

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Edison Company, The Cleveland Electric	)	Case Nos. 09-1947-EL-POR
Illuminating Company, and The Toledo	)	09-1948-EL-POR
Edison Company For Approval of Their	)	09-1949-EL-POR
Energy Efficiency and Peak Demand	)	
Reduction Program Portfolio Plans for	)	
2010 Through 2012 and Associated Cost	)	
Recovery Mechanisms.	)	

In the Matter of the Application of Ohio	)	Case Nos. 09-1942-EL-EEC
Edison Company, The Cleveland Electric	)	09-1943-EL-EEC
Illuminating Company, and The Toledo	)	09-1944-EL-EEC
Edison Company For Approval of Their	)	
Initial Benchmark Reports.	)	

In the Matter of the Energy Efficiency and	)	
Peak Demand Reduction Program	)	Case Nos. 09-580-EL-EEC
Portfolio of Ohio Edison Company, The	)	09-581-EL-EEC
Cleveland Electric Illuminating Company	)	09-582-EL-EEC
and The Toledo Edison Company.	)	

---

**MOTION FOR WAIVER REGARDING THE TIME TO FILE OBJECTIONS,  
MOTION TO EXTEND THE DEADLINE TO SUBMIT TESTIMONY, AND  
REQUEST FOR EXPEDITED RULING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

Pursuant to Ohio Adm. Code 4901-1-12 and 4901-1-13(A), the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively "FirstEnergy" or "Companies"), moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") for waiver of the deadline for submitting objections and moves for an extension of time for the filing of intervenor

testimony. The extensions sought for both deadlines is one day, which would apply to all intervenors and would not otherwise disturb the procedural schedule in these cases. Specifically, the due date for intervenor objections and testimony would be extended from February 16, 2010 to February 17, 2010.

The OCC seeks an expedited ruling under the special provision in Ohio Adm. Code 4901-1-12(C) for extension requests of five days or less. While not required to contact all parties under the applicable provision of Ohio Adm. Code 4901-1-12(C) for extension up to five days, the OCC contacted all the parties to these cases and determined that the OCC's motions ("Motions") are unopposed.

The reasons supporting these requests, along with an explanation of the need to determine the filing date on an expedited basis, are set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

/s/ Jeffrey L. Small  
Jeffrey L. Small, Counsel of Record  
Gregory J. Poulos  
Christopher J. Allwein  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Telephone: (614) 466-8574  
[small@occ.state.oh.us](mailto:small@occ.state.oh.us)  
[poulos@occ.state.oh.us](mailto:poulos@occ.state.oh.us)  
[allwein@occ.state.oh.us](mailto:allwein@occ.state.oh.us)

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Edison Company, The Cleveland Electric	)	Case Nos. 09-1947-EL-POR
Illuminating Company, and The Toledo	)	09-1948-EL-POR
Edison Company For Approval of Their	)	09-1949-EL-POR
Energy Efficiency and Peak Demand	)	
Reduction Program Portfolio Plans for	)	
2010 Through 2012 and Associated Cost	)	
Recovery Mechanisms.	)	

In the Matter of the Application of Ohio	)	Case Nos. 09-1942-EL-EEC
Edison Company, The Cleveland Electric	)	09-1943-EL-EEC
Illuminating Company, and The Toledo	)	09-1944-EL-EEC
Edison Company For Approval of Their	)	
Initial Benchmark Reports.	)	

In the Matter of the Energy Efficiency and	)	
Peak Demand Reduction Program	)	Case Nos. 09-580-EL-EEC
Portfolio of Ohio Edison Company, The	)	09-581-EL-EEC
Cleveland Electric Illuminating Company	)	09-582-EL-EEC
and The Toledo Edison Company.	)	

---

**MEMORANDUM IN SUPPORT OF MOTION FOR WAIVER REGARDING THE  
TIME TO FILE OBJECTIONS AND MOTION TO EXTEND THE DEADLINE TO  
FILE TESTIMONY  
AND REQUEST FOR EXPEDITED RULING**

---

**I. INTRODUCTION**

The extensive history of these cases is described in an Entry in these dockets dated January 14, 2010. That Entry set February 16, 2010 as the deadline for the submission of objections to the Companies' proposed energy efficiency programs and testimony by intervening parties. The date for the evidentiary hearing was also set for March 2, 2010.

This pleading follows up on communications between most of the parties in which it was agreed that a one-day extension to the February 16, 2010 deadlines was desirable. While not required to contact all parties under the applicable provision of Ohio Adm. Code 4901-1-12(C) for extension up to five days, the OCC contacted the remaining parties to determine if any party objects to the request for an expedited ruling. There are no objections to the expedited treatment of the instant Motions, and no objections to the extensions themselves.

