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Via Personal Delivery

December 12, 2008

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
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2008 DEC 12 PM 4:19

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In re: Case No. 08-935-EL-SSO

Dear Sir/Madam:

Please find enclosed an original and twenty (20) copies of the *Reply Brief of the Ohio Schools Council* to be filed in Case No. 08-935-EL-SSO on behalf of the Ohio Schools Council.

Copies have been served on all parties of record in this case.

Respectfully yours,

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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

REPLY BRIEF OF THE OHIO SCHOOLS COUNCIL

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Attorneys for the Ohio Schools Council

I. Introduction

The Ohio Schools Council ("Schools") hereby files this reply brief. The Schools will reply to matters of the most significance to our positions. In not addressing each and every position advanced by the parties, we are not expressing agreement necessarily with any such position. The Schools have demonstrated that its positions in this case are supported by factual analysis, the laws of the State of Ohio, and reasonable and important considerations of public policy.

II. The Companies have Failed to Meet their Burden of Proof Regarding the ESP, as proposed, and Reasonable Modifications, Including the Schools' Proposals, and Should be Incorporated into any Approved ESP.

The FirstEnergy Companies ("FirstEnergy" and/or the "Companies") have failed to satisfy their burden of proof to show that the proposals included within their proposed electric security plan ("ESP") are just, reasonable, and prudent nor have the Companies proven their Plan to be consistent with the electric policies of the state. The Schools concur with the Briefs of the Commission Staff and each and every other intervening party in this case that the Companies' ESP, as proposed, should not be approved by the Commission.[1] Modifications are necessary for the ESP to be more favorable in the aggregate than the expected results of a market rate option ("MRO"). Importantly, Amended Substitute Senate Bill 221 ("SB 221") provides the Commission with authority to modify and approve an ESP if the Commission deems the ESP, as modified, more favorable to customers.

In the Schools' Initial Post Hearing Brief ("Initial Brief"), we provided the Commission with specific modifications that would correct or, at least, moderate the unjust

[1] *See* Post-Hearing Brief Submitted on behalf of the Staff of the Public Utilities Commission of Ohio (hereinafter "Commission Staff Brief"), at 9 (Stating "Staff believes changes to FE's proposal are necessary to make it more reasonable.").

and unreasonable rate increases to the Schools in order to obtain a more favorable ESP. The Schools proposals[2], to be considered in the alternative, are as follows:

1. **The Commission should order the Companies to offer the Schools a third Energy for Education program.**

2. **In the alternative, the Commission should order the Companies to offer the Schools a School Rider in the Companies' tariffs to reduce rate impacts on Schools.**

The Schools' Initial Brief, explains these alternative proposals in detail, and establishes that these proposed two alternative modifications are just, reasonable and necessary.

III. The Companies' Brief Fails to Address the Legitimate Arguments Presented by the Schools in This Case.

The Companies' brief in support of their ESP does not mention the Schools. The Companies' brief fails to address the legitimate arguments made by the Schools regarding the substantial rate increases proposed to confront this customer class on January 1, 2009. The extent of the Companies' analysis in their brief regarding how individual customers and discrete customer classes will be impacted by the ESP is limited to assertions that *average* rate increases across all customers will be "modest"[3] and increases in generation rates have been *mitigated* under the Plan.[4] As previously explained, the rate increases proposed for individual School customers, and the Schools as a customer class, will be *substantial, are not proposed to be mitigated*, and are *far in excess of the average* rate increases for the reminder of the General Service-Secondary (GS-S) and General Service-Primary (GS-P) classes.

[2] *See* Initial Post Hearing Brief of Ohio Schools Council, at 22-23.
[3] *See* Brief of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company In Support of their Electric Security Plan (hereinafter "Companies Brief"), at 2.
[4] *Id.* at 25.

