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Tim Walters
Consumers for Fair Utility Rates

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PHAACO

Chuck Wright
W.S.O.S Community Action

Teri Combs
Corporation for Ohio Appalachian
Development

David C. Rinebolt
Executive Director & Counsel

Peter G. Natal
Deputy Director

231 West Lima Street
P.O. Box 1793
Findlay OH 45839-1793
419. 425.8860
Fax 419 425.8862
www.ohiopartners.org

December 12, 2008

Ms. Betty McCauley, Docketing Chief
Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street, 13th Floor
Columbus, OH 43215

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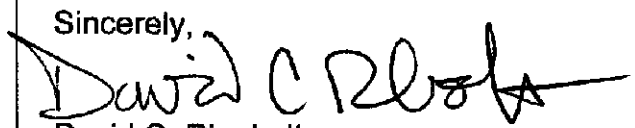
RE: Case No. 08-⁹³⁵855-EL-SSO

To Whom It May Concern:

Please find enclosed an original and twenty copies of the *Reply Brief of Citizen Power and Ohio Partners for Affordable Energy* in the above-referenced docket. We do not require a stamped copy.

If you have any questions regarding this document, please feel free to contact me.

Sincerely,


David C. Rinebolt
Counsel

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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-S99

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**REPLY BRIEF OF
CITIZEN POWER AND OHIO PARTNERS FOR AFFORDABLE ENERGY**

David C. Rinebolt
Trial Attorney
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
Telephone: (419) 425-8860
FAX: (419) 425-8862
e-mail: drinebolt@aol.com
cmooney2@columbus.rr.com

**Counsel for Ohio Partners for
Affordable Energy**

Theodore S. Robinson
Trial Attorney
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
Telephone: (412) 421-6072
FAX: (412) 421-6142
e-mail: robinson@citizenpower.com

Counsel for Citizen Power

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**REPLY BRIEF OF
CITIZEN POWER AND OHIO PARTNERS FOR AFFORDABLE ENERGY**

Ohio's consumers and utilities now face a change in the regulatory framework regarding the provision of electric utility service. The Cleveland Electric Illuminating Company, The Ohio Edison Company, and The Toledo Edison Company (collectively "the Companies" or "FirstEnergy") offer an interpretation of the new statute, Am. Sub. SB 221 ("SB 221"), in line with that offered by other public utilities in Ohio, that the Standard Service Offer ("SSO") proposed in an Electric Security Plan ("ESP") need only be "more favorable in the aggregate" than a Market Rate Option ("MRO") as both are defined by the statute. R.C. §§4928.142 and 4928.143. The Companies are in error.

In SB 221, the General Assembly maintains the requirement that an SSO represent an appropriate balance between the interests of the utility and its customers.¹ The statute requires reasonable rates, protection for at-risk populations, and an alignment of customer and utility interests in providing reliable service, among other policy goals. R.C. §4928.02. The FirstEnergy

¹ Staff Brief at 1.

proposal fails to acknowledge the importance of state policy goals, the need for balance, and reasonable rates. Given the dearth of shopping opportunities for customers, particularly small customers, the SSO will be the rate that the vast majority of customers will pay. This rate should represent an appropriate balance between the interests of the parties.

The utilities collectively chose to file their proposals on the effective date of the statute, July 31, 2008. They chose not to wait for guidance from the Public Utilities Commission of Ohio ("PUCO" or "the Commission") on the necessary content of the plans. The effect of this rush to impose substantial rate increases on customers based on the utilities' collective interpretation of the law has had the logical effect. FirstEnergy has already seen its MRO application rejected. Duke, on the other hand, was able to achieve a negotiated settlement once it pared down its proposal to comply with the statutory limits.

The Application has numerous flaws. The proposed deferrals of large portions of the rate increases do not produce price stability. Rather, it imposes significant financial burdens on customers over a much longer term than the ESP will be in effect. The statute is clear that the Commission cannot evaluate the impact of the MRO by simply pushing hundreds of millions of dollars in IOUs from customers to the Companies under the rug and ignore them when comparing the ESP and MRO. R.C. §4928.143(C)(1).

In addition, the Application attempts to embrace issues considered separately in a fully litigated distribution rate case. Fortunately, the Attorney Examiners ruled that distribution rate case issues be severed from this case. As

a result, it is obvious the Commission will modify this plan despite the Companies' insistence that basic distribution issues remain included in the case.

The Application establishes an unreasonable strawman, a market-based comparison rate that is effectively the same as its proposed MRO, already rejected. Both the Ohio Energy Group ("OEG") and the Office of the Ohio Consumers' Counsel ("OCC") presented testimony providing projections of future market prices and it is the "expected" prices that are the test between the ESP and the RTO. R.C. §4928.143(C)(1). These projections show that the ESP is not more advantageous from a pricing standpoint than an MRO could be. That alone is adequate grounds for rejecting the application.

