

FILE

Ohio Partners for Affordable Energy**FAX**

231 West Lima Street
P.O. Box 1793
Findlay OH 45830-1793
419-425-8860
Fax 419-425-8862
www.ohiopartners.org

Facsimile Cover Sheet**Date:**8 1-5-09**Total Pages:**11**To:**Docketing Division**Fax #**614-466-0313**From:**Dave Rinehart**Re:**Case No. 08-935-EL-SSO**RECEIVED**

JAN 5 2009

DOCKETING DIVISION
Public Utilities Commission of 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 06 2009

**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 OF 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**

**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 OF OHIO PARTNERS FOR AFFORDABLE ENERGY

I. Introduction

Pursuant to the Entry issued on December 26, 2008, Ohio Partners for Affordable Energy ("OPAE"), hereby submits the following comments regarding the tariff filing on December 22, 2008 by The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company (collectively "the Companies" or "FirstEnergy").

II. Extension of Regulatory Transition Charge ("RTC") Tariffs.

OPAE notes its agreement with the position taken by the Ohio Consumer and Environmental Advocates ("OCEA") regarding continuation of the RTC, filed on December 23, 2008.

III. The Companies should file an Energy Efficiency and Demand Response Tariff and immediately convene a Collaborative empowered to hire a third-party administrator to implement programs designed to meet statutory requirements.

OPAE and other parties have repeatedly raised the need to begin immediately to comply with the energy efficiency and demand response requirements of Am. Sub. SB 221 ("SB 221"). The FirstEnergy applications in

both this docket and the companion Market Rate Option ("MRO") docket, Case No. 08-936-EL-SSO, provided no detail on programs designed to achieve statutory mandates. The Commission needs to save the Companies from themselves by ordering the implementation of nominal tariffs that can provide funding for an Energy Efficiency and Demand Response Collaborative ("EEDRC").

Several parties have raised the concept of utilizing an independent third-party administrator, similar to Energy Vermont or the Energy Trust of Oregon, to design and administer the statutorily-mandated program. This is analogous to using an independent third-party to design and oversee the procurement of wholesale power as required for an MRO proposal that complies with SB 221. OPAE recommends that the collaborative be empowered to hire a third-party administrator and oversee the design and implementation of a program designed to achieve the statutory goals. The tariffs should be adjusted as necessary to provide adequate funding.

The Companies should also be ordered to take immediate steps to meet their energy efficiency and demand response requirements. First, existing DSM and low-income efficiency programs should be continued. The existing Community Connections I and II Programs should be continued at an annualized funding level of \$3.5 million provided on a pro-rata basis until programs designed by the third-party administrator are operational. In addition, the Home Performance with Energy Star Program and residential demand response program currently managed by FirstEnergy should be permitted to continue,

again until programs developed by the third-party administrator and approved by the EEDRC and implemented. In the case of both the low-income and high-income programs, funding can be included in the aforementioned rider as contemplated by the Companies in their initial filing.

The Commission should also require the Companies to extend interruptible tariffs per the Companies' filing as necessary to achieve demand reduction targets. FirstEnergy should absorb any delta revenue resulting from continuation of these arrangements to the extent there is any.

IV. The Commission should require the Companies to develop a short-term procurement strategy and commit to conducting an integrated resource plan and implementing a longer term portfolio procurement plan.

Under the provisions of R.C. 4928.143, FirstEnergy's existing tariffs stay in effect per their terms. A utility is permitted to collect fuel costs. Since the Companies do not own generation, a fuel cost rider should be established to collect the cost of prudent wholesale power purchases. These costs should be passed through to customers on a net basis; i.e., to the extent that the customer is paying any generation-related charge, that charge should be deducted from the fuel cost rider. Conceivably, if wholesale prices are less than the generation-related charges, the rider would be negative.¹

OPAE remains skeptical, as are many parties, to the long-term viability of the wholesale market as it currently exists. Trading on the existing exchanges is

¹ FirstEnergy apparently held an auction on December 31, 2008 to procure power to provide SSO service beginning with the January, 2009 billing cycle. Because the auction suffered from the same flaws noted by the Public Utilities Commission of Ohio in its *Opinion and Order in Case No. 08-936-EL-SSO*, the auction was not fair, open, or transparent as required by R.C. 4928.142(A) and (B). OPAE recommends the Commission review the auction outcome in light of the day-ahead and spot market prices currently available through the Midwest Independent System Operator and the appropriateness of the term prior to affirming the results.

thin and it is unclear if the market can provide the products necessary for a distribution utility to develop a prudent and least-cost standard service offer. Nonetheless, because of the current economic downturn, wholesale electricity prices are generally favorable to customers right now. It seems only reasonable that small customers, after bearing significant price increases, reap the benefits of the 'market' during this small window. The recession is likely to proceed for some months, permitting customers some stability while an appropriate portfolio is designed as required by statute.

IV. Conclusion

OPAE looks forward to working with all parties to develop and implement prudent procurement programs for energy efficiency, demand response, and wholesale power purchases. The portfolio of these procurements should meet the state policy of Ohio as established by the General Assembly.

Respectfully submitted,

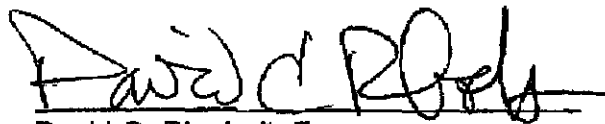


David C. Rinebolt (0073178)
Trial Counsel
Colleen L. Mooney (0015668)
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
Telephone: (419) 425-8860
e-mail: drinebolt@aol.com
cmooney2@columbus.rr.com

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of these *Comments* were served electronically upon the parties of record identified below on this 5th day of January, 2009.



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 St., P. O. Box 1008
Columbus, OH 43216-1008

Attorney for Constellation NewEnergy,
Inc. and Constellation Energy
Commodities Group, Inc., Direct
Energy Services, LLC and Integrals
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@bkilawfirm.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
lmcalister@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
jpmessn@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
Small@occ.state.oh.us