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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 ) Case No. 10-388-EL-SSO  
Establish a Standard Service Offer )  
Pursuant to R.C. § 4928.143 in the Form )  
of an Electric Security Plan. )

**PUCO**

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**APPLICATION FOR REHEARING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,  
CITIZEN POWER,  
CITIZENS COALITION,  
ENVIRONMENTAL LAW & POLICY CENTER,  
NATURAL RESOURCES DEFENSE COUNCIL,  
NORTHEAST OHIO PUBLIC ENERGY COUNCIL,  
NORTHWEST OHIO AGGREGATION COALITION,  
AND  
THE OHIO ENVIRONMENTAL COUNCIL**

---

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

Jeffrey L. Small, Counsel of Record  
Gregory J. Poulos  
Ann M. Hotz  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
614-466-8574 (Telephone)  
614-466-9475 (Facsimile)  
[small@occ.state.oh.us](mailto:small@occ.state.oh.us)  
[poulos@occ.state.oh.us](mailto:poulos@occ.state.oh.us)  
[hotz@occ.state.oh.us](mailto:hotz@occ.state.oh.us)

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Theodore Robinson  
Staff Attorney and Counsel  
**Citizen Power**  
2121 Murray Avenue  
Pittsburgh, PA 15217  
(412) 421-7029 (Telephone)  
[robinson@citizenpower.com](mailto:robinson@citizenpower.com)

Joseph P. Meissner, Counsel of Record  
Matthew D. Vincel  
The Legal Aid Society of Cleveland  
1223 West 6th Street  
Cleveland, OH 44113  
(216) 216-687-1900 (Telephone)  
[jpmeyssn@lasclev.org](mailto:jpmeyssn@lasclev.org)  
[mvincel@lasclev.org](mailto:mvincel@lasclev.org)  
**Citizens Coalition**

Henry Eckhart  
50 West Broad Street, #2117  
Columbus, OH 43215  
(614) 461-0984 (Telephone)  
(614) 221-7401 (Facsimile)  
[henryeckhart@aol.com](mailto:henryeckhart@aol.com)  
**Natural Resources Defense Council**

Nolan Moser  
1207 Grandview Ave., Ste. 201  
Columbus, OH 43212-3449  
(614) 487-7506 (Telephone)  
(614) 487-7510 (Facsimile)  
[nmoser@theOEC.org](mailto:nmoser@theOEC.org)  
**Ohio Environmental Council**

Lance M. Keiffer  
Assistant Prosecuting Attorney  
Lucas County Courthouse  
700 Adams Street, Suite 250  
Toledo, OH 43604  
(419) 213-2001 (Telephone)  
(419) 213-2011 (Facsimile)  
[lkeiffer@co.lucas.oh.us](mailto:lkeiffer@co.lucas.oh.us)  
**NOAC**

Glenn Krassen  
Bricker & Eckler LLP  
1375 East Ninth St., Ste. 1500  
Cleveland, OH 44114  
(216) 523-5405 (Telephone)  
(216) 523-7071 (Facsimile)  
[gkrassen@bricker.com](mailto:gkrassen@bricker.com)  
**NOPEC**

Matthew Warnock  
Bricker & Eckler LLP  
100 S. Third Street  
Columbus, OH 43215  
(614) 227-2388 (Telephone)  
(614) 227-2390 (Facsimile)  
**NOPEC**

Michael E. Heintz  
Staff Attorney  
Environmental Law & Policy Center  
1207 Grandview Ave.  
Suite 201  
Columbus, Ohio 43212  
614-488-3301 (Telephone)  
614-487-7510 (Facsimile)  
[mheintz@elpc.org](mailto:mheintz@elpc.org)  
**ELPC**

April 19, 2010

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The undersigned parties herein apply for rehearing of the Entry issued by the Public Utilities Commission of Ohio ("PUCO" or "Commission") on April 6, 2010 ("PUCO's Entry").<sup>1</sup> The PUCO provided that it would take administrative notice of the record in FirstEnergy's pending market rate offer ("MRO"), Case No. 09-906-EL-SSO, as an important part of the proceeding in this electric security plan ("ESP") case. The PUCO's Entry also granted the Motion for Waivers filed by the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy" or the "Companies"). The undersigned parties submit that the PUCO's Entry in the above-captioned case is unreasonable and unlawful in the

following particulars:

- A. The PUCO's Entry Is Unreasonable And Unlawful Because The PUCO Is Not Permitted To Take Administrative Notice Of The Record In The Pending MRO Case.
  - 1. The PUCO's Entry took administrative notice of the record in the pending MRO case without any basis in law.
  - 2. The PUCO's Entry took administrative notice of the record in the pending MRO case and thereby unlawfully eliminated a portion of FirstEnergy's burden of proof.
- B. The PUCO's Entry Is Unreasonable And Unlawful Because the PUCO Partly Granted FirstEnergy's Motion for Waivers After Concluding that the Application Was the "[C]ulmination of a [L]engthy [P]rocess" Involving Other Cases.
- C. The PUCO's Entry Is Unreasonable And Unlawful Because the PUCO Failed to Require a Showing of Good Cause For The Waivers Granted.
  - 1. The PUCO's Entry did not properly recognize the standard of review regarding waiver requests.
  - 2. The PUCO Entry failed to require FirstEnergy to file a description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code.
  - 3. The PUCO Entry incorrectly waived FirstEnergy's obligation to file a description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed to be established in the ESP.
  - 4. The PUCO erred by waiving the requirement for the Companies to file a detailed account of how the ESP is consistent with and advances the policy of this State.
  - 5. The PUCO should not have waived the requirement to file work papers under Ohio Adm. Code 4901:1-35-03(G) because FirstEnergy did not state good cause for its request.

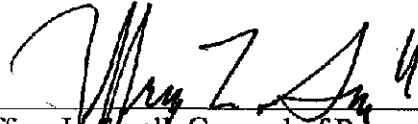
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<sup>1</sup> This pleading is submitted by each undersigned party separately, as well in support of the positions taken by the other undersigned parties.

The reasons for granting this Application for Rehearing are set forth in the attached  
Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



Jeffrey L. Small, Counsel of Record  
Gregory J. Poulos  
Ann M. Hotz  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
614-466-8574 (Telephone)  
614-466-9475 (Facsimile)  
[small@occ.state.oh.us](mailto:small@occ.state.oh.us)  
[poulos@occ.state.oh.us](mailto:poulos@occ.state.oh.us)  
[hotz@occ.state.oh.us](mailto:hotz@occ.state.oh.us)



Theodore Robinson  
Staff Attorney and Counsel  
**Citizen Power**  
2121 Murray Avenue  
Pittsburgh, PA 15217  
(412) 421-7029 (Telephone)  
[robinson@citizenpower.com](mailto:robinson@citizenpower.com)



Joseph P. Meissner, Counsel of Record  
Matthew D. Vincel  
The Legal Aid Society of Cleveland  
1223 West 6th Street  
Cleveland, OH 44113  
(216) 687-1900 (Telephone)  
[jpmessn@lasclev.org](mailto:jpmessn@lasclev.org)  
[mvincel@lasclev.org](mailto:mvincel@lasclev.org)  
**Citizens Coalition**

*H. Eckhart*

Henry Eckhart

50 West Broad Street, #2117 *by JLS*

Columbus, OH 43215

(614) 461-0984 (Telephone)

(614) 221-7401 (Facsimile)

henryeckhart@aol.com

**Natural Resources Defense Council**

*N. Moser*

Nolan Moser

1207 Grandview Ave., Ste. 201 *by JLS*

Columbus, OH 43212-3449

(614) 487-7506 (Telephone)

(614) 487-7510 (Facsimile)

nmoser@theOEC.org

**Ohio Environmental Council**

*L. Keiffer*

Lance M. Keiffer

Assistant Prosecuting Attorney *by JLS*

Lucas County Courthouse

700 Adams Street, Suite 250

Toledo, OH 43604

(419) 213-2001 (Telephone)

(419) 213-2011 (Facsimile)

lkeiffer@co.lucas.oh.us

**NOAC**

*G. Krassen*

Glenn Krassen

Bricker & Eckler LLP *by JLS*

1375 East Ninth St., Ste. 1500

Cleveland, OH 44114


(216) 523-5405 (Telephone)


(216) 523-7071 (Facsimile)

gkrassen@bricker.com

**NOPEC**

Matthew Warnock  
Bricker & Eckler LLP  
100 S. Third Street  
Columbus, OH 43215  
(614) 227-2388 (Telephone)  
(614) 227-2390 (Facsimile)  
**NOPEC**

  
\_\_\_\_\_  
Michael E. Heintz  
Staff Attorney  
Environmental Law & Policy Center  
1207 Grandview Ave.  
Suite 201  
Columbus, Ohio 43212  
614-488-3301 (Telephone)  
614-487-7510 (Facsimile)  
[mheintz@elpc.org](mailto:mheintz@elpc.org)  
**ELPC**





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---

**I. HISTORY OF THE CASE**

On March 23, 2010, the Ohio Edison Company, the Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively "FirstEnergy" or "Companies") filed an Application for approval of an ESP. FirstEnergy attached to its Application a Stipulation and Recommendation ("Stipulation") that was executed by the Companies, the PUCO Staff, and other parties.