An ESP should have a long-term focus, as should any plan proposed under SB 221. The statute establishes long-range goals for energy efficiency, demand reduction, and renewable generation. R.C. §§4928.64 and 4928.66. These goals cannot be reached in three year slices; they must be met by a long-term plan that will stimulate the investments necessary to achieve these important state policy goals. The Commission should order the Companies to immediately convene a collaborative to design programs to achieve these goals, and should required the continued funding of existing low-income programs, already proven cost-effective, to kick start the effort to comply with statutory requirements.

Development of an integrated portfolio of demand and supply side technologies is required to meet the goals of the statute. OPAE has provided testimony on the appropriate mechanism for conducting planning and

procurement.² Several states, including Illinois, Maryland, and Delaware, have all adopted this approach after the flaws in 'slice of system' auctions became apparent. Ohio should learn from the experiences of these states and, consistent with Ohio law, adopt a similar approach.

An integrated portfolio approach applied to an MRO would produce much lower prices than those resulting from the approach championed by the Companies because it would focus on the lowest price options available to provide SSO service. A properly designed portfolio would be able to capture the changes in wholesale prices. This, in turn, would require an acceptable ESP to also use a portfolio approach in order to meet the statutory requirements to be "more favorable in the aggregate."

The funding level for distribution system improvements proposed in the Application was apparently established by 'management judgment' and is not based on a plan.³ Depending on the management judgment of companies that already fail to meet modest reliability targets is not warranted. The same lack of detail characterizes the Companies' Advanced Metering Infrastructure (AMI) initiative. There is only a minimal 'plan' and no cost-effectiveness analysis. The only reference to cost regarding this portion of the Application is the interest of the Companies in charging higher costs via time-of-use rates. The extensive record provides no support, from any party, for the assertion that time-of-use rates will produce a demand response more cost-effectively than conventional, low-cost, radio-controlled switching or other proven techniques. And there is

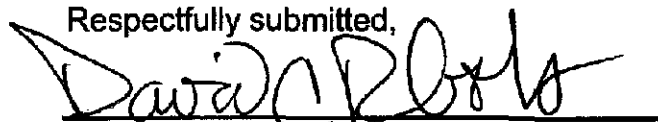
² *Direct Testimony of Barbara R. Alexander.*

³ FirstEnergy Brief at 56.

nothing in the record that proves that AMI will reduce prices for the average residential consumer that will bear the cost.

The Attorney Examiner ruling has already altered the ESP by severing the distribution issues already litigated. Additional alterations must be made in order to comply with the statute. These changes will, under the terms of the statute, permit FirstEnergy to withdraw this initial proposal should it find the modifications unpalatable. The Companies should withdraw this application and refile a proposal that complies with the statute.

Respectfully submitted,



David C. Rinebolt (0073178)

Trial Counsel

Colleen L. Mooney (0015668)

Ohio Partners for Affordable Energy

231 West Lima Street

P.O. Box 1793

Findlay, OH 45839-1793

Telephone: (419) 425-8860

e-mail: drinebolt@aol.com

cmooney2@columbus.rr.com

**On Behalf of Ohio Partners for
Affordable Energy**



Theodore S. Robinson

Citizen Power

2121 Murray Avenue

Pittsburgh, PA 15217

Telephone: (412) 421-6072

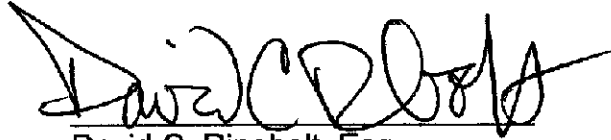
FAX: (412) 421-6142

e-mail: robinson@citizenpower.com

On Behalf of Citizen Power

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Reply Brief* were served electronically upon the parties of record identified below on this 12th day of December, 2008.



David C. Rinebolt, Esq.
**Counsel for Ohio Partners for
Affordable Energy**

David F. Boehm
Boehm, Kurtz & Lowry
36 East Seventh St., Ste. 1510
Cincinnati, OH 45202

Attorney for Ohio Energy Group

John W. Bentine
Chester, Willcox & Saxbe LLP
65 East State St., Ste. 1000
Columbus, OH 43215-4213

Attorney for The Kroger Company, Inc.

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

Attorney for The Ohio Environmental
Council and Dominion Retail, Inc.

