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The Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215-3793

December 12, 2008

PUCO

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## 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 Reply 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.

Let us know of any problems.

Thank you.

Very truly yours,

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**LSC**

**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 )  
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)

Case No. 08-935-EL-SSO

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**REPLY BRIEF  
OUTLINING FE'S CULPABILITY FOR FAILING TO INSURE UTILITY  
CUSTOMERS RECEIVE THE BENEFITS OF SB 221,  
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 DECEMBER 12, 2008**

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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 Reply Brief, based on the law, the  
rules governing PUCO procedures, and the schedule set for briefings in this proceeding.

We are raising two main issues based on the Initial Briefs from other parties, upon the record, and upon what is now taking place in the real world.

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

**ARGUMENT ONE: FE IS MAINLY RESPONSIBLE AND CULPABLE FOR THE CURRENT FAILURE TO INSURE THAT OHIO UTILITY CUSTOMERS RECEIVE THE BENEFITS AND ADVANTAGES FROM OHIO SB 221.**

The current electric utility situation for FE customers is a mess!

Ohio SB 221 was designed to provide various benefits for Ohio utility customers, including providing rate relief with access to competitive electric sources, protections for the environment, and energy efficiency programs. At the same time, the bill contained various protections for the utility companies in order to insure their economic health. This bill tried to bring together all of the various interests involved in the utility arena including for the environmental issues, alternative fuels, renewable energy sources, utility company earnings, market based rates, energy efficiency and DSM programs.

The effort to implement the bill in these PUCO proceedings has largely failed. Who is responsible for this failure? The finger of blame must be squarely point at FE. The following paragraphs outline some of FE's failures:

**1. FE HAS FAILED TO FILE PROPER MRO AND ESP CASES**

Initially according to SB 221 the Utility Companies were provided the opportunity and required to file for an MRO and an ESP as the SSO for their utility customers. The three companies--Ohio Edison Company, The Cleveland Electric

Illuminating Company, and The Toledo Edison Company, also known as FE or the Companies--filed an MRO case (Case No. 08-936-EL-SSO) and an ESP case (Case No. 08-935-EL-SSO) on July 31, 2008. Even to the casual observer, these filings were grossly defective when they were filed. For example, the filings were missing specific plans for certain SB 221 requirements. They also lacked substantiating data for important and expensive items such as the Minimum Default Service Charge. Other similar defects could also be found.

The PUCO has already issued the OPINION AND ORDER in Case No. 08-936-EL-SSO on November 25, 2008. That decision clearly and specifically sets forth the failures of FE's MRO filing. See CONCLUSIONS OF LAW (7), (8), (9), (10), (13), (14), (15), (16), and (17) of the OPINION AND ORDER. The PUCO then advises FE to "consider the revisions to the Master SSO Supply Agreement proposed by the parties" in the event FE chooses to continue to pursue an MRO. See CONCLUSIONS OF LAW (18).

Some of these same defects noted in FE's MRO filing also show up in FE's ESP filing. The ESP filing also has additional problems, a number of which are very apparent in the questions asked by the Hearing Examiners in the ESP proceedings as well as from the multitudinous Initial Briefs filed by all the parties.

Suppose you are a rational electric utility company. Would not all of this--the MRO decision, the Hearing Examiners' questions, and the parties' Briefs--lead you to amend and supplement what you have filed in both the MRO case and the ESP case? Would you not try to save your proposals and thus implement SB 221? Would you not be meeting with the parties to see if an agreement and stipulation could be negotiated?

Yet so far as the Citizens Coalition is aware, FE has not followed these prudent courses of action in either the MRO case or this ESP case. Here inaction and silence has been FE's reaction. Unfortunately, these FE responses—or rather lack of responses—only contribute to the mistrust of FE and lead many to suspect that the Companies have some kind of legal trickery planned.