FirstEnergy's Application contained a request that the Commission make use of the record in FirstEnergy's pending MRO Application in Case No. 09-906-EL-SSO. FirstEnergy's Application states that the Companies "request that the Commission take administrative notice of the evidentiary record established in the MRO filed by the

Companies, Case No. 09-906-EL-SSO, and thereby incorporate by reference that record for the proposes of and use in this proceeding.”<sup>2</sup>

On March 23, 2010, FirstEnergy also filed a Motion for Waivers of PUCO rules that require applicants such as the Companies to submit certain information for the consideration of electric security plans. Members of the Ohio Consumer and Environmental Advocates (“OCEA”) filed a Memorandum Contra Motion for Waivers on March 26, 2010.<sup>3</sup> The Memorandum Contra Motion for Waivers argued, among other matters, that FirstEnergy’s Motion for Waivers failed to state “good cause” (in some instances, any cause for the requested waivers and sought general waivers that the Commission has previously stated should not be granted.

Although the ESP would provide for generation service beginning on June 1, 2011, the Application demands “an order approving the Stipulation and ESP, by May 5, 2010.”<sup>4</sup> The Stipulation provides that failure to approve the ESP by that date, unaltered, will result in FirstEnergy considering the Stipulation “null and void.”<sup>5</sup> FirstEnergy, the PUCO Staff, and other stipulators insisted that the Commission cut the statutory review opportunity for this electric security plan – 275 days according to R.C. 4928.143(C)(1) -- to just a mere 43 days.<sup>6</sup>

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<sup>2</sup> Application at 3.

<sup>3</sup> The OCEA filers of the Memorandum Contra Motion for Waivers are joined by the Environmental Law & Policy Center in this pleading.

<sup>4</sup> Id.

<sup>5</sup> Stipulation at 33 (“Procedural Aspects”).

<sup>6</sup> An aggressive procedural schedule, which provided that the hearing would begin on April 20, 2010, was issued less than twenty-four hours after the Application was filed. Entry (March 24, 2010). On March 29, 2009, the Office of the Ohio Consumers’ Counsel, Citizens Power, Citizens Coalition, Natural Resources Defense Council, and the Ohio Environmental Council filed a Joint Interlocutory Appeal. No action has been taken on the Joint Interlocutory Appeal.

On April 6, 2010, the Commission issued an entry (i.e. the PUCO's Entry) that granted FirstEnergy's waiver requests stated in Ohio Adm. Code Section 4901:1-35-03, paragraphs (C)(4), (C)(5), (C)(6), (C)(7), (C)(8),(F), and parts of (G). Additionally, the Commission granted FirstEnergy's requested waivers regarding many of the filing requirements under Ohio Adm. Code Section 4901:1-35-04. In granting the waivers, the PUCO rejected concerns about the time line of the case being rushed and the inadequate opportunity for review, stating that the Application and its Stipulation appear to be the "culmination of a lengthy process" involving other cases, and that the PUCO was acting, in part, "in light of the process and information provided in other proceedings . . . ." <sup>7</sup> The PUCO's Entry granted FirstEnergy's "request[ ] that the Commission take administrative notice of the record in Case No. 09-906-EL-SSO for purposes of this proceeding." <sup>8</sup>

The undersigned parties file this Application for Rehearing in response to the Commission's April 6, 2010 Entry.

## **II. OHIO LAW REGARDING ELECTRIC SECURITY PLAN APPLICATIONS**

FirstEnergy proposes an ESP, which is partly governed by the requirements of R.C. Chapter 4928 and, more particularly, R.C. 4928.143. R.C. 4928.143(C)(1) provides that the "commission shall issue an order . . . for an initial application under this section not later than one hundred fifty days after the application's filing date and, for any subsequent application by the utility . . . , not later than two hundred seventy-five days after the application's filing date." FirstEnergy filed its first ESP application on July 31,

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<sup>7</sup> PUCO's Entry at 4, ¶(10) (April 6, 2010).

<sup>8</sup> Id. at 2, ¶(6) (April 6, 2010).

2008, soon after enactment of S.B. 221.<sup>9</sup> The new Application contains a “subsequent” FirstEnergy ESP that, as established under Ohio law, can be reviewed for 275 days before a decision.

