BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider.	))))))	Case No. 10-0176-EL-ATA

APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF INDUSTRIAL ENERGY USERS-OHIO

RECEIVED-DOCKETING DIV
2010 MAY 17 PM 5:01
PUCO

Samuel C. Randazzo (Counsel of Record)
Lisa G. McAlister
Joseph M. Clark
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com

May 17, 2010

Attorneys for Industrial Energy Users-Ohio

{C31004: }

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician OH Date Processed 5/20/10

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider.	)))))	Case No. 10-0176-EL-ATA

APPLICATION FOR REHEARING OF INDUSTRIAL ENERGY USERS-OHIO

Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code ("O.A.C."), Industrial Energy Users-Ohio ("IEU-Ohio") respectfully submits this Application for Rehearing from the April 15, 2010 Second Entry on Rehearing ("Second Entry on Rehearing") and the April 28, 2010 Third Entry on Rehearing ("Third Entry on Rehearing") of the Public Utilities Commission of Ohio ("Commission") in the above-captioned proceeding involving Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("TE") (collectively "FirstEnergy" or "Companies"). As explained in more detail in the attached Memorandum in Support, the Second and Third Entries on Rehearing regarding the Residential Generation Credits ("Rider RGC") are unlawful and unreasonable for the following reasons:

1. The Commission's expansion of the rate relief in the Second Entry on Rehearing is unlawful and unreasonable.

2. The Commission's related grant of authority to defer the revenue shortfall created by the "rate relief" in the Second and Third Entries on Rehearing is unlawful and unreasonable.

IEU-Ohio respectfully requests that the Commission grant this Application for Rehearing and grant the relief requested herein. By proceeding in the current direction, the Commission is making a difficult situation worse.

Respectfully submitted,

Samuel C. Randazzo (Counsel of Record)
Lisa G. McAlister
Joseph M. Clark
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

{C31004: }

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider.	)))))	Case No. 10-0176-EL-ATA

MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING

I. INTRODUCTION AND BACKGROUND

On February 12, 2010, FirstEnergy filed an Application for Commission approval of a new rider, Rider RGC, to provide rate credits or discounts to residential customers on certain rate schedules (hereinafter "all-electric residential customers").[1] The RGC Application also sought authority to modify the scope of FirstEnergy's Economic Development Rider ("Rider EDR") so as to fund the Rider RGC credits in ways that appeared to require customers served under rate schedules GS and GP to pay higher rates to cover a portion of the revenue shortfall created by the proposed residential credits or discounts.

On February 18, 2010 and February 24, 2010, respectively, IEU-Ohio filed its intervention request and comments identifying issues raised by the RGC Application.

The Commission issued a Finding and Order on March 3, 2010 ("March 3 Order"), directing FirstEnergy to modify certain tariff sheets to provide "rate relief" to all-electric residential customers. The March 3 Order also authorized FirstEnergy to modify

[1] The February 12, 2010 application shall be designated as the "RGC Application."

its accounting procedures to "...defer the difference between the rates and charges to be charged to the all-electric customers as the result of the Commission's order in this proceeding and the rates and charges that would otherwise be charged to those customers...." March 3 Order at 3. In the March 3 Order, the Commission also stated that the specified rate relief was to be accompanied by a process that would allow the Commission to determine the "best long-term solution" and it directed its Staff to undertake an investigation and file a report to provide the Commission with options for a longer-term solution. March 3 Order at 3-5.

On March 8, 2010, the Office of the Ohio Consumers' Counsel ("OCC") filed a Request for Clarification and, in the Alternative, Application for Rehearing from the March 3 Order ("OCC Application for Rehearing").

FirstEnergy also filed an Application for Rehearing on April 2, 2010 in which it asked the Commission to clarify the March 3 Order so that the deferral accounting authority in the March 3 Order applied to the entire population receiving the mandated rate relief and that the mandated rate relief was limited to the winter period.

On April 6, 2010, the Commission granted OCC's Application for Rehearing to further consider matters raised by OCC and also granted the Motions to Intervene of several parties, including OCC, IEU-Ohio, the Ohio Manufacturers' Association ("OMA"), and the Ohio Hospital Association ("OHA").[2]

On April 15, 2010, the Commission issued a Second Entry on Rehearing denying OCC's Application for Rehearing but expanding the mandated rate relief to include all residential customers who had been billed under the all-electric residential rate

[2] IEU-Ohio filed its Motion to Intervene on February 18, 2010. OCC filed its Motion to Intervene on February 23, 2010 and OMA and OHA filed their Motions to Intervene on March 1, 2010.

schedule as well as all successors to any such account.[3] The Second Entry on Rehearing also removed the 90-day deadline for the completion of the mandated Staff investigation and required FirstEnergy to file tariffs to implement the Second Entry on Rehearing within seven days.[4]

On April 16, 2010, FirstEnergy filed a motion requesting an extension of time to file tariffs consistent with the Commission's clarification in its Second Entry on Rehearing.

On April 28, 2010, the Commission issued a Third Entry on Rehearing that granted FirstEnergy's April 16, 2010 motion requesting an extension of the tariff filing deadline, clarified that deferral accounting authority applies to the revenue shortfall from the rate relief given to the broader population of customers created by the Commission's Second Entry on Rehearing, and clarified that the rate relief applies during the winter period.

IEU-Ohio hereby files its Application for Rehearing from the Commission's Second and Third Entries on Rehearing.

[3] Governor Ted Strickland sent a letter to Chairman Schriber on April 8, 2010 asking the Commission to remove any restrictions on eligibility for the all-electric discount, requesting the Commission to apply the discount to all accounts served under an all-electric service schedule regardless of when the customer began taking service under the all-electric service schedule.