**2. FE HAS FAILED TO PROTECT ITS CUSTOMERS BY INSURING A RELIABLE SUPPLY OF ELECTRIC ENERGY AFTER DECEMBER 31, 2008**

Our understanding is that there is no contract(s) in place for providing FE customers with electricity after December 31, 2008. Of course, we understand that FE owns FES with all of its generation facilities. But there is no contract in place for FES to provide the electricity that FE customers will need. Any contract also, we understand, needs FERC approval. That may not be automatic. Furthermore, there are questions concerning the provisions of any such contract and how this affects the rates that FE customers may be required to pay for their electricity.

Again this situation is entirely under the control of FE which appears to be doing nothing about this problem.

**3. FE'S THREATENED ACTIONS REGARDING GOVERNMENT AGGREGATION AND SPECIFICALLY NOPEC UNDERMINE THE GOALS OF SB 221.**

At present 600,000 customers in Northern Ohio receive electric service through NOPEC. The current contract with FE for NOPEC's energy supply runs out on December 31, 2008. At the same time, NOPEC has a deal with Florida Power and Light which begins April 1, 2009, and offers substantial benefits for NOPEC's customers. All

of this, however, is jeopardized by FE's purposeful failure to insure electricity to NOPEC for the January 1 to April 1, 2009, period and by FE's malicious attempts in the ESP to impose conditions and non-bypassable riders that will virtually make it impossible to achieve SB 221's goals regarding large-scale government aggregation.

Here again is a course of conduct by FE which threatens to undermine the provisions and goals of SB 221.

**4. FE's ESP FILING REVEALS OTHER FE AMBITIONS AND ACTIVITIES THAT HURT FE CUSTOMERS AND UNDERMINE ACHIEVING THE GOALS OF SB 221.**

Other parties have already extensively briefed ways in which FE's ESP filing will hurt them. These include FE's changes in its rate structure, FE's disregard for the former demand charges in its rates and the well-documented economic distinction between low load and high load usage, FE's unreasonable conditions for interruptible service, and FE's many riders including riders for which no financial substantiation is provided. It is not necessary to repeat the details of these but the Citizens Coalition would simply refer the PUCO to the many excellent and comprehensive briefs filed by other parties on these issues.

**5. FE HAS FAILED TO PROPOSE ADEQUATE PROGRAMS AND FUNDING TO ACHIEVE THE SB 221 GOALS FOR ENERGY EFFICIENCY AS WELL AS PROVIDE DSM AND OTHER ENERGY PROGRAMS TO HELP FE CUSTOMERS.**

At the Public Hearings in Cleveland Liz Hernandez provided extensive information about energy efficiency, FE efficiency programs, and the need for funding for these. Here is some of her testimony:

As rates continue to climb, energy conservation is one of the few ways that struggling low-income residents will be able to impact their deepening and disproportionate energy burden.

Cleveland Housing Network is one of the leaders in providing low-income energy services...to the community for over 20 years. CHN has worked in partnership with many community development organizations throughout the northeast Ohio territory to provide their residents these services.

....  
When fully funded, CHN is able to provide comprehensive services, both electric baseload energy efficiency programs, as well as gas conservation, in addition to providing for health and safety related measures to allow for full weatherization measures to be installed.

....  
With regards to FirstEnergy funding specifically: funding is currently not meeting the needs of the low-income residents in the FirstEnergy territory. For the past several years the funding level of \$2.7 million has been allocated to the Community Connections Program.

This funding amount is spread throughout the FirstEnergy territories of Ohio Edison, Toledo Edison and the Cleveland Electric Illuminating service territories.

....  
The FirstEnergy program allows for the replacement of inefficient, high use, what we call energy hog refrigerators with an energy star appliance based on metering the appliance. It also allows for the installation of efficient lighting with the installation of compact fluorescent bulbs in areas where they are used the most in the home.

....  
While electric baseload programs may average a thousand dollars with repairs included, the leveraged dollars amount to three times that amount from the state and Dominion programs. The energy savings from these programs can lower the usage of a lower income consumer by anywhere from 30 to 45 percent. We have had some even higher.

FirstEnergy funding in 2007 and 2008 was expended well before the end of the funding cycle, with most agencies requesting additional money to meet the growing needs of their communities. However, there were no additional dollars to be had.

As well, there is currently no funding in place for 2009 and beyond. Immediate attention to this funding crisis is needed to avoid discontinuing these valued programs....