The Commission’s rules amplify the contents of R.C. Chapter 4928 regarding involving interested persons in an ESP proceeding. Ohio Adm. Code 4901:1-35-06 provides “[i]nterested persons wishing to participate in the hearing . . . *forty-five days* [to intervene] after the issuance of the entry scheduling the hearing.”<sup>10</sup> The Attorney Examiner reduced this period to *twelve days*.<sup>11</sup>

The PUCO need not act on an ESP application as soon as it would for a MRO application under R.C. 4928.142 -- where a ninety-day period applies for a decision on a MRO<sup>12</sup> -- but an ESP and a MRO application share procedural requirements.<sup>13</sup>

The commission shall set the time for hearing of a filing under section 4928.142 [i.e. a MRO filing] or 4928.143 [i.e. an ESP filing] of the Revised Code, send written notice of the hearing to the electric distribution utility, and *publish notice in a newspaper of general circulation in each county in the utility’s certified territory*.

The additional time provided for an ESP corresponds to its potential added complexity, a situation that is presented in FirstEnergy’s Application. Approval of an ESP requires the additional determination by the PUCO that the ESP “is more favorable

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<sup>9</sup> The hearing in the 2008 ESP case was scheduled sixty-seven days after FirstEnergy filed its application. *In re FirstEnergy’s 2008 ESP Proposal*, Entry at 1 (September 20, 2008). Despite having an additional one hundred twenty-five days to decide this subsequent ESP case, the hearing date stated in the Entry dated March 24, 2010 is only twenty-eight days after FirstEnergy’s application.

<sup>10</sup> Emphasis added.

<sup>11</sup> Entry at 3 (March 24, 2010).

<sup>12</sup> R.C. 4928.142(B).

<sup>13</sup> R.C. 4928.141(B) (emphasis added).

in the aggregate as compared to the expected results [under a MRO].”<sup>14</sup> “The burden of proof in the proceeding shall be on the electric distribution utility.”<sup>15</sup>

R.C. 4903.082 requires “ample rights of discovery” in proceedings before the Commission. More specifically to the circumstances of SSO cases, R.C. 4928.145 provides for discovery of certain matters from applicant utilities.

[U]pon submission of an appropriate discovery request, an electric distribution utility shall make available to the requesting party every contract or arrangement that is between the utility and any of its affiliates and a party to the proceeding, consumer, electric services company, or political subdivision . . . .

The Supreme Court of Ohio’s reversal of an attorney examiner’s denial of the OCC’s right to discovery regarding a stipulation in a rate stabilization plan case is precedent for the appropriateness of inquiries into the circumstances surrounding the execution of the Stipulation.<sup>16</sup>

### III. ARGUMENT

#### A. **The PUCO’s Entry Is Unreasonable And Unlawful Because The PUCO Is Not Permitted To Take Administrative Notice Of The Record In The Pending MRO Case.**

##### 1. **The PUCO’s Entry took administrative notice of the record in the pending MRO case without any basis in law.**

The PUCO’s Entry approved the procedure proposed by FirstEnergy to expedite

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<sup>14</sup> R.C. 4928.143(C)(1).

<sup>15</sup> *Id.*

<sup>16</sup> *Ohio Consumers’ Counsel v. Public Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789 (“*Consumers’ Counsel 2006*”). The decision in *Consumers’ Counsel 2006* was partly codified in R.C. 4928.145, both of which provide for additional transparency in the Commission’s proceedings.

consideration of the ESP Application without examination of the applicable law.<sup>17</sup> The finding regarding administrative notice seems to have been entirely guided by a desire for rapid approval of the Application. The matters that are proper subjects of administrative notice by the PUCO were examined by the Supreme Court of Ohio in *Canton Storage & Transfer Co. v. Public Util. Comm.*:

We have . . . held that consolidation of cases and the exchange of testimony is *impermissible where it eliminates a portion of a party's burden of proof*.<sup>18</sup>

The *Canton Storage* Court quoted from an earlier case where “ [t]he commission’s procedure eliminated the necessity for Transit Homes making its own record before the commission.”<sup>19</sup> As further argued below, the Commission’s administrative notice of the record in the pending MRO case significantly reduces FirstEnergy’s burden of proof regarding the ESP Application, and is both unreasonable and unlawful.<sup>20</sup>

*Canton Storage* is also informative regarding the relationship between prejudice to a party and the burden of proof under circumstances where administrative notice is taken of an existing record. In *Canton Storage*, the Court held that “[a]dministrative notice of the testimony . . . prejudiced the protestants because the applicant’s burden of

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<sup>17</sup> FirstEnergy never submitted a motion and supporting argument regarding its requested administrative notice of the record in the pending MRO case. Consequently, no opposing arguments were offered in memoranda contra FirstEnergy’s proposal. An application for rehearing is the first opportunity for parties to address the proposed procedure.

