITY CUSTOMERS PAY THE LOWEST POSSIBLE RATES FOR UTILITY SERVICE WHICH SHOULD INCLUDE CONSIDERATION OF ACTUAL RATE DECREASES.

SB 221 allows for either an "MRO" or an "ESP" in establishing basic utility rates. Let us be realistic. Not one customer in a thousand knows what these initials stand for. All the electric customers of FE know is that for decades they have been paying among the highest electric rates not only in Ohio, but also in the United States. Many customers believe they have paid three times over for very expensive generating plants. They paid for these plants prior to 2000 through ordinary rates cases. From 2000 to 2005 they were compelled to pay for these plants as "stranded costs" through high extra charges on their

monthly bills. After 2005, these customers were again forced to pay for these plants as "transition costs," again through prohibitive extra payments on their bills.

Despite the extreme amount of these payments both in individual monthly electric bills and as part of the overall Company earnings, there has never been an accounting for these. Never have the customers and the public been informed about how much has been collected through these various mechanisms, how such funds were used, and even whether more was collected than was actually spent by the companies on these very expensive plants. When one considers how down-to-the-penny the Companies collect for such items as fuel charges and bad debts, it is scandalous how FE and its subordinate companies have never been required to account for billions of customer dollars collected through extra charges for so-called "transition costs" and "stranded costs." The only ones "stranded" in fact have been FE's long suffering customers.

What customers need now and what they deserve are the establishment of truly just and reasonable rates. The PUCO should use whatever mechanism, whether an MRO or an ESP, that produces such just and fair rates. Rate increases, moreover, should not be camouflaged like some kind of "IED" to be exploded in the future through deferral mechanisms. Any system of deferrals only sets up minefields that threaten future ratepayers. Furthermore, the Commission should consider whether the current high rates that customers now pay can be reduced and even reduced substantially. One way to begin this would be by reducing the astronomical corporate executive salaries, including for the FE Chief Executive Officer. Such salaries--exceeding industry standards--may contain as much as Fifty to One Hundred Million Dollars of hidden excessive costs.

CONCLUSION

The Citizens Coalition has offered four initial arguments in this first brief. The Coalition urges the Commission to accept these arguments and use these in their Decision and Order in this case. Depending upon what is filed by other parties in their Initial Briefs, the Citizens Coalition will respond accordingly.

Respectfully submitted,

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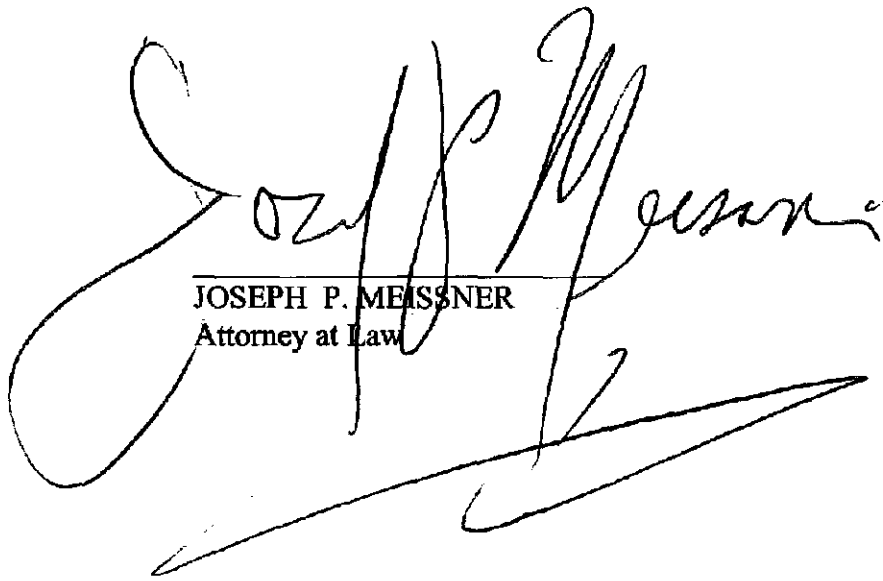

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