....  
The funding has been inadequate despite the growing need and the increased capacity of the providers to get to those clients in need to provide this service.

I urge the Commission to seriously consider that this company [FE] cannot continue to raise its rates without a serious commitment to energy

conservation for low-income customers and for all customers who are interested in reducing their consumption.

....

In summary, Cleveland Housing Network is advocating that the PUCO include the funding of the Community Connections program currently administered through Ohio Partners for Affordable Energy at a much higher level. The current funding needs to be at an amount triple its current amount and allow for the serving of clients outside the poverty limits. I would suggest looking at an amount of \$10 million annually for the next ten years as a starting point. (Cleveland Public Hearings, pp.45-51.)

The failures of FE to fund these programs adequately and to set plans now for 2009 which could help in achieving the goals of SB 221 provide further evidence of FE's culpability in failing to implement SB 221. When one considers the relatively small amounts needed for these programs and the good that can be achieved in helping customers reduce their usage and bills, against the mammoth profits earned by FE during the past three or four years, this only further confirms the view that FE has little interest in establishing energy efficiency and DSM programs for its customers and achieving the goals of SB 221.

**6. UNLIKE PAST CASES, FE HAS FAILED TO NEGOTIATE IN GOOD FAITH WITH THE PARTIES TO THIS PROCEEDING.**

It might not be appropriate to discuss the various details of any discussions which have taken place among the parties. But there are real differences in the attitudes and approaches of the Companies in the year 2000 and those of 2008. In 2000 the Companies actively, even aggressively, sought out the other parties and worked diligently and extensively to achieve an acceptable compromise and stipulation. That has been lacking in this proceeding. All of us parties and consumer groups look to FE for leadership in the utility arena. We all may argue and present witnesses and evidence about the electric



issues including SB 221, but in the end we depend upon FE and we have always been willing to listen to FE representatives and work to achieve acceptable compromises.

No one disputes the importance of this ESP case for both for FE and for Ohio and FE customers as well as its companion case regarding an MRO. We all know that SB 221 contains substantial benefits and advantages for both FE and for its customers. Why then this FE silence? As stated above, our fear is that FE is abandoning its customers, working to subvert SB 221, and planning to resort to legal skullduggery. Let us hope we are wrong.

**ARGUMENT TWO: SINCE FE'S PROPOSED MRO HAS BEEN FOUND TO BE SERIOUSLY DEFICIENT BY THE PUCO AND SINCE FE'S PROPOSED ESP WOULD ALMOST CERTAINLY BE FOUND LEGALLY DEFICIENT—IF A PUCO DECISION HAS TO BE RENDERED IN THIS PROCEEDING, THE CITIZENS COALITION URGES THE PUCO AND THE PARTIES TO POSTPONE ANY FINAL OPINION IN THIS CASE AND TO WORK TOGETHER OVER THE NEXT SIX MONTHS IN ORDER TO SUCCESSFULLY IMPLEMENT THE BENEFITS AND ADVANTAGES OF SB 221 FOR ALL PARTIES. IN THE MEANTIME, THE PUCO SHOULD ORDER THE CURRENT RATE PLANS WITH CERTAIN MODIFICATIONS TO PROTECT CUSTOMERS TO REMAIN IN EFFECT FOR THE NEXT SIX MONTHS.**

What should be done? How should FE be held accountable for its failures? How should FE customers--and that includes all classes--be safeguarded from the Companies? How should the PUCO proceed forward? It is not enough simply for the PUCO to rule against FE in the ESP case and find that FE has not met its burden of proof. More is required from the Commission.