<sup>18</sup> *Canton Storage & Transfer Co. v. Public Util. Comm.* (1995), 72 Ohio St. 3d 1, 9, 647 N.E.2d 136, 144 citing *Motor Service. Co. v. Public Util. Comm.* (1974), 39 Ohio St.2d 5, 68 O.O.2d 3, 313 N.E.2d 803 (emphasis added).

<sup>19</sup> *Id.*, quoting from *Motor Service* at 12, 68 O.O.2d 7, 313 N.E.2d 808.

<sup>20</sup> The Supreme Court of Ohio has held that “trial courts may not take judicial notice of their own proceedings in other cases even when the cases involve the same parties.” *State ex rel. Everhart v. McIntosh*, 115 Ohio St. 3d 195; 196, 2007-Ohio-4798; 874 N.E. 2d 516, 517 (citations omitted).



proof was reduced by this use of the testimony.”<sup>21</sup> Again, the reduction in FirstEnergy’s burden of proof regarding the ESP Application is prejudicial to the cases of non-signatories to the Stipulation, and the administrative notice taken by the Commission is both unreasonable and unlawful.

**2. The PUCO’s Entry took administrative notice of the record in the pending MRO case and thereby unlawfully eliminated a portion of FirstEnergy’s burden of proof.**

An ESP is the subject of R.C. 4928.143, where the “burden of proof in the proceeding shall be on the electric distribution utility.”<sup>22</sup> The Application, including all of its attachments, fails (among its failures) to document the proposed plan “relating to the supply and pricing of electric generation service” that is required of an ESP under R.C. 4928.143(B). FirstEnergy’s testimony, filed as required by the March 24, 2010 procedural schedule, similarly fails to provide the required support. FirstEnergy apparently intends to rely upon the record in the pending MRO case, Case No. 09-906-EL-SSO, to meet its burden of proof regarding most of its proposal to conduct a competitive bidding process beginning on June 1, 2011. The Commission’s administrative notice of the record in the pending MRO case is intended to cure that problem and result in rapid approval of the Application.

As stated in *Canton Storage*, the Commission’s administrative notice may not “eliminate[ ] a portion of a party’s burden of proof.”<sup>23</sup> That is not only the effect, but

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<sup>21</sup> Id. at 8-9.

<sup>22</sup> Id.

<sup>23</sup> *Canton Storage & Transfer Co. v. Public Util. Comm.* (1995), 72 Ohio St. 3d 1, 9, 647 N.E.2d 136, 144 citing *Motor Service. Co. v. Public Util. Comm.* (1974), 39 Ohio St.2d 5, 68 O.O.2d 3, 313 N.E.2d 803 (emphasis added).

apparently the purpose of the administrative notice in this case. As a result, the PUCO's Entry regarding taking administrative notice of the record in the MRO case is unreasonable and unlawful, and must be changed on rehearing.

**B. The PUCO's Entry Is Unreasonable And Unlawful Because the PUCO Partly Granted FirstEnergy's Motion for Waivers After Concluding that the Application Was the "[C]ulmination of a [L]engthy [P]rocess" Involving Other Cases.<sup>24</sup>**

The Commission stated its belief that FirstEnergy's ESP Application, though filed only recently, was actually the "culmination of a lengthy process" that involves other cases that preceded it.<sup>25</sup> The ESP Application is the beginning of a process, and not the culmination of a process.

The Commission pointed out that because it has taken administrative notice of "the extensive record in the market rate offer proceeding, the Commission believes that a limited waiver of certain filing requirements contained in Rule 4901:1-35-03"<sup>26</sup> is appropriate. The grant of the waiver included all provisions in Rules 4901:1-35-03 (C)(4), (C)(5), (C)(6), (C)(7), (C)(8) and (C)(9). Apparently, for the same reasons, the Commission granted a waiver of Rule 4901:1-35-03(F) and (G). The waiver of Rule 4901:1-35-03(G) was granted only to the extent that the rule applied to the other provisions that were waived.

The Commission has allowed the filings FirstEnergy made in its MRO application under R.C. 4928.142 to replace the filings required in FirstEnergy's ESP case. As stated above, the Commission may not rely upon the record in the MRO case. Also, the General

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<sup>24</sup> PUCO's Entry at 4, ¶(10) (April 6, 2010).

<sup>25</sup> Id. at 4.

<sup>26</sup> Id. at 4, ¶(10).

Assembly established different requirements, to be examined over a much longer time period, for an ESP proposal under R.C. 4928.143 as compared to a MRO proposal under R.C. 4928.142. FirstEnergy's waiver requests rely upon the administrative notice unlawfully provided by the PUCO's Entry, and the procedures in this case should be extended over the 275-day period allowed by statute to permit parties and the Commission to consider the information that the Commission should have ordered upon denial of FirstEnergy's waiver requests.

