

FILE



The

Legal Aid Society
of Cleveland

Since 1905

RECEIVED-DOCKETING DIV

2009 JAN -6 AM 9:13

PUCO

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

January 5, 2009

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

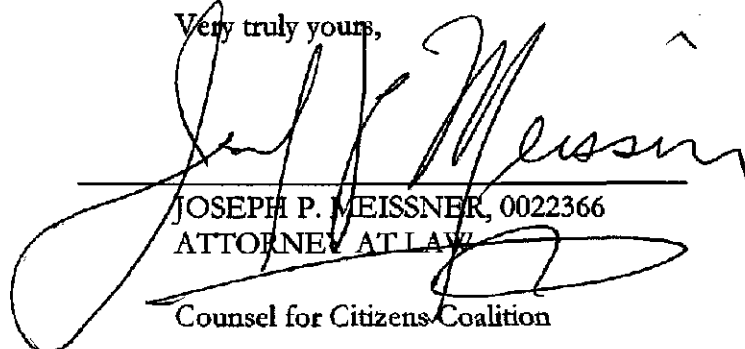
We are enclosing Comments Related to the Tariff Filing for our clients, the Citizens Coalition, in this case.

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,


JOSEPH P. MEISSNER, 0022366
ATTORNEY AT LAW
Counsel for Citizens Coalition

www.lasclev.org

Main Office

1223 West Sixth Street
Cleveland, OH 44113

Phone: 216.687.1900
Fax: 216.687.0779

Ashtabula County

121 East Walnut Street
Jefferson, OH 44047

Phone: 866.873.9665
Fax: 440.576.3021

Lake & Geauga

8 North State St - Ste 300
Painesville, OH 44077

Phone: 888.808.2800
Fax: 440.352.0015

Lorain County

538 West Broad St - Ste 300
Elyria, OH 44035

Phone: 800.444.7348
Fax: 440.323.8526

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.
Date Processed JAN 06 2009
Technician DM

 LSC

RECEIVED-DOCKETING DIV
2009 JAN -6 AM 9:13

PUCO

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	Case No. 08-935-EL-SSO
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.)	
)	

**COMMENTS
ON
COMPANIES' PROPOSED TARIFF FILING
FILED ON BEHALF OF THE
NEIGHBORHOOD ENVIRONMENTAL COALITION
THE EMPOWERMENT CENTER OF GREATER CLEVELAND,
UNITED CLEVELANDERS AGAINST POVERTY,
CLEVELAND HOUSING NETWORK.
AND
THE CONSUMERS FOR FAIR UTILITY RATES
DATED JANUARY 5, 2009**

Now comes The Neighborhood Environmental Coalition (hereinafter "Coalition"), The Consumers for Fair Utility Rates (hereinafter "Consumers"), United Clevelanders Against Poverty, Cleveland Housing Network, and The Empowerment Center of Greater Cleveland (hereinafter "Center") who, through their counsel, hereby submit these Comments on the Filing of Proposed Tariffs by the Companies. The

PUCO's ENTRY, dated December 26, 2008, allowed for the filing of these comments by January 5, 2009. We do thank the Commission for this opportunity.

FIRST COMMENT EXPRESSING THE CONCERNS OF THE CITIZENS' COALITION:

The Citizens Coalition is quite concerned with the disastrous developments in these proceedings. On July 31, 2008, the Companies filed for an "ESP" under the new Ohio Law SB 221. At the same time, the Companies filed for an "MRO" under the same statute. It was obvious at that time that both of these filings were grossly defective. The eventual and understandable PUCO decision in PUCO Case No. 08-936-EL-SSO confirmed that there were gross deficiencies in the Companies' MRO filing. At the same time, the PUCO urged that the Companies should consider the various recommendations from the other parties in that case.

