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# Ohio Partners for Affordable Energy

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August 4, 2010

Docketing Division  
Public Utilities Commission of Ohio  
180 East Broad Street, 11<sup>th</sup> Floor  
Columbus, OH 43215

786  
RE: Case No. 09-768-EL-UNC

To Whom It May Concern:

Please find enclosed an original and 15 copies of the OPAE's  
*Memorandum Contra the Applications for Rehearing of Duke Energy*  
– *Ohio and Ohio Edison Company, The Cleveland Electric*  
*Illuminating Company, and The Toledo Edison Company* in the  
above-referenced docket. We do not require a stamped copy.

If you have any questions regarding this document, please feel free  
to contact me.

Sincerely,

  
David C. Rinebolt  
Counsel

Encl – 16

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Investigation into the	)	<b>PUCO</b>
Development of the Significantly Excessive	)	
Earnings Test Pursuant to S.B. 221 for	)	Case No. 09-786-EL-UNC
Electric Utilities.	)	

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**OHIO PARTNERS FOR AFFORDABLE ENERGY'S  
MEMORANDUM CONTRA THE APPLICATIONS FOR REHEARING OF  
DUKE ENERGY – OHIO AND OHIO EDISON COMPANY, THE  
CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE  
TOLEDO EDISON COMPANY**

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A Commission Entry filed on September 23, 2009 required Commission Staff to submit recommendations regarding the development of the significantly excessive earning test ("SEET") as required by S.B. 221. A workshop was held to permit discussion between the Commission Staff and parties on the scope and intent of the statute. Staff filed its recommendations on November 18, 2009. The next day, the attorney examiner requested comments and reply comments from interested parties regarding the Staff recommendations. The Commission issued its Finding and Order on June 30, 2010.

On July 26, 2010, Duke Energy – Ohio ("Duke") filed an application for rehearing of the Commission's ruling. Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy") filed an application for rehearing on July 30, 2010. Ohio Partners for Affordable Energy ("OPAE") hereby submits this memorandum contra the applications for rehearing as permitted under O.A.C. §4901-1-35(B).

## **I. Duke**

Duke argues that there are three errors in the Commission ruling and requests clarification on a fourth issue. OPAE will directly address the first assignment of error and comment on the others.

Duke initially argues that the Commission should not require each electric utility to include in its SEET filing the difference in earnings between its current electric security plan ("ESP") and what would have occurred if the preceding rate plan had been in place. Duke somehow believes that requiring this information will result in a SEET that compares the revenue generated by the ESP with the revenue that would have been generated under the prior rate plan. That conclusion is in error. Rather, the information will be of use to the Commission in determining whether the return on common equity is excessive as a result of the ESP, the focus of O.R.C. §4928.143(F). Unless one knows the difference between the revenue generated by the ESP and the prior rate plan, one cannot determine what the delta revenue generated by the ESP is. Since a refund under the SEET can only be triggered by the impact of the ESP on revenues, the Commission needs to be able to quantify the 'value' of the ESP relative to a baseline.

The projection is only relevant to the year being reviewed. Utilities have long contended it is possible to project wholesale prices at least three years into the future. Projecting revenues from an older rate plan should be simple compared to projecting future costs in a dynamic marketplace. Moreover, it is the utility that provides this information and it can justify its approach in the filing.

The utility must meet its burden of proof. The data required by the Commission is necessary to determine that the burden has been met and that any refund, if warranted, is appropriate. The Commission must determine if the ESP causes the excess earnings when compared to comparable companies. Unless one knows the delta, this determination cannot occur.

OPAE offers no comments on the 12 vs. 13 months issue. OPAE agrees with Duke's point on the third issue; that it is unclear whether or not the agreement on SEET approved by the Commission in the SSO docket is still in effect. We observe, however, that this issue will ultimately be decided in Duke's SEET filing when the Commission finally determines whether "the issue is adequately addressed in the stipulation and the order approving the stipulation." Finding and Order at 16. Finally, the utility should file testimony and information addressing the questions raised by the Commission whether or not it believes it falls within the safe harbor. The Commission may not agree with that conclusion, so the information will be relevant. Finding and Order at 29.

## **II. FirstEnergy**

FirstEnergy also questions the filing requirements, specifically the issue raised by Duke regarding the difference in earnings between the ESP and what would have occurred had the previous rate plan remained in effect; and, the comparison of the inclusion and exclusion of deferrals from the analysis. OPAE has previously commented on the first issue. On the second, the Commission clearly has need for information on the impacts of deferrals since it specifically held that it would not make a generic finding with respect to the inclusion or

exclusion of deferrals from revenue. Finding and Order at 18. Without the information, it would be very difficult for the Commission to conduct an evaluation. The availability of such information should not be dependent on whether or not the utility thinks it relevant. Counting deferrals can trigger a SEET; deferrals are important for reasons beyond their use as a mechanism to refund excessive earnings to customers.

OPAE has also already addressed the issue of what types of information must be included in the filing. Suffice it to say, every Ohio utility is different and FirstEnergy is certainly unique in that it does not own generation. The Commission opted not to develop a one-size fits-all test, referred to as a bright line, which customer parties championed. As a result, the Commission must approach each company individually and that means information related specifically to the utility is necessary.

Finally, OPAE notes its support for the issue raised by the Customer Parties in their application for rehearing.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Memorandum Contra to the Applications for Rehearing of Duke Energy – Ohio, and Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company* was served by regular U.S. Mail upon the parties of record identified below in this case on this 5th day of August, 2010.



David C. Rinebolt

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