The General Assembly has provided 275 days for a full review of information provided in support of any ESP application, including that provided under the full application and enforcement of the Commission's own filing requirements. The Commission cannot meet its obligation to "ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service"<sup>27</sup> if the PUCO waives its filing requirements that were promulgated (after extensive comment) so that the Commission can meet statutory directives.

**C. The PUCO's Entry Is Unreasonable And Unlawful Because the PUCO Failed to Require a Showing of Good Cause For The Waivers Granted.**

**1. The PUCO's Entry did not properly recognize the standard of review regarding waiver requests.**

Ohio Adm. Code 4901:1-35-02(B) allows for waivers of the PUCO's filing requirements where "good cause" is shown. In a recent case involving Aqua Ohio, Inc.,<sup>28</sup> the Commission applied this standard of "good cause" in considering waiver requests

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<sup>27</sup> R.C. 4928.02(A).

<sup>28</sup> Although the waivers that were not granted in that case were waivers to standard filing requirements of traditional ratemaking cases, the principle should equally apply to filing requirements in a R.C. 4928.143 case. *In re Aqua Ohio*, Case No. 09-560-WW-AIR, Entry at ¶7 (July 29, 2009) ("Aqua").

under the Standard Filing Requirements in a rate cases under R.C. Chapter 4909.<sup>29</sup> In *Aqua*, the Commission's consideration of various waivers (and denial of waivers) included whether the information subject to the waiver request was "necessary for an effective and efficient investigation."<sup>30</sup> In determining whether good cause existed to grant FirstEnergy's Motion for Waivers, the Commission should have considered, *inter alia*, whether certain of the information the Companies ask not to file is nonetheless necessary for parties (and the Commission) to make an effective and efficient review of the Application.

In this case under R.C. Chapter 4928, there is no requirement for a Staff report and the PUCO Staff joined in the Stipulation. Under the circumstances, parties bear even more burden to provide for an "effective" review of FirstEnergy's proposals. And considering the compressed timeline FirstEnergy proposed as accepted in the Attorney Examiner's Entry dated March 24, 2010, the need to be "efficient" is extremely important. Therefore, the PUCO's standard for judging whether there is good cause to grant FirstEnergy's waiver requests should include whether the information FirstEnergy asks not to file is nonetheless necessary for other parties (and, ultimately, the Commission) to make an effective and efficient review of the Application.

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<sup>29</sup> Ohio Adm. Code 4901-1-07 (Appendix A).

<sup>30</sup> *In re Aqua Ohio*, Case No. 09-560-WW-AIR, Entry at ¶¶9 and 11 (July 29, 2009).

**2. The PUCO Entry failed to require FirstEnergy to file a description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code.**

Within S.B. 221, the General Assembly enacted R.C. 4928.20(I), (J), and (K) to encourage and promote governmental aggregation. Moreover, the General Assembly under (K) ordered the Commission to adopt rules to encourage and promote large-scale governmental aggregation in this state. To justify the waiver FirstEnergy cavalierly states that it “will continue to maintain systems necessary to account for customer participation in governmental aggregation programs.”<sup>31</sup> In its Motion for Waivers, FirstEnergy appeared to perceive that it has no obligation to implement any practice or procedure to meet its obligations under newly enacted R.C. 4928.20(I), (J), and (K). Apparently FirstEnergy intends to continue to do what it has been doing since governmental aggregation was first established in 2000 under S.B. 3.

It appears as if the Commission intends Rule 4901-1-35-3(C)(6) to be the rule it adopted to encourage and promote large-scale governmental aggregation as directed by the General Assembly. If FirstEnergy is simply going “to continue to maintain systems necessary to account for customer participation in governmental aggregation programs,”<sup>32</sup> FirstEnergy’s actions will not promote or encourage governmental aggregation.

FirstEnergy did not show good cause to waive the requirements under Rule 4901-1-35-3(C)(6). By waiving that rule with the justification provided by FirstEnergy, the Commission is simply voiding the General Assembly’s directive under R.C. 4928.20(K).

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<sup>31</sup> Motion for Waivers at 3.

<sup>32</sup> PUCO’s Entry at 3 (April 6, 2010).

The Commission's waiver of that rule is inconsistent with R.C. 4928.20(K), and should be changed on rehearing.

**3. The PUCO Entry incorrectly waived FirstEnergy's obligation to file a description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed to be established in the ESP.**

The Commission should not have agreed with FirstEnergy's vacuous argument favoring waiver of Ohio Adm. Code 4901:1-35-03(C)(7),<sup>33</sup> which requires FirstEnergy to file "a description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed to be established in the ESP." The rule amplifies the requirement stated in R.C. 4928.20(K) that the Commission must "consider the effect on large-scale governmental aggregation of any nonbypassable generation charges."

