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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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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.)

PUCO
Case No. 08-935-EL-SSO

**INDUSTRIAL ENERGY USERS-OHIO'S APPLICATION FOR REHEARING AND
MEMORANDUM IN REPLY TO FIRSTENERGY'S MOTION FOR STAY**

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January 12, 2009

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INDUSTRIAL ENERGY USERS-OHIO'S APPLICATION FOR REHEARING

Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code, Industrial Energy Users-Ohio ("IEU-Ohio") respectfully submits this Application for Rehearing of the Finding and Order issued by the Public Utilities Commission of Ohio ("Commission") on January 7, 2009. As explained in more detail in the attached Memorandum in Support, the Commission's Finding and Order in this case is unreasonable and unlawful for the following reason:

The Commission's failure to address issues regarding the treatment of interruptible customers, the end date of "reasonable arrangements" and rate schedule eligibility for customers previously subject to a "reasonable arrangement" is unreasonable and unlawful inasmuch as it violates Sections 4928.141 and 4928.143, Revised Code, because customers cannot know what their standard service offer ("SSO") is until these issues are addressed.

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**MEMORANDUM IN SUPPORT AND MEMORANDUM IN REPLY TO
FIRSTENERGY'S MOTION FOR STAY**

I. INTRODUCTION

The Commission's January 7, 2009 Order addressed issues regarding the rates and charges that can be used to bill customers of Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI") and The Toledo Edison Company ("TE"). The January 7, 2009 Order also acknowledged that the comments from certain customer representatives included requests for relief from, among other things, the consequences of actions taken by OE, TE and CEI because such actions significantly altered service quality and the price or cost of such service. Rather than addressing the concerns raised by customers, the January 7, 2009 Order told the customers to, in effect, file complaints if they believed that the letter or spirit of the law was being violated.

Last Friday afternoon, OE, CEI and TE (collectively "Utilities") filed a motion seeking a stay of the effective date of the January 7, 2009 Order issued by the Commission in this proceeding. They also filed an application for rehearing directed at

the same order. Among other things, the Utilities' motion asks that the Commission require parties to file any responsive pleadings by today, January 12, 2009.¹

By this application, the Industrial Energy Users-Ohio (IEU-Ohio) also seeks rehearing of the January 7, 2009 Order because it unreasonably and unlawfully leaves customers to fend for themselves in the face of actions by OE, TE and CEI which the Commission has an affirmative obligation to prevent. Below, IEU-Ohio also responds to the Utilities' motion for a stay.

II. ARGUMENT IN SUPPORT OF IEU-OHIO'S APPLICATION FOR REHEARING

There is an expression that appears to have its roots in Africa or Asia. It goes something like this: When two elephants fight or embrace, the grass suffers just the same. Recent history suggests that the public interest is like the grass in this expression; the public interest seems to suffer whether the utility and the regulator are fighting or embracing.

The Commission and the Utilities are engaged in combat over the meaning of SB 221. In the meantime, the customers that they both are supposed to serve are left to guess about: (1) the prices they will pay for the electricity they are using now; (2) what rate schedule is available to them; (3) when and for how long they will be interrupted; and, among other things, (4) who they can go to for answers to their very practical questions like: "How much should I budget for electricity?". The current fight over which provision of SB 221 applies to set rates until a new SSO is established has become so disconnected from the objectives of financial stability and rate predictability that each successive step taken by the Utilities or the Commission accelerates Ohio's

¹ The Utilities' pleadings indicate in several places that the pleadings were emailed contemporaneously with the filings. However, IEU-Ohio did not receive the pleadings by email or otherwise until 12:20 pm today. IEU-Ohio was able to access the filings through the Commission's Docketing Information System website. Also, on January 9, 2009, Attorney Examiner Pirik relieved the Utilities of their obligation to file compliance tariffs by today, January 12, 2009. Hopefully, the Commission will permit parties more time to submit comments. A January 12, 2009 filing date is too short with or without adequate service.

race to the bottom. These conditions would be unacceptable in the context of a robust economy. Today, they are even more unfit for public consumption.

