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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO 2010 OCT -4 PM 5:10

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In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo) Case No. 10-388-EL-SSO
Edison Company for Authority to Establish)
a Standard Service Offer Pursuant to)
R.C. §4928.143 in the Form of an Electric)
Security Plan.)

**INDUSTRIAL ENERGY USERS-OHIO'S MEMORANDUM CONTRA THE
APPLICATION FOR REHEARING BY THE OFFICE OF THE OHIO
CONSUMER'S COUNSEL, CITIZEN POWER, AND NATURAL
RESOURCES DEFENSE COUNCIL**

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October 4, 2010

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I. INTRODUCTION

The current standard service offer ("SSO"), or default service, for customers who do not shop and are in the service territories of Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI") and The Toledo Edison Company ("TE") (collectively "FirstEnergy" or "Companies"), was established in Case No. 08-935-EL-SSO and expires on May 31, 2011. On October 20, 2009, the Companies filed an application for approval of a market rate offer ("MRO") to conduct a competitive bidding process ("CBP") to obtain generation supply for SSO supply beginning on June 1, 2011, so as to maintain uninterrupted SSO generation service.¹ In the responsive comments submitted on behalf of the Public Utilities Commission of Ohio's ("Commission") Staff, Staff stated it "would recommend that the Applicants strongly

¹ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated with Reconciliation Mechanism, and Tariffs for Generation Service, Case No. 09-906-EL-SSO, Application (October 20, 2009) (hereinafter "MRO Case").*

consider building on the successful electric security plan ("ESP") rather than to proceed with the somewhat more limited MRO. Staff will distribute to all parties of the case a straw man proposal to facilitate discussions at the December 1, 2009 pre-hearing."²

As a result of the above-mentioned Staff recommendation in the MRO Case, serious and lengthy discussions, deliberations, and negotiations took place that resulted in a Stipulation and Recommendation ("Stipulation") filed on March 23, 2010 that contained a proposed successor ESP for the Companies.³ Accordingly, a procedural schedule was established by Entry issued March 24, 2010.⁴ In accordance with the procedural schedule, prepared testimony was submitted on April 15, 2010 and the evidentiary hearing began on April 20, 2010 and concluded on April 23, 2010. Post-hearing briefs were filed by the parties on April 30, 2010.

On May 12, 2010, a Supplemental Stipulation was filed that incorporated all of the terms of the original Stipulation as well as additional terms agreed to by the signatory parties. The Supplemental Stipulation was supported by all of the signatory parties to the original Stipulation and added the support of the Council of Smaller Enterprises and the City of Akron. In a May 13, 2010 Entry on Rehearing denying Applications for Rehearing related to procedural issues in this proceeding, the Commission indicated it needed additional information on the impact of the proposed ESP on customers' bills before making a decision on the proposed ESP.⁵ The Commission ordered its Staff to present a detailed analysis of the impact of the

² MRO Case, Comments Submitted on behalf of the Staff of the Public Utilities Commission of Ohio at 22 (November 24, 2009).

³ The Stipulation was accompanied by an application made pursuant to Section 4928.143, Revised Code, thereby providing the Commission with the opportunity to enable a successor ESP for the Companies.

⁴ Entry at 2, 3 (March 24, 2010).

⁵ Entry on Rehearing at 9 (May 13, 2010).

proposed ESP on customers' bills and required the detailed analysis to be filed at least seven days before the Commission-ordered resumption of the evidentiary hearing on June 17, 2010.⁶ After the conclusion of the Commission-ordered resumption of the evidentiary hearing, several parties filed supplemental briefs regarding the Supplemental Stipulation on July 1, 2010.

On July 22, 2010, the Companies filed a Second Supplemental Stipulation, which included all of the elements of the Stipulation and the Supplemental Stipulation as well as additional materials agreed to by the signatory parties, and Supplemental Testimony of William R. Ridmann to support the Second Supplemental Stipulation. The Second Supplemental Stipulation included as signatory parties (in addition to all of the signatory parties of the Stipulation and Supplemental Stipulation) the Northeast Ohio Public Energy Council and the Northwest Ohio Aggregation Coalition. Additionally, the Environmental Law and Policy Center, Consumer Protection Association, Cleveland Housing Network, Empowerment Center, and Consumers for Fair Utility Rates also signed the Second Supplemental Stipulation as non-opposing parties. The Office of the Ohio Consumers' Counsel ("OCC") also filed two separate pieces of supplemental testimony on July 24, 2010 and an evidentiary hearing was held on July 29, 2010. The Second Supplemental Stipulation (hereinafter referred to as "Combined Stipulation") and the Supplemental Testimonies were accepted into the record on July 29, 2010.

On August 25, 2010, the Commission modified and approved the Combined Stipulation, finding that the as-modified Combined Stipulation meets the Commission's criteria for the approval of settlements, as affirmed by the Ohio Supreme Court.⁷ The

⁶ The June 17, 2010 hearing commenced on June 21, 2010 pursuant to an Attorney Examiner Entry granting a brief extension of the hearing.

⁷ *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559 (1994).

Companies filed a letter on September 8, 2010 notifying the Commission they conditionally accepted the ESP, as modified by the August 25, 2010 Opinion and Order.⁸ On September 24, 2010, OCC, Citizen Power, and the Natural Resources Defense Council (collectively referred to as "Joint Rehearing Applicants")⁹ jointly filed an Application for Rehearing (hereinafter "Joint Application for Rehearing") from the Commission's August 25, 2010 Opinion and Order.

