



**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**INDUSTRIAL ENERGY USERS-OHIO'S MEMORANDUM CONTRA  
APPLICATION FOR REHEARING OF OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION AND PERTINENT BACKGROUND**

On February 12, 2010, Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI") and The Toledo Edison Company ("TE", collectively, "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").<sup>1</sup> 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 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

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<sup>1</sup> The February 12, 2010 application shall be designated as the "RGC Application."

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”). 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 schedule as well as all successors to any such account.<sup>2</sup> 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.

On April 28, 2010, the Commission issued a Third Entry on Rehearing that 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. The Third Entry on Rehearing also clarified that the rate relief applies during the winter period only.

On May 17, 2010, OCC filed another Application for Rehearing (“Second Application for Rehearing”) on the Commission’s Second Entry on Rehearing. In its Second Application for Rehearing, among other things, OCC requested that the Commission expand the mandated relief to residential water heating customers.

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<sup>2</sup> 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.

Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code, Industrial Energy Users-Ohio ("IEU-Ohio") hereby respectfully submits this Memorandum Contra OCC's Application for Rehearing for the Commission's consideration and requests that OCC's Second Application for Rehearing be denied.

**II. THE COMMISSION'S MANDATED RELIEF IS UNREASONABLE AND UNLAWFUL AND SHOULD NOT BE FURTHER EXPANDED.**

As IEU-Ohio understands it, FirstEnergy's RGC Application proposed to reinstitute a credit in order to provide rate relief to those customers whose bills increased during the winter period more than they would have otherwise increased as a result of the all-electric discounts being reduced.<sup>3</sup> Specifically, FirstEnergy's RGC Application proposed a credit to any customer taking service under Rate Schedule RS who on January 22, 2009 took service under one of the all-electric rate schedules that requires increased use in the winter (i.e., space heating rates and optional electrically heated apartment rates) and has not had a change of service address subsequent to January 22, 2009. FirstEnergy proposed to reduce the credit over an eight year period to avoid the rate shock concern raised by customers.

IEU-Ohio was and is the only party that protested the Commission's unilateral modifications of prior, final orders to provide rate relief to all-electric residential customers based upon the unlawfulness and unreasonableness of such unilateral modifications. IEU-Ohio stands by its position and continues to assert that neither FirstEnergy nor the Commission can lawfully change rates without complying with the requirements in the Revised Code as applicable. Notwithstanding this fact, the

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<sup>3</sup> The Commission provided a brief description of the evolution of the rates and charges applied to the all-electric customers in its March 3 Order.

Commission's Second Entry on Rehearing further exacerbated the problem by expanding the mandated rate relief to include all residential customers who had been billed under the all-electric residential rate schedule as well as all successors to any such account. In other words, customers who may have never had a discount and clearly were not induced by any promise of such a discount are now receiving a discount.

Now, OCC seeks to further expand the mandated discount to customers whose usage is unaffected during the winter period. Specifically, OCC requests that the Commission expand the mandated relief to residential water heating customers and residential customers who have installed 80 gallon plus water heaters with peak load control devices.

OCC argues that excluding water heating customers from the rate relief ordered discriminates against them in violation of Sections 4905.22, 4905.33 and 4905.35, Revised Code. OCC reasons that water heating customers are receiving service under the same or similar circumstances as space heating customers and, thus, should receive the same mandated rate relief. *OCC is incorrect.*

As the Commission limited the mandated relief to the winter months, it is inappropriate to expand the mandated rate relief to customers who are unaffected by winter weather. Notwithstanding the fact that none of the mandated rate relief is lawful or reasonable, OCC has not demonstrated that water heating customers experience the same hardships as space heating customers during the winter period.

Additionally, as the Commission has granted FirstEnergy accounting authority to defer the revenue shortfall while at the same time pushing off the question of how and when the "regulatory asset" created by this accounting authority will be amortized,

granting OCC's requested rehearing would further increase the "regulatory asset," which the Commission has suggested FirstEnergy is entitled to recover from other customers. It would be particularly egregious to increase the regulatory asset that other Ohio customers (including those that OCC also represents) may be required to contribute to when OCC has not demonstrated any harm to the customers to whom it seeks to provide mandated rate relief.

Accordingly, IEU-Ohio respectfully requests that the Commission deny OCC's request that the Commission mandate rate relief for water heating customers.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Memorandum Contra Application for Rehearing of Ohio Consumers' Counsel* was served upon the following parties of record this 27<sup>th</sup> day of May 2010 via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

  
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