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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) Case No. 10-176-EL-ATA
Edison Company for Approval of a)
New Rider and Revision of an Existing)
Rider)

**Ohio Edison Company, The Cleveland Electric Illuminating Company,
and The Toledo Edison Company Memo Contra the
Office of Consumers' Counsel Application for Rehearing**

Comes now Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company ("Companies"), by counsel, and respectfully submits its Memorandum Contra the Office of Consumers' Counsel ("OCC") Application for Rehearing filed in this matter on March 8, 2010.

I. Introduction

This proceeding was instituted to address concerns raised by and to assist customers who experienced larger than expected increases in their price for electricity during the coldest winter months in 2009-2010. The rates charged at that time were approved by the Public Utilities Commission of Ohio ("Commission") in March 2009 in Case No. 08-935-EL-SSO by adoption of a Stipulation and Recommendation and Supplemental Stipulation ("Stipulation"), which was signed by nearly all of the parties to the proceeding including the OCC, who agreed "not to oppose the Stipulated ESP as modified by this Supplemental Stipulation in any forum" and that the "signing this Supplemental Stipulation binds them to the Stipulation (filed in [Case No. 08-935-EL-

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SSO] on February 19, 2009) as modified by this Supplemental Stipulation.”
Supplemental Stipulation, Case No. 08-935-EL-SSO, p. 10, filed February 26, 2009.

The rates that were charged to all-electric customers during the winter months of 2009-2010 were the result of that Stipulation and were the only rates the Companies were authorized to charge.

On March 3, 2010, the Commission issued a Finding and Order in this proceeding directing that rate relief should be provided for all-electric customers that will provide bill impacts commensurate with charges in place in December 2008. The Companies made tariff filings pursuant to this Order on March 17, 2010, so OCC’s request for rehearing is moot in this regard, as the credit resulting from the Commission’s Order provides a greater discount than that requested by OCC.

II. The Commission’s Order did not Change the Grandfathering Provision

OCC also raises in its Application for Rehearing that the grandfathering date for the all-electric rates, January 1, 2007, should be disregarded. *OCC Application for Rehearing*, pp. 3-4. This grandfathering date was established by Commission Order in early 2006 in the Companies’ Rate Certainty Plan proceeding (“RCP”), Case No. 05-1125-EL-ATA et seq. Grandfathering of rates is a long standing regulatory practice used to phase-out rates for any number of reasons. Customers who bought all-electric homes after January 1, 2007 knew that the all-electric discounts no longer applied to those residences and presumably the home sale transactions reflected that fact. OCC’s position now that upholding the grandfathering of those rates is unjustly discriminatory is contradictory to the prior Commission Order. OCC has provided no legal basis to support its claim that the Commission’s RCP order adopting the RCP Stipulation should

be changed some four years after it was rendered. To do so would be an unlawful collateral and untimely attack on the Commission's Order and should be denied.

III. The Commission's Focus at this Time Should Be Forward Looking

In its March 3, 2010 Order, the Commission ordered its Staff to prepare and file a report within ninety (90) days of the Order with recommendations for a long-term solution to the historic deeply discounted rates received by all-electric customers. OCC now suggests that instead of looking for solutions to address this situation, the Commission should look back to determine if the Companies ever intimated that the deeply discounted all-electric rates would last forever even if the Commission removed the rates from the Companies' tariff books. While the Commission has jurisdiction to review and request modification of promotional materials and advertisements, and to take action to prohibit "unfair and deceptive acts or practices" with respect to such material, to exercise that jurisdiction at this juncture would only serve to overly tax its already stretched resources and divert the effort away from implementing a long-term solution. *See* Rule 4901:1-10-24(C), (D). More specifically, OCC's suggestion at page 7 that the Staff prepare a report that "considers assignment of financial responsibility" to the Companies is inappropriate. If this reference is meant to suggest that the Companies should not be permitted to recover their reasonably incurred costs of serving customers at rates that were derived from a Commission-approved Stipulation, then this suggestion should be rejected. It cannot be disputed that the Companies charged the only rates they were lawfully permitted to charge, and they should not now be penalized for doing so.

OCC is improperly attempting to expand the scope of this proceeding. The threshold issue presented in this Application is how best to deal with the impacts caused

by the rate adjustments approved by the Commission. There is nothing in the Application in this case, or the Commission's Order, that even remotely deals with OE's or CEI's alleged conduct over thirty years ago.

The plan and process laid out in the Commission's Order will allow the top priority of addressing the long-term solution to remain the focus of the Commission's and interested stakeholders' efforts, to the benefit of customers.

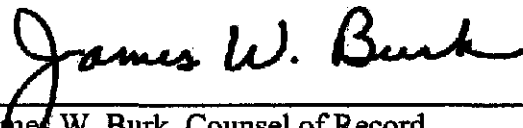
IV. Expedited Discovery is Unnecessary

OCC requests that the Commission order expedited discovery in this proceeding because the Staff report is due in ninety (90) days from the date of the Order. Such extraordinary relief is not justified in this proceeding. While the Commission has directed Staff to prepare and file a report, it also set up a process for interested parties to file comments after the Staff report is filed. Further, the Commission set no specific time limit on how long the comment and reply comment period may be. There is no reasonable basis to burden the Companies with expedited discovery requirements literally months before the Staff report is even due to be filed.

V. Conclusion

As a result of the Commission's March 3rd Order, much of what the OCC seeks has in effect been granted. The remainder of its arguments should be rejected for the reasons set forth above and its Application for Rehearing denied.

Respectfully submitted,

A handwritten signature in black ink that reads "James W. Burk". The signature is written in a cursive style with a large, stylized "J" and "B".

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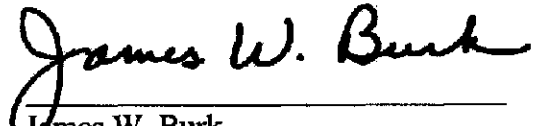
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On behalf of Ohio Edison Company,
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and The Toledo Edison Company

Certificate of Service

It is hereby certify that a copy of the foregoing Memo Contra Office of Consumers' Counsel Application for Rehearing has been served on all parties of record by U.S. Mail, postage prepaid, this 18th day of March, 2010.


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