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Public Utilities Commission of Ohio  
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180 E. Broad Street, 10th Floor  
Columbus, Ohio 43215

**In re: Case Nos. 09-1947-EL-POR, 09-1948-EL-POR and 09-1949-EL-POR  
Case Nos. 09-1942-EL-EEC, 09-1943-EL-EEC and 09-1944-EL-EEC  
Case Nos. 09-580-EL-EEC, 09-581-EL-EEC and 09-582-EL-EEC**

Dear Sir/Madam:

Please find enclosed an original and twenty (20) copies of APPLICATION FOR REHEARING OF THE OHIO ENERGY GROUP to be filed in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



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MLKkew

Encl.

Cc: Certificate of Service  
Kim Bojko, Hearing Examiner  
Greg Price, Hearing Examiner

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**BEFORE THE  
PUBLIC UTILITY COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison Company, The	:	Case Nos.	09-1947-EL-POR
Cleveland Electric Illuminating Company, and The Toledo Edison	:		09-1948-EL-POR
Company For Approval of Their Energy Efficiency and Peak	:		09- 1949-EL-POR
Demand Reduction Program Portfolio Plans for 2010 through 2012	:		
and Associated Cost Recovery Mechanisms	:		
	:		
In the Matter of the Application of Ohio Edison Company, The	:	Case Nos.	09-1942-EL-EEC
Cleveland Electric Illuminating Company, and The Toledo Edison	:		09-1943-EL-EEC
Company For Approval of Their Initial Benchmark Reports.	:		09-1944-BL-EEC
	:		
In the Matter of the Energy Efficiency and Peak Demand Reduction	:	Case Nos.	09-580-EL-EEC
Program Portfolio of Ohio Edison Company, The Cleveland	:		09-581-EL-EEC
Electric Illuminating Company, and The Toledo Edison Company.	:		09-582-EL-EEC

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**APPLICATION FOR REHEARING  
OF THE OHIO ENERGY GROUP**

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Pursuant to R.C. §4903.10, the Ohio Energy Group ("OEG") Petitions the Public Utilities Commission of Ohio ("Commission") for Rehearing of its March 23, 2011 Opinion and Order ("Order") in the above-captioned matter.

Specifically, OEG contends that the Commission erred in holding that the proposed allocation of program costs for large commercial and industrial customers under Rates GP, GSU and GT of the Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company (collectively "Companies") is reasonable and not in violation of the Stipulation approved in Case No. 08-935-EL-SSO ("2009 ESP").

Respectfully submitted,



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## MEMORANDUM IN SUPPORT

### **1. The Commission's Order Violates The Terms Of The 2009 ESP Stipulation.**

In post-hearing briefs OEG addressed the issue of the appropriate allocation method for EE/PDR program costs for the large commercial and industrial consumers served under Rates GP, GSU and GT. OEG advocated that those program costs be allocated directly to the rate schedule that benefits from the program, just like the Companies proposed to do with the residential customers on Rate RS and the small commercial customers on Rate GS.

The Companies addressed cost allocation on page 19 of their Initial Brief. The Companies proposed that EE/PDR costs should be tracked and allocated to "six customer sectors". The Mercantile-Utility (Large Enterprise) sector is comprised of Rates GP, GSU and GT. The Companies argue that combining Rates GP, GSU and GT into one sector "*continues the parties' agreement in the [2009] ESP Case that allocation of costs would be on a rate schedule basis.*" (FirstEnergy Initial Brief at 19).

On page 15 and 16 of its March 23, 2011 Order the Commission agreed with the Companies' proposed allocation methodology stating that it:

*"is not persuaded that the evidence in this proceeding demonstrates that the Companies' proposed allocation of EE/PDR program costs disproportionately impacts large C&I customers or that Companies' proposed allocation of EE/PDR program costs for large C&I customers is improper or inconsistent with the stipulation in the ESP case. Therefore, we decline to modify the proposed allocation of EE/ PDR program costs as proposed by OEG."*

The Commission's legal determination that the Companies' allocation proposal does not violate the terms of the ESP Stipulation is erroneous. Combining Rates GP, GSU and GT into one sector (Mercantile-Utility Large Enterprise) does not allocate costs on a rate schedule basis and violates the Stipulation in the 2009 ESP case. The provision of the 2009 ESP Stipulation cited by the Companies provides as follows: "*The Demand Side Management and Energy Efficiency rider will be implemented as proposed in the Companies' ESP, excluding smart grid; provided, however, that the allocation of costs will be on a rate schedule/class specific basis or as otherwise recommended as part of the energy efficiency collaborative...*" (February 19, 2009 Stipulation, Case No. 08-935-EL-SSO, Section E.2, page 21). Note that this provision of the 2009 ESP Stipulation explicitly states

that costs will be allocated "*on a rate schedule/class specific basis.*" It does not allow the Companies to group several classes or rate schedules into a single "*sector*" for allocation purposes. A "*sector*," as defined by the Companies, is not a rate schedule or a customer class. It is a group of rate schedules or customer classes. The Commission's determination that combining Rates GP, GSU and GT into one "*sector*" is consistent with the 2009 ESP Stipulation should be vacated.