The comments filed in response to the Commission's December 26, 2008 Entry in this proceeding included reports from customers about problems they are experiencing as a result of actions taken by the Utilities. These reports were submitted to the Commission in the context of questions about the economic relationships that should, as a matter of law, be maintained between the Utilities and their customers until such time that a new SSO is established pursuant to Section 4928.142 or Section 4928.143, Revised Code. In response to the problems identified in these reports, the Commission chose to: (1) narrowly define the scope of the proceeding, (2) use the narrowed scope to put these concerns outside the current scope; and, (3) direct the customers' attention to the opportunity to file a complaint.

The Commission's failure to address the issues raised by customers is unreasonable and unlawful. Customers have as much right to know what their economic relationship with the Utilities is as the Utilities have a right to know which rates and charges they can use to bill customers for the service. IEU-Ohio would also note that numerous complaints dealing with issues regarding the end date of reasonable arrangements have been pending at the Commission for almost one year.²

The Commission's failure to address issues regarding the treatment of interruptible customers, the end date of "reasonable arrangements" (for firm and non-firm service) and rate schedule eligibility for customers previously subject to a "reasonable arrangement" is unreasonable and unlawful. Customers cannot know what their SSO is until these issues are addressed. Accordingly, the Commission should

² See, for example, the complaints filed in Case Nos. 08-67-EL-CSS, 08-145-EL-CSS, 08-146-EL-CSS, 08-254-EL-CSS, 08-255-EL-CSS and 08-893-EL-CSS.

grant rehearing for the purpose of taking up these issues and resolving them. As discussed further below, in the event that the Commission grants the Utilities' request for a stay to preserve the status quo as the status quo is defined by IEU-Ohio, some of these issues may be rendered moot.

III. ARGUMENT IN SUPPORT OF IEU-OHIO'S MEMORANDUM IN REPLY TO UTILITIES' MOTION FOR STAY

The Utilities claim that they are seeking a stay to preserve the status quo. But they narrowly define the status quo so that aspects of the status quo that are useful to customers fall through the cracks. For example, some of the Commission-approved "reasonable arrangements" between the Utilities and customers have terms defined by the length of the regulatory transition charges ("RTC") collection period. While the utilities are seeking a stay to preserve the benefit of continued collection of RTCs, they are putting customers with reasonable arrangements on a forced march to rate schedules which bring dramatically higher electric bills.³ Both during and after the Market Development Period, these "reasonable arrangements" were the SSO for customers served pursuant to such arrangements.⁴

In some cases, the Utilities' administration of the migration from a "reasonable arrangement" to a standard rate schedule has been timed, perhaps coincidentally, so that customers are precluded from accessing a rate schedule that produces a lower total bill.

³ Based on the complaint filed by the Cleveland Board of Education in Case No. 08-1236-EL-CSS, it appears that electric price and rate schedule eligibility problems are not limited to larger manufacturers.

⁴ Section 4928.34 (A)(6), Revised Code, states that the rate cap for the term of the arrangement is the total of all the rates and changes in effect under the arrangement. During the Market Development Period, the unbundled rates subject to the rate cap formed the basis for the SSO. Section 4928.35 (D), Revised Code. In the case of the Utilities, the terms of reasonable arrangements were extended pursuant to and as part of their transition and subsequent rate plans. As of July 31, 2008, the effective date of SB 221 referenced in the definition of "rate plan" in Section 4928.01 (A)(33) and subsequently used in Sections 4928.142 and 4928.143, Revised Code, many reasonable arrangements were in place. Restoring the status quo as of the effective date of SB 221 must also preserve the reasonable arrangements in place on July 31, 2008.

For example, the Utilities are taking the position that CEI's Large Industrial rate schedule is not available to customers that were on reasonable arrangements as of December 31, 2008. Customers that are otherwise eligible for CEI's Large Industrial schedule are given a choice to take service under a commercial schedule that raises their monthly bill by six figures or more.