According to the Stipulation, the reconciliation rider, Rider GCR, would change from a bypassable charge under the terms of the existing ESP to a non-bypassable charge under circumstances described in the Stipulation.<sup>34</sup> Those circumstances might change from month-to-month, providing for instability regarding the terms under which aggregation could proceed (or, due to the instability, not proceed). Those circumstances would also include instances where FirstEnergy's projections, unsupervised by the Commission, would trigger unavoidable charges.<sup>35</sup> FirstEnergy's argument for the provisions in its Stipulation -- i.e., it is "beneficial for all customers"<sup>36</sup> -- should be

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<sup>33</sup> Motion for Waivers at 3.

<sup>34</sup> Stipulation at 11-12.

<sup>35</sup> Stipulation at 12 ("Companies may convert Rider GCR to a non-avoidable charge provision if they believe").

<sup>36</sup> Motion for Waivers at 3.

reserved for its brief. The argument is inappropriate in support of a waiver request, and the request should have been denied as lacking good cause. The Commission's waiver should be reversed on rehearing.

**4. The PUCO erred by waiving the requirement for the Companies to file a detailed account of how the ESP is consistent with and advances the policy of this State.**

FirstEnergy's request for waiver of Ohio Adm. Code 4901:1-35-03(C)(8), regarding whether the Application supports State policy, argued against the Commission's rule. FirstEnergy stated that it should not be required to discuss State policy because "those policies can conflict in practice."<sup>37</sup> The time for argument against the promulgation of the Commission's rule is long past. The waiver request should have been denied, and the grant of the waiver in the PUCO's Entry should be reversed.

**5. The PUCO should not have waived the requirement to file work papers under Ohio Adm. Code 4901:1-35-03(G) because FirstEnergy did not state good cause for its request.**

The Commission's grant of waiver regarding workpapers furthers FirstEnergy's strategy of avoiding scrutiny about the effects that its Application will have on customers and on the competitive market in the FirstEnergy service territory. Through this waiver, facts and figures concerning the proposed plan may not undergo scrutiny. Accordingly, this waiver is contrary to the Commission's obligation to fully consider an ESP application under R.C. 4928.143(C)(1) in a proceeding where the Companies bear the burden of proof. The waiver of the requirement should be reversed on rehearing.

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<sup>37</sup> Id.

#### **IV. CONCLUSION**

The PUCO erred by taking administrative notice of the record from the market based offer proceeding. Therefore, the waiver of the Commission's rules regarding ESP applications is not justified by the PUCO's taking of administrative notice of the record in the MRO proceeding, which was a record that was produced in a proceeding under a statute, R.C. 4928.142, that is not controlling for this electric security plan. Nor can the very short hearing schedule be justified by the administrative notice of the record from the market based offer case.

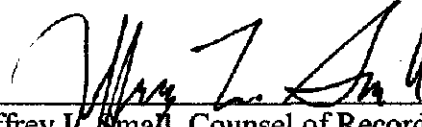
FirstEnergy did not provide good cause for the waiver of the rules that were waived by the Commission. The PUCO therefore erred by not denying FirstEnergy's requested waivers.

The PUCO should give itself -- and give the parties who did not sign the Stipulation -- the benefit of the 275-day schedule provided under Ohio law for reviewing the Application. That amount of detailed review, in advance of a PUCO judgment, is owed to the customers who are adversely affected by FirstEnergy's Application and Stipulation.



Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



Jeffrey L. Small, Counsel of Record  
Gregory J. Poulos  
Ann M. Hotz  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, OH 43215-3485

(614) 466-8574 (Telephone)

(614) 466-9475 (Facsimile)

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

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

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



Theodore Robinson  
Staff Attorney and Counsel  
**Citizen Power**  
2121 Murray Avenue  
Pittsburgh, PA 15217  
(412) 421-7029 (Telephone)  
[robinson@citizenpower.com](mailto:robinson@citizenpower.com)



Joseph P. Meissner, Counsel of Record  
Matthew D. Vincel  
The Legal Aid Society of Cleveland  
1223 West 6th Street  
Cleveland, OH 44113  
(216) 687-1900 (Telephone)  
[jmeissn@lasclev.org](mailto:jmeissn@lasclev.org)  
[mvincel@lasclev.org](mailto:mvincel@lasclev.org)  
**Citizens Coalition**