**2. If The Commission Changes The Allocation Methodology That It Approved In The 2009 ESP Stipulation, It Must Provide A Foundation For Its Change Of Policy.**

The Supreme Court of Ohio has held that when the Commission breaks with its own precedent it must clearly explain the reasons for changing its position. In Office of Consumers' Counsel v. Public Utilities Com'n of Ohio, 10 Ohio St.3d 49, 461 N.E.2d 303, 305 (Ohio 1984) the Court reversed a decision of the Commission on the grounds that it failed to "*justify*" a provision of its Order that directly conflicted with a previous Commission order. The Court, citing Cleveland Elec. Illuminating Co. v. Public Utilities Com'n of Ohio, 42 Ohio St.2d 403, 330 N.E.2d 1, states:

*"Although the Commission should be willing to change its position when the need therefor is clear and it is shown that prior decisions are in error, it should also respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law."*

The Commission approved the 2009 ESP Stipulation that contained the provision that EE/PDR costs be recovered "*on a rate schedule/class specific basis.*" Its approved allocation method in this proceeding runs counter to the method approved by the Commission in the 2009 ESP Stipulation. This constitutes a change of position by the Commission. The Commission has failed to provide any rationale for this change. The Commission's March 23, 2011 Order simply concludes that the Companies' proposed allocation of EE/PDR program costs is not inconsistent with the Stipulation in the 2009 ESP case.<sup>1</sup> It offers no further explanation. If the Commission is determined to implement the Companies' proposed allocation methodology it must provide a justification for its change of policy.

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<sup>1</sup> Order p. 16.

**3. Allocation Of EE/PDR Program Costs To The Rate Schedule That Directly Benefits From The Program Is Just And Reasonable.**

OEG continues to advocate that EE/PDR program costs be allocated directly to the rate schedules that benefit from the program. Rate GT is comprised of only a few dozen very large industrial manufacturers including steel companies, auto manufacturers, and petroleum refiners. A single very large industrial customer can use as much as 1,000,000,000/kwh annually. The amount of Rate GT load comprised of lighting or motors which may benefit from the EE/PDR programs is tiny. Yet under the Companies' proposal these Rate GT customers will be allocated large amounts of the EE/PDR costs because of their significant energy usage. On the other hand, Rate GP is comprised of thousands of medium sized businesses where lighting or motors could represent a significant percentage of their load. These medium sized businesses could very well benefit from the EE/PDR programs and the Companies proposed allocation assigns too little cost responsibility to them.

A single example demonstrates the practical implications of grouping the largest business customers into one "sector". Exhibit SEO-C3 shows the Companies' proposed EE/PDR allocation for Toledo Edison. The combined energy usage for Rates GP, GSU and GT is 5,111,703 megawatt hours. This constitutes 51.6% of all energy sold by Toledo Edison. The Companies' allocation method assumes that the usage characteristics of the businesses that make up this "sector" is similar, despite the fact that the companies on Rates GP, GSU and GT that make up over half of Toledo Edison's energy sales range from large steel companies to primary voltage distribution warehouses. The EE/PDR programs that are appropriate for steelmakers vary greatly from those appropriate for warehouses. There is no precision to the Companies' method. It is unnecessarily blunt and inaccurate.

OEG recommends that the Commission directly assign EE/PDR costs to Rates GP, GSU and GT, just as it did for Rates RS and GS. This will ensure that the class that will benefit will pay their appropriate share, no more and no less. Once the EE/PDR costs are directly assigned to Rates GP, GSU and GT, then the rate design proposed by the Companies to recover the costs is reasonable.

It is important to note that OEG's proposal is revenue neutral to the Companies. If the Commission were to reconsider this issue and approve OEG's proposed allocation the only consequence would be that EE/PDR

costs would be recovered by the Companies from the specific rate schedules that benefit from the programs. It would not have any effect on the Companies' ability to recover costs.

Finally, no intervenor has opposed OEG's proposal and one intervenor, Nucor, makes a substantially identical recommendation as OEG. (Nucor Reply Brief p. 3.)

### **CONCLUSION**

The allocation of EE/PDR costs to Rates GP, GSU and GT proposed by the Companies and approved by the Commission violates the terms of the 2009 ESP Stipulation which requires that EE/PDR costs be recovered "*on a rate schedule/class specific basis.*" The Rate Schedule specific assignment method proposed by OEG is consistent with the 2009 ESP Stipulation. Further, it ensures that the Rate Schedule that receives the benefit of EE/PDR programs pays the costs, no more and no less. OEG urges the Commission to grant this Petition for Rehearing in order to redress this important issue.

Respectfully submitted,



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April 21, 2011

## CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or ordinary mail, unless otherwise noted, this 21<sup>st</sup> day of April, 2010 to the following:



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