The Companies' attempts to employ the regulatory principle of gradualism also does not extend to the Schools. For example, Rider EDR, "designed to moderate the potential rate increases to those customer classes which would have otherwise received the largest increases", does not apply to the Schools.[5] As explained in detail in the Schools' Initial Brief, the Companies failed to consider whether it would be reasonable or appropriate to mitigate the substantial rate increases confronting the Schools because the Companies did not complete any rate impact analysis of the proposed ESP on the Schools as a customer class but simply forced the Schools into the calculated *average* rate increase for the GS-S and GS-P classes. The Companies' again completely ignored the more favorable load characteristics and lower cost causation of the Schools as a unique customer class. As succinctly explained in Nucor's Initial Brief:

> Herding existing customers into one of the new rate classes, calculating an average rate from all the rate schedules that comprise the new rate class, then calculating the rate impacts for the new rate class under the ESP proposal does not tell us the whole story about the rate impacts on individual customers or rate schedules.[6]

For the Schools, as previously explained in detail, the whole story would not show a moderate average increase of 5.32% or less in 2009. Rather, it would show **an average increase in excess of 11%** with many School customers being forced to fund **increases in excess of 25%** and **some as great as 77.5%.**[7] Because the Companies have not recognized or addressed the substantial and undisputed rate increases confronting Ohio's public schools, the Schools again request that the Commission address these severe rate increases and incorporate one of the Schools' proposed alternative modifications into any approved ESP.

[5] Companies' Brief, at 34.
[6] Initial Brief of Nucor Steel Marion, Inc., at 13.
[7] *See* Initial Post Hearing Brief of Ohio Schools Council, at 8-9.

IV. Without Moderating the Proposed Rate Increases for the Schools, the Industrial Customers' Proposal Would Unreasonably Result in Even More Substantial Rate Increases for the Schools.

The Schools are not the only party to voice their dissatisfaction with the distribution-case rate design and the resulting severe rate increases confronting certain customer classes under the Companies' proposed ESP. Similar to the Schools' challenge to the Companies' unwavering commitment to service voltage rate simplification, several other interveners, primarily industrial and large commercial customers, also address the rate design and the resulting substantial rate increases proposed under the ESP. For example, Nucor argues in its brief:

> FirstEnergy proposes to consolidate over twenty existing rate schedules into eight new rate classes, consistent with the rate classes FirstEnergy proposed in its distribution case. Direct Testimony of Gregory F. Hussing, FirstEnergy Exhibit 4 ("FirstEnergy Ex. 4") at 3, 5. FirstEnergy then proposes to apply a near-uniform (differentiated on the basis of a loss adjustment) generation rate to the eight rate classes. As discussed in detail below, FirstEnergy's proposed rate design recognizes almost no cost differences to serve customer classes based on the characteristics of those classes. The result is an over-allocation of costs to in the General Service – Transmission ("GT") class (as well as certain other classes), and a dramatic increase in rates for such customers.[8]

Similarly, Kroger argues in its post hearing brief that:

> There are major problems with this proposed rate design. . . . [W]hen these "moderate" impacts are evaluated in the context of actual individual customers of differing load factors, a very different picture emerges.[9]

[8] *See* Initial Brief of Nucor Steel Marion, Inc., at 7-8.
[9] *See* Initial Brief of The Kroger Co., at 7-8.

Certainly, the Schools should continue to be considered a unique class of customers, and due consideration given to the dramatic increase in School rates contemplated under the Companies' ESP proposal.