First, we are aware that the record has been held open in this proceeding. Also the PUCO has "invited" FE to resubmit its MRO filing and include the revisions proposed by the parties in that proceeding. The Citizens Coalition would recommend

that the PUCO schedule additional hearings in the ESP case, specifically requesting FE and the parties to address various issues including the following. All should also include in any filings their solutions for each of these issues:

- ...Rate structure, including the justification for various rate classes
- ...Concerns about the impact of rates on low-load and high-load customers
- ...Interruptible rates, including times and notice for when interruption of service is needed
- ...Rates for school districts and extension of the Energy for Education Program,
- ...Proper Rate Treatment for all-electric residential customers
- ...Large Scale government aggregation and how to promote this.
- ...Programs to help low-income families including "payment pools" to help customers when all other resources have been used
- ...Energy efficiency, DSM, and other programs aimed at helping all classes of FE customers so they can conserve on electric usage and thus reduce their bills while also reducing the need for more generating plants in the future
- ...Environmental plans to meet required goals
- ...Alternative and renewable sources of energy as well as meeting the mandated goals contained in SB 221,
- ...Proposed riders including the alleged need for each of these, the substantiation for these, justifications for why various riders should be non-bypassable while others are bypassable, and the costs and calculations for each
- ...Other utility issues involving SB 221

This process should be scheduled over the next six months. As part of this process, additional public hearings should be scheduled, with timely notice, so that the public can be better informed about the new SB 221 and provide their testimony and recommendations. The Citizens Coalition, in line with the excellent advice offered by the Industrial Energy Users and its renowned counsel, would urge all "stakeholders to use their substantial skills and talents for their mutual benefit rather than mutual destruction." See p. 4 of IEU-Ohio's Post-Hearing Brief.

Second, during this six-month period all customers should only be charged electric rates which are reasonable, proper, and in line with the objectives of SB 221. It is our understanding that without an approved MRO or ESP, rates after January 1, 2009,

would be based upon the current rate plans in effect for each company. Given, however, FE's culpability in causing customers to fail to receive their benefits from SB 221 and given the ongoing declining market rates for energy, it is not enough simply to continue the old rates into the new year. If FE had filed a proper MRO which the Commission could have ordered into effect, FE customers would now be enjoying rates that were lower than their current rates. FE customers should not be burdened with unreasonable and excessive rates. They should not be cheated out of what is rightfully theirs, namely substantially reduced electric rates. Therefore the Citizens Coalition urge the PUCO to cap current rates by what would have been the market rates that FE customers would now enjoy if FE had filed a proper MRO proceeding. If, on the other hand, this calculation might be difficult to perform, then the Citizens Coalition would urge the PUCO to reduce FE rates across-the-board by a meaningful percentage, say, a twenty-five percent reduction in all rates. This would remain in effect over the next six months while all work cooperatively and in good faith to implement all of SB 221.

Third, it is time that the burden of stranded plant and the unsubstantiated transition charges are eliminated from all customer bills. The Companies should be ordered to eliminate this charge from all monthly bills for all customers. This not only would rid customer bills of a huge unsubstantiated charge, but also lead toward lower electric bills during these perilous economic times.

Fourth, SB 221 does mandate certain goals in terms of energy efficiency and related issues. FE seemingly hopes to place the burden for achieving such goals solely upon its mercantile customers. FE has not proposed any programs for all of its customer groups in terms of DSM, peak demand reduction, and other energy efficiency measures.

This is a very restrictive view of what SB 221 is intended to accomplish. Moreover, this mercantile-customer-only approach robs FE customers of opportunities to participate in programs which would reduce their electric usage and thus lead to lower bills. In the MRO case FE has already been found deficient in its proposals to meet these energy goals. The PUCO should act quickly to insure that action can be taken by FE for 2009's goal.

To achieve the various goals as well as establish programs that will help individual customers, the Citizens Coalition urges the Commission to order that a collaborative be established immediately. This would be a decision-making collaborative as outlined in the Citizens Coalition Initial Brief. All parties would be invited to participate in this, which would also include the Companies. The Collaborative would be charged with establishing and implementing DSM and related energy efficiency programs, including those as outlined above in the testimony provided by Cleveland Housing Network expert Liz Hernandez. The Collaborative could hire outside objective experts, administrators, agencies, and companies to carry out the mission.

