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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) 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.)

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON COMPANY'S
MEMORANDUM CONTRA INDUSTRIAL ENERGY USERS-OHIO
APPLICATION FOR REHEARING**

I. INTRODUCTION

Pursuant to Section 4901-1-35(B) of the Ohio Administrative Code, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, "Companies") submit their Memorandum Contra Industrial Energy Users – Ohio ("IEU") Application for Rehearing of the Commission's January 7, 2009 Finding and Order.

II. ARGUMENT

This case has a lengthy procedural history, the relevant portions of which for purposes of this pleading are as follows:

On July 31, 2008, the Companies filed both an Electric Security Plan and a Market Rate Option, neither of which are yet in effect. Because the Companies' rate plan was designed to expire on December 31, 2008, the Companies, pursuant to

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R.C. 4928.141(A), submitted a compliance tariff filing in which a limited set of tariffs that otherwise would have expired under the terms of the rate plan were extended indefinitely. This compliance filing did not include any rate schedules related to the Companies' interruptible program, industrial customer contracts or rate schedules that appear to be the subject of IEU's application for rehearing.¹

By Entry issued on December 26, 2008, parties were given until January 5, 2009 to comment *on the Companies' tariff filing*. While IEU acknowledged in its January 5, 2009 comments (at page 2) the appropriate scope of the comments, it then ignored the Commission's request and instead raised issues related to: (i) the Companies' portfolio management (IEU Comments, p. 2); (ii) termination of customer special contracts and related rate schedules (*id.* at 3); (iii) disclosure of customer information related to a power procurement process unrelated to this docket (*id.*); and (iv) protocols surrounding the Companies' interruptible program. (*Id.*)

In its January 7, 2009 Finding and Order, the Commission summarily rejected IEU's comments, saying:

As we stated previously, the purpose of our review a[t] this time is to consider the Companies' tariff filing. Therefore, we agree with the Companies that it would not be appropriate to consider the substance of [IEU's] comments within the context of this order. [Jan. 7, 2009 Finding and Order at 12.]

IEU submitted its Application for Rehearing arguing that the Commission's finding was unlawful and unreasonable because "customers [allegedly] cannot know what their standard service offer ("SSO") is until [IEU's issues] are addressed." (IEU AFR.)

¹ As is more fully discussed, *infra*, IEU provides no specifics in support of its pleading, thus making it difficult to respond in any detail to IEU's general, unsubstantiated claims.

As is more fully discussed below, IEU's Application for Rehearing should be denied as improperly raising issues beyond the scope of the Companies' tariff filing and irrelevant to the resolution of the determination of the Companies' SSO.

A. IEU's Application for Rehearing Improperly Raises Issues Beyond the Scope of the Companies' Tariff Filing

The Commission clearly has the authority to determine the scope of proceedings before it and to designate what issues will be considered in any particular proceeding. As stated above, the January 5th comments in this proceeding were limited to the Companies' tariff filing. The request was specific and was not intended to grant parties carte blanche authority to raise *any* issue that they desired. In light of the fact that the Companies' tariff filing that is the subject of the Commission's request for comments did not involve the Companies' rate schedules related to their interruptible program, or the end date of customer contracts or other rates schedules related to such contracts, IEU's issues are beyond the scope of those issues designated by the Commission for comment, and, thus, are not proper for inclusion in IEU's Application for Rehearing. The Commission was correct to conclude that it would be inappropriate to address IEU's comments within the context of its January 7, 2009 Order.

Further, IEU admits in its January 5, 2009 Comments that issues related to portfolio management were already "noted in IEU-Ohio's Post Hearing Brief" and that it "once again urges the Commission to address [this issue.]" (IEU Comments, p. 2.) Likewise, IEU brought the contractual end dates of customer special contracts "to the Commission's attention in the briefing phase of this proceeding." (Id. at 3.) Clearly, with regard to both of these issues, IEU had its opportunity to make its case in its post

hearing brief and it, in fact, took that opportunity. It would be improper for the Commission to allow IEU to raise these same issues for a second time in IEU's January 5th Comments, and a third time herein in its Application for Rehearing. Accordingly, the Commission was correct in refusing to address IEU's comments as part of the Commission's consideration of the Companies' tariff filing.²