*Henry Eckhart*

Henry Eckhart  
50 West Broad Street, #2117  
Columbus, OH 43215  
(614) 461-0984 (Telephone)  
(614) 221-7401 (Facsimile)  
[henryeckhart@aol.com](mailto:henryeckhart@aol.com)

*by JLS*

**Natural Resources Defense Council**

*Nolan Moser*

Nolan Moser  
1207 Grandview Ave., Ste. 201  
Columbus, OH 43212-3449  
(614) 487-7506 (Telephone)  
(614) 487-7510 (Facsimile)  
[nmoser@theOEC.org](mailto:nmoser@theOEC.org)

*by JLS*

**Ohio Environmental Council**

*Lance M. Keiffer*

Lance M. Keiffer  
Assistant Prosecuting Attorney  
Lucas County Courthouse  
700 Adams Street, Suite 250  
Toledo, OH 43604  
(419) 213-2001 (Telephone)  
(419) 213-2011 (Facsimile)  
[lkeiffer@co.lucas.oh.us](mailto:lkeiffer@co.lucas.oh.us)

*by JLS*

**NOAC**

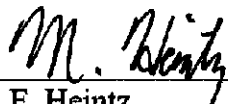
*Glenn Krassen*

Glenn Krassen  
Bricker & Eckler LLP  
1375 East Ninth St., Ste. 1500  
Cleveland, OH 44114  
(216) 523-5405 (Telephone)  
(216) 523-7071 (Facsimile)  
[gkrassen@bricker.com](mailto:gkrassen@bricker.com)

*by JLS*

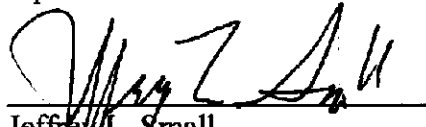
**NOPEC**

Matthew Warnock  
Bricker & Eckler LLP  
100 S. Third Street  
Columbus, OH 43215  
(614) 227-2388 (Telephone)  
(614) 227-2390 (Facsimile)  
NOPEC

  
\_\_\_\_\_  
Michael E. Heintz  
Staff Attorney  
Environmental Law & Policy Center  
1207 Grandview Ave.  
Suite 201  
Columbus, Ohio 43212  
614-488-3301 (Telephone)  
614-487-7510 (Facsimile)  
[mheintz@elpc.org](mailto:mheintz@elpc.org)  
ELPC

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Application for Rehearing* was served upon the persons listed below, electronically, this 19th day of April 2010.

  
Jeffrey L. Small  
Assistant Consumers' Counsel

## SERVICE LIST

burkj@firstenergycorp.com  
korkosza@firstenergycorp.com  
haydenm@firstenergycorp.com  
elmiller@firstenergycorp.com  
sam@mwncmh.com  
lmcaster@mwncmh.com  
jclark@mwncmh.com  
david.fein@constellation.com  
Cynthia.brady@constellation.com  
dboehm@BKLlawfirm.com  
mkurtz@BKLlawfirm.com  
RTriozi@city.cleveland.oh.us  
SBeeler@city.cleveland.oh.us  
Cmooney2@columbus.rr.com  
drinebolt@aol.com  
Thomas.mcnamee@puc.state.oh.us  
smhoward@vorys.com  
mhpetricoff@vssp.com  
mwarnock@bricker.com  
wis29@yahoo.com  
cmiller@szd.com  
aporter@szd.com  
gdunn@szd.com  
robinson@citizenpower.com  
mheintz@elpc.org  
dsullivan@nrdc.org  
swolfe@viridityenergy.com  
Ccunningham@Akronohio.Gov  
cfaruki@ficlaw.com

ricks@ohanet.org  
tobrien@bricker.com  
gkrassen@bricker.com  
mwarnock@bricker.com  
mkl@bbrslaw.com  
gas@bbrslaw.com  
jbentine@cwslaw.com  
mwhite@cwslaw.com  
myurick@cwslaw.com  
dmancino@mwe.com  
glawrence@mwe.com  
lkeiffer@co.lucas.oh.us  
nmoser@theOEC.org  
will@theOEC.org  
trent@theOEC.org  
Williams.toddm@gmail.com  
Amy.Spiller@duke-energy.com  
mdortch@kravitzllc.com  
mparke@firstenergycorp.com  
beitingm@firstenergycorp.com  
Dane.Stinson@BaileyCavalieri.com  
henryeckhart@aol.com  
jpmeissn@lasclev.org  
mvincel@lasclev.org  
jroberts@enernoc.com  
eric.weldele@tuckerellis.com  
afreifeld@viridityenergy.com  
charles.dyas@btlaw.com  
david.paragas@btlaw.com

Kim.Bojko@puc.state.oh.us  
Gregory.Price@puc.state.oh.us