The Companies have not followed the Commission's helpful recommendation. Nor have the Companies attempted to amend their faulty MRO filing. At the same time, the ESP filing had many of the same deficiencies as the MRO filing which had been rejected by the PUCO. It would seem that a responsible and reasonable utility company would seek to amend its ESP filing to meet the deficiencies found in its MRO filing. The Companies have not sought to do this, but continued stubbornly ahead in their substandard ESP case with the very predictable result that the Commission found the companies ESP filing needing certain modifications. Again the Companies have neglected to accept these modifications and have failed to amend their ESP filing.

All of this suggests that the companies and their parent FE are not acting in good faith nor are they behaving as reasonable utility companies in terms of implementing SB

221. This conclusion is further buttressed by the Companies' action on December 22, 2008, when they stated they wanted to withdraw and terminate their application for an ESP. Give their previous actions as well as their lack of reasonable conduct, this December 22nd rejection should not be allowed by the Commission. Certainly implied in SB 221 there should be requirements for actions by the companies that are in good faith and reasonable. Failing to abide by such implicit standards, the companies should not be allowed to recall and terminate their ESP filing. The Citizens Coalition objects to any PUCO actions in establishing the tariffs which would reward the Companies for their lack of good faith, for their unreasonableness, and their intransigence.

SECOND COMMENT: REDUCE OUR ELECTRIC RATES !

For decades FE's customers have borne the burden of rates that are among the highest both in Ohio and in the United States. Under the regime of electric deregulation, FE customers have been required to pay several times over for electric generation plant, first in their inherited rates, then in the stranded cost charges from 2000 on, and then in the transition charges from 2005 to the present.

Against this background came the reform act of SB 221. Based on this statute, the Companies filed their MRO and ESP cases simultaneously at the end of July 2008. . The Companies may have been expecting that the market rates for electricity would increase throughout 2008 and might increase considerably. There even seemed to be an electric industry propaganda campaign of "scaring the children" by raising the specter of vastly increasing rates, ala Illinois and Maryland. Thus the companies may have plotted that almost any ESP they proposed would seem to be better than an MRO in a situation

where market rates had increased considerably. However, the truth is that market rates have actually gone down, and decreased fairly substantially.

Suppose that the companies had filed proper MRO and ESP cases. A proper MRO case considering what has happened in the markets would thus have turned out to be an advantage for the customers whose old rates set in the 2005 case would then have been decreased.

Why should customers be deprived of the benefits of these lower market rates, especially when this seems to have been one of the intentions of the Ohio General Assembly in enacting SB 221? The reason why customers are not enjoying these lower market rates at present is the fault of the companies and FE. Through their lack of good faith and their improper MRO and ESP filings, their own customers are being deprived of the benefits of SB 221. The Citizens Coalition is well aware that market rates can go up, just as they have come down. Our national gasoline experiences of the first part of 2008 shows what can happen to energy rates. But the fact of the matter is that market rates for electricity have come down and it seems likely this may continue for some time because of the poor overall economic conditions both in America and throughout the world.

The Citizens Coalition is aware of the technical legal arguments about what particular section of the Ohio revised code should be applied at this time. The Citizens Coalition, however, would urge the PUCO to take a broader view of their powers and duties. The Commission should place the customers in the position they would have been absent the bad faith and bad actions of the companies. Customers would now enjoy the lower market rates. The Commission should establish tariffs which reflect these

market rates and would thus result in lower monthly bills for already hard-pressed customers.

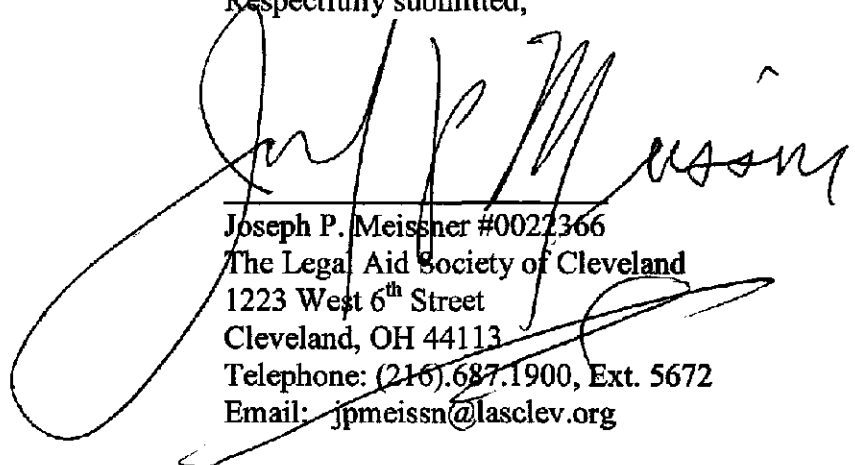
THIRD COMMENT: WHERE ARE WE GOING?