And finally, even if the Commission were to have wanted to address IEU's comments, it would have been virtually impossible to do so. IEU fails to provide any specifics, instead making general references to "reasonable arrangements" and "rate schedule eligibility." What rate schedules? Which arrangements? Clearly, before the Commission could address allegations of unreasonableness and unlawfulness, IEU would have to provide *facts* supported by *evidence*. If, indeed, IEU believes that the Companies' actions are illegal, then it should file a complaint case pursuant to R.C. 4905.26, alleging specific facts to which the Companies can respond. To resolve such allegations would require at a minimum, an in depth analysis of *specific* customer contracts, *specific* events leading up to the termination of these contracts, and *specific* tariff provisions related to tariff eligibility and interruptible procedures. A comment process is not the place for such issues to be resolved. Notwithstanding IEU's claims to the contrary, it is not the Commission's "failure to address" IEU's issues that is unreasonable and unlawful. Rather, it is IEU's attempt to raise issues beyond the scope of the Commission's December 26, 2008 Entry that is, especially when such issues are based on unsubstantiated assertions and generalities.

² It appears that IEU has abandoned, at least for purposes of its Application for Rehearing, issues related to the results of the Companies' recent power procurement process and issues related to interruptible protocol are addressed *infra*.

B. The Issues Raised by IEU Are Not Relevant to the Determination of the Companies' SSO.

IEU argues that the Commission's failure to address the treatment of interruptible customers, the end dates to certain customer contracts and eligibility requirements under certain rate schedules is unlawful because customers allegedly will not be able to determine their SSO without the resolution of such issues. (IEU AFR.) IEU's claim is simply wrong. The Companies' tariff filing did not impact the tariff schedules or contracts related to IEU's issues. Therefore, issues surrounding the determination of a SSO are misplaced in an Application for Rehearing related to a Commission order on unrelated schedules.

Further, the Companies' SSO is determined by the terms and conditions set forth in various rate schedules, all of which are available to the customer. For example, the treatment of interruptible customers is governed by specific riders and rate schedules, none of which were altered by the Companies' tariff filing. As more fully discussed in the Companies' January 6, 2009 Reply Comments, the rate schedules related to the Companies' interruptible program did not change. The schedules were the same both before and after December 31, 2008.³ Similarly, the eligibility requirements of any rate schedule are set forth in each such schedule. If customers meet these requirements, they are eligible for the rate schedule; if they do not, then they are not. And finally, the specific end dates for special contracts were determined by the Commission pursuant to its authority set forth in R.C. 4905.31. These end dates have been established and are known to customers, the Companies, and the Commission. After the end date for a

³ Rather than reiterate the Companies' response to this issue herein, the Companies incorporate by reference their reply as set forth on pages 9-15 of their January 6, 2009 Reply Comments. The Companies' administration of the interruptible protocol was also appropriate as explained in detail in the same section of the Companies' Reply Comments, which are incorporated for this purpose as well.

customer's special contract, the customer would take service under the otherwise applicable tariff, or may seek a new special contract under R.C. 4905.31, subject to Commission approval. The standard service offer that continues under R.C. 4928.143(C)(2)(b) if no ESP or MRO is in place is the "*utility's*" most recent SSO, not an individual special contract for a particular customer. Furthermore, while the Companies may not agree with the Commission's logic as set forth in its January 7, 2009 Finding and Order (at pages 8 and 9), Ohio Edison and Toledo Edison contracts terminated on or before December 31, 2009 consistent with the end dates expressly set forth in the RCP Stipulation.⁴

In sum, a customer's determination of its SSO, at least to the extent (if any) affected by the issues raised by IEU, can be determined by the tariff provisions set forth in the rate schedules that are already in existence or by the terms set forth in a prior proceeding.

III. SUMMARY AND CONCLUSION

IEU raises issues well beyond the scope of the Commission's December 26, 2008 Entry. Moreover, the issues raised by IEU are based not on facts, but rather on unsubstantiated claims and generalities. Because of the in depth analysis that would be required to address IEU's issues, an evidentiary hearing would be necessary. Such a proceeding is permitted through R.C. 4905.26. And finally, the issues raised by IEU are irrelevant for purposes of determining the *utility's* SSO, which are governed by rate

⁴ Because IEU fails to specify the contracts that are the subject of its end date argument, the Companies can only assume that CEI contracts are excluded from this argument given that the contracts terminate in 2010 pursuant to the same stipulation.

schedules already in effect. Accordingly, for all of the reasons set forth above, the Companies respectfully ask the Commission to deny IEU's Application for Rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing* was served upon the following parties of record this 22nd day of January, 2009, via electronic transmission or first class mail, postage prepaid.

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