## **II. APPLICABLE PROCEDURAL RULES**

The date for the filing of objections was set according to Ohio Adm. Code 4901:1-39-04(D).<sup>1</sup> The Commission's rule provides for "objections within sixty-days after the filing," but also sets this deadline "[u]nless otherwise ordered."

Ohio Adm. Code 4901-1-13(A) specifically permits parties to move for extensions of time to file testimony. In addition, that rule provides for the granting of such motions for "good cause shown."

Ohio Adm. Code 4901-1-12(C) allows parties to request an expedited ruling on their motions. That rule provides that "[i]f the motion requests an extension of time to file to file pleadings or other papers of five days or less, an immediate ruling may be issued without the filing of memoranda."

## **III. ARGUMENT**

Pursuant to Ohio Adm. Code 4901-1-13(A) and 4901-1-12(C), the OCC seeks an extension of the deadline to file objections and to file its testimony one day later than currently scheduled. This extension of time would change the due date for written

---

<sup>1</sup> Entry at 2, ¶(4)(c).

objections and pre-filed testimony from February 16, 2010 to February 17, 2010. The OCC proposes that the *extension apply to all intervenors*.

The current procedural schedule, which provides for the filing of protests and testimony the day after a holiday, adds an additional burden to the discussion and review process in which all the parties are presently engaged. The extension sought by the OCC would apply to all parties subject to the deadlines on February 16, 2010, and is unopposed by any party to these cases. Hopefully the discussion and review process currently in progress will assist in reducing the matters in dispute between the parties.

The extension sought in the OCC's Motions will not delay in the remainder of the procedural schedule. Therefore, the extension should not work to prejudice any party. For these reasons, the Commission should grant OCC's Motions.

The OCC requests a ruling on its Motions in the shortest period of time possible for the purposes of permitting all parties to plan their schedules.

#### **IV. CONCLUSION**

For the reasons stated above, the Commission should grant OCC's Motions based upon the OCC's showing of good cause. The Commission should grant these Motions in the shortest period of time possible, without waiting for the filing of responsive memoranda as permitted by Ohio Adm. Code 4901-1-12(C).

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

/s/ Jeffrey L. Small

Jeffrey L. Small, Counsel of Record

Gregory J. Poulos

Christopher J. Allwein

Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-8574

[small@occ.state.oh.us](mailto:small@occ.state.oh.us)

[poulos@occ.state.oh.us](mailto:poulos@occ.state.oh.us)

[allwein@occ.state.oh.us](mailto:allwein@occ.state.oh.us)

## **CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing *Motions by the Office of the Ohio Consumers' Counsel* was served electronically (hard copy available upon request) to the below-listed Service List this 12<sup>th</sup> day of February, 2010.

/s/ Jeffrey L. Small

Jeffrey L. Small

Assistant Consumers' Counsel

## **SERVICE LIST**

Kathy J. Kolich  
Arthur E. Korkosz  
Ebony L. Miller  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308

James F. Lang  
Laura C. McBride  
N. Tervor Alexander  
Kevin P. Shannon  
Calfee, Halter & Griswold LLP  
1400 KeyBank Center  
800 Superior Ave.  
Cleveland, OH 44114

Will Reisinger  
Trent Dougherty  
Nolan Moser  
1207 Grandview Avenue, Ste. 201  
Columbus, OH 43212-3449

Attorneys for Staff the Ohio Environmental  
Council

Duane Luckey  
Attorney General's Office  
Public Utilities Commission of Ohio  
180 E. Broad St., 6<sup>th</sup> Fl.  
Columbus, OH 43216

Thomas Lindgren  
Attorney General's Office  
Public Utilities Section  
180 East Broad Street 6<sup>th</sup> Floor  
Columbus, OH 43215

Todd Jones  
Christopher Miller  
Andre Porter  
Gregory Dunn  
Schottenstein Zox & Dunn Co., LPA  
250 West Street  
Columbus, OH 43215

Attorneys for the AICUO

David C. Rinebolt  
Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Findlay, OH 45839-1793

Samuel C. Randazzo  
Lisa G. McAlister  
Joseph M. Clark  
McNees Wallace & Nurick LLC  
21 East State Street, 17th Floor  
Columbus, OH 43215

Attorneys for Industrial Users Energy-Ohio

Joseph P. Meissner  
The Legal Aid Society of Cleveland  
1223 West 6<sup>th</sup> St.  
Cleveland, OH 44113

Attorney for: Neighborhood  
Environmental Coalition, Consumers for  
Fair Utility Rates, The Empowerment  
Center of Greater Cleveland and Cleveland  
Housing Network