An Editorial on these proceedings appeared in the December 25, 2008, issue of the Cleveland Plain Dealer. See Page A-15 of that issue. After discussing the case, the editorial recommended that the parties should engage in discussions and negotiations in order to reach a resolution. This is also the path suggested in the Reply Brief filed by the Citizens Coalition on December 12, 2008.

The difficulty with this reasonable approach is that it takes two sides to engage in discussions and negotiations. So far, in this entire proceeding and its companion of Case No. 08-936-EL-SSO 936, the Companies have shown little interest in any negotiations. Absent any changes in the companies' behavior, the Citizens Coalition would urge the Commission to establish rates that reflect market conditions for the next two years, or the rates from the ESP decision, whichever are lower. The PUCO should order FE and the companies to establish an energy portfolio designed to take advantage of lower market rates as well as the FE ownership of electric generation plants already paid for by FE's customers. At the same time, the Commission should order FE and the parties to establish a decision-making collaborative to begin working on important SB 221 goals for energy efficiency, alternative and renewable energy sources, peak-load shaving, and other crucial energy concerns.

Finally, the Citizens Coalition expresses its willingness to work cooperatively with all parties in these proceedings in order to achieve the goals set forth in SB 221.

Respectfully submitted,

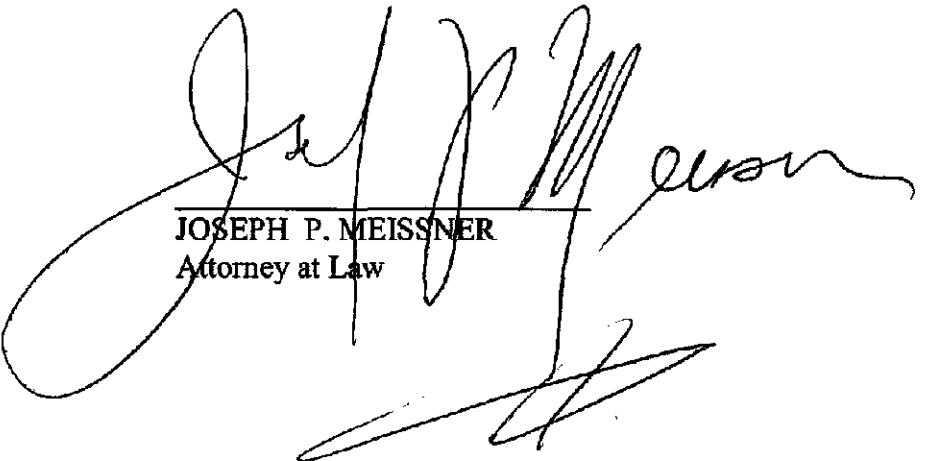
A large, stylized handwritten signature in black ink, which appears to read "Joseph P. Meissner". The signature is written over the typed name and contact information.

Joseph P. Meissner #0022366
The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, OH 44113
Telephone: (216) 687.1900, Ext. 5672
Email: jpmeissn@lasclev.org

Counsel for:
Neighborhood Environmental Coalition,
Consumers for Fair Utility Rates and
The Empowerment Center of
Greater Cleveland
United Clevelanders Against Poverty, 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 5th day of January 2009.



JOSEPH P. MEISSNER
Attorney at Law