For the reasons described below, the Commission should affirm its Opinion and Order and deny in its entirety the Joint Application for Rehearing of the Joint Rehearing Applicants.

II. ARGUMENT

As a threshold matter, the Commission should deny the Joint Application for Rehearing in its entirety inasmuch as it raises no new issues for the Commission's consideration. The Commission fully considered in its Opinion and Order the arguments raised by the Joint Rehearing Applicants and the Joint Application for Rehearing presents no new arguments for the Commission's consideration. In fact, the Commission's Opinion and Order spends 21 pages explaining the arguments raised by the parties, including all of the points now raised again by the Joint Rehearing

⁸ The Companies' letter stated: "While no formal acceptance of the Commission's Opinion and Order is required, in order to avoid unnecessary uncertainty regarding the implementation of the ESP, the Companies hereby provide notice that they accept the Commission's Opinion and Order issued on August 25, 2010 as their ESP for the period of June 1, 2011 through May 31, 2014, with such acceptance remaining dependent upon the terms and conditions of the ESP as approved being specifically implemented in the manner and timeframe contemplated thereby, no changes being made as a result of an application for rehearing or appeal, and with the Companies reserving the right to withdraw the ESP if the Companies do not concur with any change made to distribution rate design or the competitive bidding process beyond the scope of the terms and conditions of the ESP as filed."

⁹ The Joint Rehearing Applicants were collectively described as the "Ohio Consumer and Environmental Advocates" or OCEA in the Opinion and Order. Opinion and Order at 19. These parties are referred to as the Joint Rehearing Applicants inasmuch as they did not collectively identify themselves as OCEA in this pleading.

Applicants, and its rationale in applying the three-prong test.¹⁰ The Joint Application for Rehearing is generally speaking nothing more than a regurgitation of the issues raised by the Joint Rehearing Applicants and other parties who opposed the Combined Stipulation. In accordance with its well-established precedent,¹¹ the Commission should deny the Joint Application for Rehearing in its entirety.

Should the Commission again address the issues raised by the Joint Rehearing Applicants, the Industrial Energy Users-Ohio ("IEU-Ohio") submits (as a signatory party to the Combined Stipulation) that the Commission's Opinion and Order correctly found that the Combined Stipulation meets the criteria established by the Commission for the approval of settlements. As the Commission correctly found and explained in its Opinion and Order, the Combined Stipulation and the record below demonstrate that: (1) the settlement is the product of serious bargaining among capable, knowledgeable parties; (2) the settlement, as a package, benefits ratepayers and the public interest; and (3) the settlement package does not violate any important regulatory principles or practices. The Commission should reaffirm its Opinion and Order and deny in its entirety the Joint Application for Rehearing.

Additionally, the Commission's Opinion and Order correctly determined and explained why the proposed ESP met the statutory criteria for approval of an ESP, finding that the ESP was, in the aggregate, "... more favorable ... as compared to the

¹⁰ Opinion and Order at 21-42.

¹¹ See, for a recent example, *In the Matter of Commission's Review of Chapters 4901:1-17 and 4901:1-18, and Rules 4901:1-5-07, 4901:1-10-22, 4901:1-13-11, 4901:1-15-17, 4901:1-21-14, and 4901:1-29-12 of the Ohio Administrative Code*, PUCO Case No. 08-723-AU-ORD, Entry at 5 (September 22, 2010). ("Upon review of OCC's request, we agree that it essentially reiterates OCC's comments in this docket that were considered and rejected by the Commission in our Order and Entry adopting new rules. Therefore, the Commission finds that OCC's motion for waiver or suspension of the disconnection rules for minimum payment PIPP customers lacks merit and should be denied.")

expected results that would otherwise apply under Section 4928.142, Revised Code.”¹² The Joint Rehearing Applicants provide no arguments or additional record evidence not already fully considered by the Commission and therefore their claims that the Combined Stipulation does not meet the test found in Section 4928.143, Revised Code, should be denied.

Finally, in its Opinion and Order, the Commission found that the issues raised by the Joint Rehearing Applicants were legally deficient inasmuch as they did not cite to any evidence proving that the Combined Stipulation, *as supplemented*, did not meet the Commission's test for approving settlements.¹³ The Commission explicitly noted, in contrast, that the Combined Stipulation addressed many of the issues raised by OCEA regarding the initial Stipulation and that OCEA failed to update its analysis to account for additional benefits contained in the Combined Stipulation even though OCEA was given a full and fair opportunity to do so.¹⁴ The Joint Application for Rehearing once again cites no record evidence to support the position that the Combined Stipulation, *as supplemented*, does not meet the Commission's criteria for the approval of settlements. The Commission should deny the Joint Application for Rehearing inasmuch as its fails to remedy this fatal defect. Further, the Commission should clearly delineate in its Entry on Rehearing that, regardless of the hypothetical merits of the Joint Application for Rehearing, there is no record evidence upon which the Commission could make the determinations requested in the Joint Application for Rehearing even if those recommendations had any merit.

¹² Opinion and Order at 42-45.

¹³ Opinion and Order at 24, 32. Emphasis in original.

¹⁴ *Id.*

III. CONCLUSION

For the reasons described above, the Commission should deny in its entirety the Joint Application for Rehearing and reaffirm its Opinion and Order.

Respectfully submitted,

A handwritten signature in black ink, reading "Samuel C. Randazzo", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Memorandum Contra the Application for Rehearing by the Office of the Ohio Consumers' Counsel, Citizen Power, and the Natural Resources Defense Council* was served upon the following parties of record this 4th day of October 2010, via electronic transmission, hand-delivery or first class mail, postage prepaid.


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