As the Commission also knows from numerous reports submitted by customers and can easily confirm from the Utilities' form letters and through its own investigation, the Utilities have changed the protocol used previously to trigger interruptions of service to non-firm customers. The change in the Utilities' practice has dramatically increased electric bills. The Utilities' narrowed definition of the status quo is designed to perpetuate the injuries and confusion that has been promoted by Utilities. The Utilities' claim that customers will not be harmed by imposing a stay based on the Utilities' definition of the status quo is false.

In IEU-Ohio's November 21, 2008 post hearing brief, IEU-Ohio urged the Commission to, in effect, preserve the status quo by finding that the record evidence does not allow the Commission to determine if the proposed electric security plan ("ESP") is, in the aggregate, better than the expected results under Section 4928.142, Revised Code. Current circumstances and controlling law require the Commission to preserve the economic and service relationships in place as of July 31, 2008. So, preservation of the status quo is required as a matter of law at this point of this proceeding.

IEU-Ohio believes that preservation of the status quo makes good sense, relatively speaking, but only if the status quo is defined broadly. Indeed, the relative merit of preserving the status quo has grown since briefs were filed in this proceeding

because of the chaos that has been ushered in by actions taken with little or no notice by the Utilities and the Commission.⁵

IEU-Ohio also notes that the introduction of mechanisms to collect the cost of purchased power and fuel can also have very disruptive rate impacts for larger, high load factor, customers to the extent that fuel and purchased power costs are recovered through a volumetric or kWh-based charge. In both its market rate offer and ESP orders, the Commission rejected the Utilities proposed kWh-based rate designs.⁶ Allowing the Utilities to, in effect, establish a “backdoor” kWh-based rate design through the use of a fuel and purchased power adjustment mechanism will, absent great care, drive another nail in Ohio’s effort to revive its economy.

⁵ For whatever it may be worth, it makes absolutely no good sense for the Commission to issue an order and a press release on January 7 announcing significant rate reductions due to the elimination of RTCs while inviting the Utilities to put rates back to their prior level (or higher) by making an adjustment for fuel or purchased power.

⁶ In the December 18, 2008 Finding and Order approving the ESP with modifications, at pages 22-23, the Commission specifically stated:

[T]he Commission finds that FirstEnergy has not demonstrated that the proposed rate design and tariff structure properly allocates the cost of providing generation service to the appropriate customers. Therefore, we decline to implement a new generation rate design and tariff structure at this time. Instead, the Commission finds that FirstEnergy should file new tariffs adjusting its current rate design and tariff structure to implement the new base generation rates approved by the Commission in the ESP. These proposed tariffs should maintain the current rate relationships between customer classes and among the rate schedules within each customer class.

In addition, the Commission agrees that the issues raised by various intervenors regarding the inclusion of demand components in the generation rate design must be addressed. To that end, the Commission finds that FirstEnergy should work with Staff, and other stakeholders, to develop a means of transitioning FirstEnergy’s generation rate schedules to a more appropriate rate structure which takes into consideration of time varying generation costs of serving different customers and classifications of customers with homogenous loads and/or generation cost profiles, considers customer load factor, incorporates seasonal generation cost differentials, and, where adequate metering is available, provides customers with time-differentiated and dynamic pricing options.

See also, In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Market Rate Offer, Case No 08-936-EL-SSO, Opinion and Order at 24 (November 26, 2008) (subject to application for rehearing).

IEU-Ohio supports the Utilities' request for a stay to preserve the status quo but the Utilities must not be allowed to pick and chose which preexisting conditions are maintained under a stay order.

IV. CONCLUSION

For the reasons stated herein, IEU-Ohio respectfully requests that the Commission address the issues raised by IEU-Ohio and other parties pertaining to the treatment of interruptible customers, the end date of "reasonable arrangements" and rate schedule eligibility for customers previously subject to a "reasonable arrangement" to expressly define the SSO rate for customers subject to those provisions. Moreover, IEU-Ohio requests that the Commission grant FirstEnergy's Motion to Stay the Commission's January 7, 2009 Order only to the extent that the status quo as defined by IEU-Ohio herein is preserved.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Application for Rehearing and Memorandum in Reply to FirstEnergy's Motion for Stay* was served upon the following parties of record this 12th day of January 2009, via electronic transmission, hand-delivery or first class mail, postage prepaid.



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