John Jones
William Wright
Assistant Attorneys General
Public Utilities Commission of Ohio
180 E. Broad St., 9th Fl.
Columbus, OH 43215

Samuel C. Randazzo
Lisa McAlister
Daniel Neilsen
Joseph Clark
McNees, Wallace & Nurick LLC
21 East State St., 17th Fl.
Columbus, OH 43215

Attorney for Industrial Energy Users-
Ohio

Jeffrey L. Small
Office of the Ohio Consumers Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215

James W. Burk
Arthur E. Korkosz
Mark A. Hayden
Ebony L. Miller
FirstEnergy Corp.
76 South Main Street
Akron, OH 44308

Leslie A. Kovacik
Dept. of Law
420 Madison Ave., 4th Fl.
Toledo, OH 43604-1219

Attorney for the City of Toledo and
NOAC

Lance M. Keiffer, Asst. Prosecutor
711 Adams Street, 2nd Floor
Toledo, OH 43624-1680

Attorney for Lucas County and NOAC

Garrett Stone
Brickfield, Burchette, Ritts & Stone
1025 Thomas Jefferson St., N.W.
8th West Tower
Washington, D.C. 20007

Attorney for Nucor Steel Marion, Inc.

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

Attorney for Constellation NewEnergy,
Inc. and Constellation Energy
Commodities Group, Inc., Direct
Energy Services, LLC and Integrays
Energy Services, Inc.

Cynthia A. Fonner
David Fein
Constellation Energy Group, Inc.
550 W. Washington St., Suite 300
Chicago, IL 60661

Attorney for Constellation NewEnergy,
Inc. and Constellation Energy
Commodities Group, Inc.

David Kutick
Jones Day
P.O. Box 165017
Columbus, OH 43216-5017

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

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

Attorney for The Sierra Club Ohio
Chapter and Natural Resources
Defense Council

Craig G. Goodman
National Energy Marketers Association
3333 K St., N.W., Ste. 110
Washington, D.C. 20007

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

Attorney for City of Akron

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

Attorney for Citizens Coalition,
Citizens for Fair Utility Rates,
Neighborhood Environmental Coalition
Cleveland Housing Network,
Empowerment Center for Greater
Cleveland

Glenn Krassen
Bricker & Eckler LLP
1375 East Ninth St., Ste. 1500
Cleveland, OH 44114

Attorney for Northeast Ohio Public
Energy Council and Ohio Schools
Council

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

Attorney for FPL Energy Power
Marketing, Inc., and Gexa Energy
Holdings, LLC

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

Attorney for Council of Smaller
Enterprises

Larry Gearhardt
Chief Legal Counsel
Ohio Farm Bureau Federation
280 North High St., P.O. Box 182383
Columbus, OH 43218-2383

Gregory H. Dunn
Schottenstein, Zox & Dunn Co., LPA
250 West Street
Columbus, OH 43215

Attorney for the City of Cleveland

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

Attorney for Ohio Manufacturer's
Association

Damon E. Xenopoulos
Brickfield, Burchette, Ritts & Stone, PC.
1025 Thomas Jefferson Street, N.W.
Eighth Floor, West Tower
Washington, DC 20007

Attorney for OmniSource Corporation

Craig I. Smith
2824 Coventry Road
Cleveland, OH 44120

Attorney for Material Sciences
Corporation

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

Attorney for Morgan Stanley Capital
Group, Inc.

Dane Stinson
Bailey Cavalieri LLC
10 West Broad St. Ste. 2100
Columbus, OH 43215

Attorney for FPL Energy Power
Marketing, Inc., and Gexa Energy
Holdings, LLC

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

Attorney for Citizen Power

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

Attorney for Morgan Stanley Capital
Group, Inc.

Grace C. Wung
McDermott Will & Emery, LLP
600 Thirteenth Street, N.W.
Washington, DC 20005

Attorney for the Commercial Group

Christopher Miller
Schottenstein, Zox & Dunn Co., LPA
250 West Street
Columbus, OH 43215

Attorney for The AICUO

sam@mwncmh.com
john.jones@puc.state.oh.us
william.wright@puc.state.oh.us
drinebolt@aol.com
dboehm@bklawfirm.com
BarthRoyer@aol.com
jbentine@cwslaw.com
Cynthia.A.Fonner@constellation.com
mhpetricoff@vssp.com
gas@bbrslaw.com
leslie.kovacik@toledo.oh.gov
lkeiffer@co.lucas.oh.us
mitch.dutton@fpl.com
LBell33@aol.com
robinson@citizenpower.com
lmcaster@mwncmh.com
jclark@mwncmh.com
dneilsen@mwncmh.com
Dane.Stinson@BaileyCavalieri.com

burkj@firstenergycorp.com
korkosza@firstenergycorp.com
haydenm@firstenergycorp.com
elmiller@firstenergycorp.com
mawhitt@jonesday.com
ricks@ohanet.org
henryeckhart@aol.com
cgoodman@energymarketers.com
Vollmse@ci.akron.oh.us
jpmeissn@lasclev.org
LGearhardt@ofbf.org
gkrassen@bricker.com
gdunn@szd.com
dex@bbrslaw.com
wis29@yahoo.com
eric.weldele@tuckerellis.com
david.fein@constellation.com
gwung@mwe.com
cmiller@szd.com