Henry W. Eckhart  
50 West Broad Street, #2117  
Columbus, OH 43215

Attorney for the Natural Resources  
Defense Council

Richard L. Sites  
General Counsel & Senior Director of  
Health Policy  
155 East Broad St., 15<sup>th</sup> Fl.  
Columbus, OH 43215-3620

Attorney for the Ohio Hospital Association

Michael E. Heintz  
1207 Grandview Ave., Ste. 201  
Columbus, OH 43204

Attorney for Environmental Law and  
Policy Center

David F. Boehm  
Michael L. Kurtz  
Boehm, Kurtz & Lowry  
36 East Seventh St., Ste. 1510  
Cincinnati, OH 45202

Attorneys for the Ohio Energy Group

Theodore Robinson  
Staff Attorney and Counsel  
Citizen Power  
2121 Murray Ave.  
Pittsburgh, PA 15217

Thomas J. O'Brien  
Bricker & Eckler LLP  
100 South Third Street

Attorney for the Ohio Manufacturers'  
Association and the Ohio Hospital  
Association

Glenn S. Krassen  
Bricker & Eckler LLP  
1375 East Ninth St., Ste. 1500  
Cleveland, OH 44114

Attorney for Ohio Schools Council



Matthew W. Warnock  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215

Attorney for Ohio Schools Council

Jacqueline Lake Roberts  
101 Federal Street, Suite 1100  
Boston, MA 02110

Attorney for EnerNOC, Inc.

[mkl@bbrslaw.com](mailto:mkl@bbrslaw.com)  
[gas@bbrslaw.com](mailto:gas@bbrslaw.com)  
[mwarnock@bricker.com](mailto:mwarnock@bricker.com)  
[gkrassen@bricker.com](mailto:gkrassen@bricker.com)  
[will@theOEC.org](mailto:will@theOEC.org)  
[nolan@theOEC.org](mailto:nolan@theOEC.org)  
[jroberts@enernoc.com](mailto:jroberts@enernoc.com)  
[mheintz@elpc.org](mailto:mheintz@elpc.org)  
[tobrien@bricker.com](mailto:tobrien@bricker.com)  
[ricks@ohanet.org](mailto:ricks@ohanet.org)  
[kjkolich@firstenergycorp.com](mailto:kjkolich@firstenergycorp.com)  
[korkosza@firstenergycorp.com](mailto:korkosza@firstenergycorp.com)  
[elmiller@firstenergycorp.com](mailto:elmiller@firstenergycorp.com)  
[jlang@calfee.com](mailto:jlang@calfee.com)  
[lmcbride@calfee.com](mailto:lmcbride@calfee.com)

Michael K. Lavanga  
Garrett A. Stone  
Brickfield, Burchette, Ritts & Stone, P.C.  
1025 Thomas Jefferson Street, N.W.  
8th Floor, West Tower  
Washington, D.C. 20007

Attorneys for Nucor Steel Marion, Inc.

[talexander@calfee.com](mailto:talexander@calfee.com)  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[lmcalister@mwncmh.com](mailto:lmcalister@mwncmh.com)  
[jclark@mwncmh.com](mailto:jclark@mwncmh.com)  
[cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)  
[drinebolt@ohiopartners.org](mailto:drinebolt@ohiopartners.org)  
[jpmeissn@laslev.org](mailto:jpmeissn@laslev.org)  
[mvincel@laslev.org](mailto:mvincel@laslev.org)  
[cmiller@szd.com](mailto:cmiller@szd.com)  
[aporter@szd.com](mailto:aporter@szd.com)  
[gdunn@szd.com](mailto:gdunn@szd.com)  
[henryeckhart@aol.com](mailto:henryeckhart@aol.com)  
[dboehm@BKLlawfirm.com](mailto:dboehm@BKLlawfirm.com)  
[mkurtz@BKLlawfirm.com](mailto:mkurtz@BKLlawfirm.com)  
[robinson@citizenpower.com](mailto:robinson@citizenpower.com)  
[duane.lucky@puc.state.oh.us](mailto:duane.lucky@puc.state.oh.us)  
[Thomas.lindgren@puc.state.oh.us](mailto:Thomas.lindgren@puc.state.oh.us)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**2/12/2010 2:28:44 PM**

**in**

**Case No(s). 09-0580-EL-EEC, 09-0581-EL-EEC, 09-0582-EL-EEC, 09-1942-EL-EEC, 09-1943-EL-EEC,**

Summary: Motion Motion for Waiver Regarding the Time to File Objections, Motion to Extend the Deadline to Submit Testimony and Request for Expedited Ruling by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Mr. Jeffrey L. Small