Of course, this Collaborative will need funds to begin its work. The Citizens Coalition would urge the PUCO to order FE to turn over the \$25 million which the FE had set aside from stockholder funds in its ESP filing for such efforts. Undoubtedly, more funds will be needed. Public witness Tim Walters testified as follows:

Some of this has to be programs that bring their [utility customer] homes to a level that's going to lower those rates and I believe I saw in there that we're talking about FirstEnergy has offered \$25 million. I'm sad to say I'm not really impressed. I could see a figure much larger than that, at least around a hundred million or higher given their profits and what they take out of it to protect our consumers. (Cleveland Public Hearings, p. 41.)

The Citizens Coalition urges that FE be ordered to commit at least One Hundred Million dollars for these programs. But while this is discussed and implemented, at least the \$25 Million already pledged by FE would insure that the Collaborative can begin its work.

Fifth, the FE top executives should also be asked to make some sacrifices. At the Public Hearings, Steve Indak who works for Congressman Dennis J. Kucinich, offered this testimony on behalf of the Congressman:

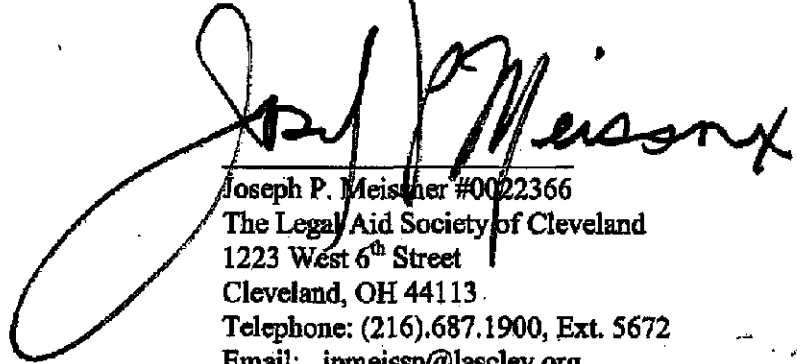
In 2007 FirstEnergy posted a net income of \$1.31 billion. According to the publication Business Week, the president and CEO of FirstEnergy received a total calculated compensation of \$12,753,326 in 2006, five times higher than the industry average for that same year for that same position. (Cleveland Public Hearings, p. 56.)

In other words, the FE CEO could give up some Ten Million dollars of annual pay and still receive an impressive salary. Other FE executives are also asked to make similar sacrifices. What should be done with these moneys? These could be used to help the school systems in Ohio who attended so many of the public hearings and made such excellent presentations about Ohio's schools and their need for funds. In conclusion, the PUCO should urge the top FE executives to give up their excessive salaries and provide these funds to help our State, including our educational system.

### CONCLUSION

The Citizens Coalition offered four arguments in their Initial Brief. In this Reply Brief, the Coalition has offered two more arguments. The Coalition urges the Commission to accept all of these arguments and use these in their Decision and Order in this case.

Respectfully submitted,

A large, stylized handwritten signature in black ink, which appears to read "Joe P. Meissner". The signature is written over the printed name and address.

Joseph P. Meissner #0022366

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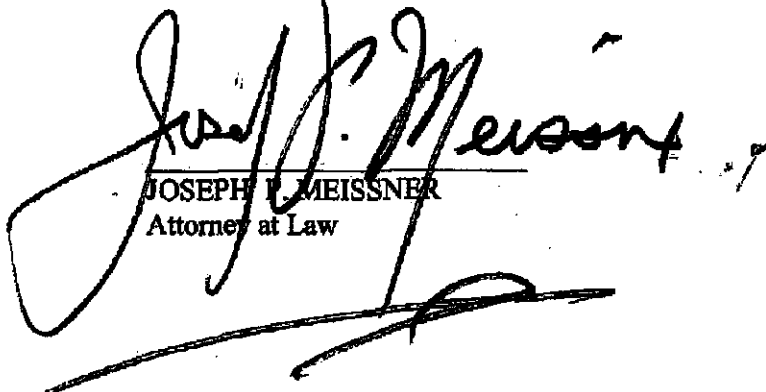
The Empowerment Center of

Greater Cleveland; and

Cleveland Housing Network

### CERTIFICATE OF SERVICE

I hereby certify that a copy of this Legal document was served by either Email or by regular U.S. Mail, postage prepaid, upon the parties of record identified below on this 12<sup>th</sup> day of December, 2008.

  
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