One of the industrial customers' primary proposed solutions to more effectively implement gradualism and address the substantial rate increases confronting the GT class was set forth in the Direct Testimony of Ohio Energy Group ("OEG") Witness Stephen J. Baron, and is supported in the briefs of both OEG and Nucor. As set forth in OEG's brief, Mr. Baron proposes that under a long-term plan, the approved ESP revenue increases for non-shopping customers be allocated using the following three principles:

> 1. Residential rates should reflect the increases suggested by the Companies (if the filed ESP rates are adopted) and not be charged any costs associated with rate mitigation under this plan. If alternative wholesale generation rates are approved, then residential rates should be adjusted accordingly to recover the residential class share of costs, without any additional mitigation charges produced under this plan.
>
> 2. No *rate schedule* should receive an increase greater than "2 Times" the retail average increase.
>
> 3. No *rate schedule* should receive a rate decrease if other schedules get an increase.[10] (emphasis added)

While the OEG "rate mitigation" plan seems to implement logical principles to mitigate rates, the practical effect of applying these principles to the eight *rate schedules* proposed by the Companies would be to further increase the ESP rates confronting the Schools. The OEG's proposal, like the Companies', effectively ignores the Schools as a unique customer rate class and forces the Schools into the GS-S and GS-P schedules. As a result, the actual

[10] *See* Brief of Ohio Energy Group on Long-Term ESP, at 16.

dramatic impact of this proposal on the Schools, like the Companies' ESP itself, is masked by the average rate increase for these *rate schedules* as a whole.

For example, under the Companies' ESP as proposed, while the average Toledo Edison ("TE") GS-S customer would receive a 6.92% decrease in their bill and the average TE GS-P customer would receive a 10.27% decrease in their bill, the Schools served by TE will be confronted with an average 16.3% increase in 2009. Incorporating OEG's proposal actually results in even more substantial increases for the Schools. Under OEG's proposal, the average proposed TE GS-S 6.92% decrease would be modified to a 4.74% increase and the average GS-P decrease of 10.27% would be modified to 0.96% increase, resulting in an approximately 10% average increase for both the TE GS-S and GS-P customer classes from the rates currently proposed in the ESP.[11] Applying the OEG "rate mitigation" plan to the Schools in TE's service territory would result in an average rate increase for the Schools of approximately 26%, a result wholly inconsistent with Mr. Baron's general principle that rate increases should not be greater than "2 Times" the retail average increase.

Without implementing the Schools' proposals to mitigate the substantial rate increases already confronting the Schools, it would be extremely unjust and unreasonable for the Commission to implement OEG's proposed "rate mitigation" plan. We also note that OEG's policy arguments regarding the need to mitigate substantial rate increases for large industrial customers to improve the State's economy must be reconciled with policy arguments set forth in the Schools' Initial Brief regarding the primary importance of education in facilitating the State's effectiveness in the global economy.[12] As expressed by

[11] *See* Brief of Ohio Energy Group on Long-Term ESP, at 17.
[12] *See* Initial Post Hearing Brief of Ohio Schools Council, at 18-22.

Governor Ted Strickland in his first inaugural State of the State address, "[E]ducation will feed the economy."[13]

V. Conclusion

The Schools again submit that the Commission's decision regarding whether the Companies ESP is more favorable in the aggregate to customers should include consideration of the rate impacts on the Schools as a unique customer class. The Companies failed to consider the rate impacts of their ESP proposal on the Schools, failed to propose reasonable rate increases for the Schools, and did not address the Schools' legitimate arguments and concerns in their brief. Modification of the Companies' ESP proposal is necessary, just, and reasonable. With appropriate modification of the ESP to include an Energy for Education contract and/or a School Rider mechanism to mitigate the substantial rate increases confronting Ohio Schools Council's 249 public school districts, the Schools could consider supporting the Companies' ESP, as so modified.

The Schools respectfully request the Commission to follow the polices and mandates of SB 221, recognize the unique Ohio public policy considerations involved for public schools, consider the drastic and financially devastating rate impacts on Schools proposed in the Companies' Application, and adopt the Schools' recommendations in this case.

[13] Governor Ted Strickland, Speech: State of the State Address, (March 14, 2007).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief of The Ohio Schools Council was served upon the following parties of record this 12th day of December 2008, *via* electronic transmission, hand-delivery or first class mail, postage prepaid.

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