[4] As discussed herein, FirstEnergy subsequently requested an extension of time to file its tariff modifications to May 7, 2010, citing additional time needed to complete required computer programming to comply with the Commission's Second Entry on Rehearing. The Attorney Examiner granted FirstEnergy a seven-day extension (until April 29, 2010) while the full Commission considered FirstEnergy's request. *See* Entry (April 22, 2010).

II. THE COMMISSION'S EXPANSION OF THE DISCOUNT TO NEW AND EXISTING CUSTOMERS AND THE COMMISSION'S RELATED GRANT OF AUTHORITY TO DEFER THE REVENUE SHORTFALL CREATED BY THE "RATE RELIEF" IN THE SECOND AND THIRD ENTRIES ON REHEARING ARE UNLAWFUL AND UNREASONABLE.

The Commission's March 3 Order describes the rate history or evolution of the rates and charges that have applied to all-electric residential customers. This history is the result of many final Commission orders, including those issued in FirstEnergy's most recent distribution rate case (Case No. 07-551-EL-AIR) as well as the proceeding that produced FirstEnergy's currently effective electric security plan ("ESP") pursuant to Section 4928.143, Revised Code (Case No. 08-935-EL-SSO). This history and evolution produced the schedules that dictated the rates and charges that FirstEnergy was and is required to apply to determine bills for electric service.

The Commission's March 3 Order unilaterally modified the rates and charges established by prior final Commission orders to provide "rate relief" to a specified group of customers. The Second Entry on Rehearing repeated the unilateral modification of prior, final Commission orders and expanded the scope of the unilateral modification and the resulting rate relief. Additionally, the Third Entry on Rehearing expanded the deferral accounting authority to the revenue shortfall from the rate relief given to the broader population of customers created by the Commission's Second Entry on Rehearing. Thus, at each step along the way, the Commission has granted FirstEnergy accounting authority to allow FirstEnergy to defer the revenue shortfall created by the rate relief mandated by the Commission's unilateral modifications of prior final orders.

Neither the Commission's March 3 Order nor its Entries on Rehearing identified the legal theory, authority, process or evidence that might permit the Commission to unilaterally modify the rates and charges established by prior, final Commission orders.

And, while the Commission has granted FirstEnergy accounting authority to defer the revenue shortfall, it has pushed off the question of how and when the "regulatory asset" created by this accounting authority will be amortized. In pushing off this question, the Commission has, nonetheless, suggested (in the March 3 Order at 3, for example) that FirstEnergy is entitled to recover the shortfall from customers in accordance with prior, final Commission orders.

IEU-Ohio has protested the Commission's unilateral modifications of prior, final orders to provide rate relief to all-electric residential customers because these unilateral modifications are unlawful and unreasonable. IEU-Ohio's protest is continued through this rehearing request. IEU-Ohio continues to protest the Commission's mandated rate relief because of the potential consequences for FirstEnergy's other customers, including members of IEU-Ohio, should the Commission direct that the rates and charges of such other customers be adjusted retroactively or prospectively to make up for the revenue shortfall created by the illegally mandated rate relief for the all-electric residential customers.

The Commission's authority to modify rates and charges is defined by the Ohio Revised Code. The authority may be exercised in accordance with the process dictated by the General Assembly. The Commission's authority is not created or expanded by letters sent to the Commission by elected officials and such letters likewise cannot be substituted for the process that must be completed as a predicate to the exercise of delegated authority. Indeed, elected officials in Ohio must follow the law as enacted by the General Assembly.

The rate relief mandated by the March 3 Order and expanded by the Entries on Rehearing is not the product of any authority that has been delegated to the

Commission by the General Assembly. The rate relief mandated by the March 3 Order and expanded by the Entries on Rehearing is not the product of any process that has been established by the General Assembly as a predicate for the Commission's exercise of its delegated authority. Accordingly, the mandated rate relief and the related accounting authority provided by the Commission in this proceeding are unreasonable and unlawful.

For the reasons previously stated, IEU-Ohio respectfully requests that the Commission grant its Application for Rehearing, find that the rate relief and related accounting authority previously mandated or authorized is unlawful and unreasonable, and find that FirstEnergy is obligated to bill customers in accordance with the rates and charges on file with the Commission pursuant to the Commission's final orders until such rates and charges are modified, altered or amended pursuant to the Commission's lawful exercise of its delegated authority.

Respectfully submitted,

Samuel C. Randazzo (Counsel of Record)
Lisa G. McAlister
Joseph M. Clark
McNees Wallace & Nurick LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

{C31004: }

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio* was served upon the following parties of record this 17th day of May 2010 *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

Lisa G. McAlister

James W. Burk
Senior Attorney
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

ON BEHALF OF FIRSTENERGY

Jeffrey L. Small
Assistant Consumer's Counsel
Office of the Ohio Consumers' Counsel
10 W. Broad Street, Suite 1800
Columbus, OH 43215-3485

ON BEHALF OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291

ON BEHALF OF THE OHIO MANUFACTURERS' ASSOCIATION

Richard L. Sites
General Counsel & Senior Director of Health Policy
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291

ON BEHALF OF OHIO HOSPITAL ASSOCIATION

Thomas McNamee
Assistant Attorney General
Public Utilities Section
180 East Broad Street
Columbus, OH 43215

ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

Kimberly Bojko
Gregory Price
Public Utilities Commission of Ohio
180 East Broad Street
Columbus OH 43215

ATTORNEY EXAMINERS