

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED-BOOKING DIV

2009 JAN -5 AM 11:08

PUCO

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

**COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO
ON FIRSTENERGY'S COMPLIANCE TARIFF FILING**

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
lmcaster@mwncmh.com
jclark@mwncmh.com

January 5, 2009

Attorneys for Industrial Energy Users-Ohio

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician SM Date Processed JAN 05 2009

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

**COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO
ON FIRSTENERGY'S COMPLIANCE TARIFF FILING**

On December 19, 2008, the Public Utilities Commission of Ohio ("Commission") issued an order approving, with significant modification, the electric security plan ("ESP") proposed by Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("TE") (collectively, "FirstEnergy" or "Companies"). On December 22, 2008, FirstEnergy reacted to the Commission's order by exercising its right to withdraw the ESP, which causes the ESP to terminate and current rates to remain in place on an interim basis by operation of law. FirstEnergy addressed the rates that it will be using prospectively to bill for electric service as a result of its withdrawal (and the termination) of its proposed ESP by filing to continue certain of its current tariff schedules that would have otherwise expired at the end of this year in accordance with tariffs approved by the Commission prior to the enactment of Amended Substitute Senate Bill 221 ("SB 221").¹

¹ FirstEnergy also noted that the distribution utilities do not own generation and will accordingly proceed to procure supply from the market with rates expected to recover the costs of such supply. Accordingly, FirstEnergy announced that it would commence a request for proposals ("RFP") process by which it will competitively source generation supply to meet the needs of its standard service offer ("SSO") customers. The RFP was held on December 31, 2008 and FirstEnergy announced via a press release that the

On December 26, 2008, the Attorney Examiner issued an Entry that directs parties to file comments by January 5, 2009 on FirstEnergy's tariff filing. In accordance with the Entry, Industrial Energy Users-Ohio ("IEU-Ohio") provides the following brief comments.

The December 26, 2008 Entry correctly references Section 4928.143(C)(2)(b), Revised Code, which requires the Commission to issue an order to continue the electric distribution utility's ("EDU") most recent SSO in the event that the EDU withdraws and, thus, terminates the ESP upon Commission modification. Since there has not yet been an order continuing FirstEnergy's most recent SSO FirstEnergy's "compliance tariff filing" precedes the issuance of the order called for by 4928.143(C)(2)(b), Revised Code. Nonetheless and recognizing the very limited time available, FirstEnergy's compliance tariff filing is useful to assist the Commission in its requirement to issue an order, which IEU-Ohio urges the Commission to promptly issue.

However, as noted in IEU-Ohio's Post Hearing Brief, simply continuing the tariffs is not broad enough to meet the requirements of SB 221. Accordingly, IEU-Ohio once again urges the Commission to also find that it expects the Companies to promptly pursue compliance with the requirements of SB 221's portfolio obligations, which 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.

"winning bid price is consistent with a retail rate of 6.98 cents per kilowatt-hour." FirstEnergy also alerted the Commission that as it has not issued an order in the pending distribution rate increase case within the 545-day window, FirstEnergy will implement the proposed rates without any refund obligation if the Commission has not issued an order by January 15, 2009. Finally, FirstEnergy filed an application for rehearing in its market rate offer case.

The Commission must also provide guidance to the Companies to address the consequences of any end to reasonable arrangements that have been approved pursuant to Section 4905.31, Revised Code. IEU-Ohio brought this to the Commission's attention in the briefing phase of this proceeding.² 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.

Finally, as the Commission has given parties the opportunity to raise important issues related to the continuation of FirstEnergy's current tariff schedules, there are two other issues that are worthy of comment. First, it is worth noting that, as reported by FirstEnergy thus far, the RFP for generation service to retail customers who choose not to shop with alternative suppliers resulted in four qualified bidders (with FirstEnergy Solutions among the winners) being selected to supply electric generation for the period of January 5 through March 31, 2009 at an "average winning bid price is consistent with a retail rate of 6.98 cents per kilowatt-hour." The wording of this press release suggests that FirstEnergy interpreted the bidding results to develop the retail price. IEU-Ohio believes that FirstEnergy should provide additional information, subject to such confidentiality arrangements as may be appropriate, to explain how the bidding results were assembled and interpreted to arrive at the retail rates.

Second, as the Commission is likely aware, FirstEnergy has recently engaged in direct communications with customers to indicate that FirstEnergy is changing protocols that apply to customers served pursuant to non-firm service arrangements. About the

² 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.

time that FirstEnergy made its compliance filing, FirstEnergy was notifying these non-firm customers that they had to make an election by December 29, 2008. FirstEnergy's notice stated that if customers did not respond by December 29, 2008 with an affirmative election to maintain their non-firm service, they would be placed on the otherwise applicable firm rate schedule. FirstEnergy provided little information to allow customers who actually received the notice to determine which option might provide the best outcome. The limited time available between the Commission's ESP order and the commencement of 2009 made the transitional logistics difficult enough without the unique challenges presented by the distribution of important notices during the holidays. In any event, FirstEnergy's treatment of customers with the capability to interrupt some or all of their electricity usage appears to work against the energy efficiency and peak demand reduction objectives that are embedded in SB 221. Also, it is reasonable to expect that EDU's that do not own generation might have a stronger and more immediate need to identify and use customer-sited capabilities to best meet supply price and reliability objectives.

IEU-Ohio respectfully requests that the Commission promptly comply with Section 4928.143(C)(2)(b), Revised Code, and issue an order continuing FirstEnergy's most recent SSO with the additional direction described herein. In addition, IEU-Ohio urges the Commission to direct FirstEnergy to develop a reasonable transition plan for customers receiving non-firm service and to prohibit FirstEnergy from implementing the protocols and procedures that FirstEnergy unilaterally established during the last two weeks.

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 *Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 5th day of January 2009, 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, Suite 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