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January 5, 2009

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215


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

Dear Sir/Madam:

Please find enclosed an original and twenty (20) copies of the COMMENTS OF THE OHIO ENERGY GROUP ON THE PROPOSED TARIFF FILING OF TOLEDO EDISON, OHIO EDISON AND CLEVELAND ELECTRIC ILLUMINATING COMPANY fax-filed today in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



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Encl.

Cc: Certificate of Service
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**BEFORE THE
PUBLIC UTILITY COMMISSION OF OHIO**

**In The Matter Of The Application Of Ohio Edison :
Company, The Cleveland Electric Illuminating Company : Case Nos. 08-935-EL-SS0
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 OF THE OHIO ENERGY GROUP
ON THE PROPOSED TARIFF FILING OF TOLEDO EDISON, OHIO EDISON AND
CLEVELAND ELECTRIC ILLUMINATING COMPANY**

The Ohio Energy Group ("OEG") files its comments in response to the Entry of the PUCO of December 26, 2008 inviting parties to address the Companies' proposed tariff filing.

1. The Existing Standard Service Offer Rates Must Be Amended To Remove RTCs.

It is clear that the rates that Ohio Edison and Toledo Edison request to remain in effect pending the implementation of tariffs resulting from the December 31, 2008 RFP contain Regulatory Transition Costs (RTCs). These "stranded costs" are the specific subject of Revised Code 4928.141(A). That section states as follows:

"A standard service offer under 4928.142 or 4928.143 of the Revised Code shall exclude any previously authorized allowances for transition costs, with such exclusion being effective on and after the date that the allowance is scheduled to end under the utility's rate plan."

As the Commission well knows, the RTCs of both Ohio Edison and Toledo Edison expire on December 31, 2008. It is hard to imagine a clearer, less ambiguous proscription against the continuation of the RTCs than the language quoted above. Yet, it would seem that Toledo Edison and Ohio Edison

expect these very substantial charges to remain a part of the rates for service rendered after January 1, 2009. We urge the Commission to require Toledo Edison and Ohio Edison to subtract the RTCs from the rates effective as of January 1, 2009. This means that when bills go out in February for service rendered in January there will be no RTC charges. The elimination of RTC charges should then be permanent as required by law.

2. **The Companies Have The Burden Of Proof To Show That Any Amendment To The Existing Standard Service Offer Rates To Recover RFP Generation Costs Reflect Only Prudent Costs.**

Section 4928.143(c)(2)(b) requires under the circumstances of this case for the Commission to “*continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or section 4928.142 of the Revised Code, respectively*”. But this section must be read in light of appropriate constitutional provisions. The Companies do not own generation and the generation service to be provided to non-shopping customers must be purchased. The December 31, 2008 RFP to acquire this generation resulted in the “*average winning bid price [that] is consistent with a retail rate of 6.98 cents per kilowatt-hour.*” (January 2, 2009 FirstEnergy Corp. Press Release). Merely keeping the existing standard service offer rates in place without a true-up to actual, prudently incurred generation costs (net of revenues received by the Companies as Load Serving Entities, such as Auction Revenue Rights (ARRs), Marginal Loss component refunds, and FTR credits) could raise constitutional issues. The burden of proof to demonstrate prudence at the PUCO is on the Companies.¹

¹ For example, the RFP bid selection criteria was developed by the Companies and then provided to the RFP Manager the day before bids were due. The bid selection criteria has not been disclosed. It is confidential. If that criteria improperly favored FES or improperly excluded other lower cost supply options then legitimate prudence issues would need to be examined by the PUCO.

3. **The Existing Standard Offer Rates Should Be Amended To Eliminate All Non-Bypassable Charges**

The existing tariffs currently contain non-bypassable charges that are barriers to shopping. These include RTC charges (which must be removed pursuant to RC §4928.141(A) as previously discussed) and Rate Stabilization Charges (RSC). The imposition of RTC and RSC charges on shoppers yields artificially low shopping credits. The shopping credits at the end of 2008 were as follows (values are averaged for the three Companies): Industrial 4.86¢/kWh; Commercial 4.54¢/kWh; Residential 6.74¢/kWh.²

This means that for an industrial customer to economically shop it must get a market price below 4.86¢/kWh, but if it does not shop it may ultimately pay (assuming that the PUCO determines that the RFP was prudent and depending on PUCO resolution of revenue allocation and rate design issues) a generation rate of 6.98¢/kWh. The asymmetry is obvious.

There were four winning bidders in the RFP, including FirstEnergy Solutions. These four bidders accepted the risk of customer shopping when they submitted their bids. This risk was clearly communicated to the bidders.

*“Table 1 shows the nominal MW quantity associated with the energy to be delivered for each tranche based solely on historical data for the maximum hourly energy but is not necessarily indicative of the actual energy quantity to be delivered for each tranche because the amount of actual SSO Load will depend upon many factors, including but not limited to, customer migration to CRES Suppliers and weather conditions. Bidders are responsible for evaluating the uncertainties associated with providing the wholesale energy needed to serve the FirstEnergy Ohio Utilities SSO Load.”*³

² Shopping Credit Information provided on FirstEnergy RFP-Auction website.

³ Ohio RFP Frequently Asked Questions – General GEN017, 26-Dec.-08.

Just as the existing standard service offer rates may need to be amended to reflect the Companies' prudently incurred net generation costs, the rates should be amended to remove all non-bypassable charges since the risk of customer shopping has been assumed by the four winning bidders.

Respectfully submitted,



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I hereby certify that true copy of the foregoing was served by electronic mail (when available) or ordinary mail, unless otherwise noted, this 5th day of January, 2009 the following:

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