

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Review of the</b>	)	
<b>Alternative Energy Rider Contained in the</b>	)	
<b>Tariffs of Ohio Edison Company, The</b>	)	<b>Case No. 11-5201-EL-RDR</b>
<b>Cleveland Electric Illuminating Company,</b>	)	
<b>and The Toledo Edison Company.</b>	)	

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**APPLICATION FOR REHEARING OF  
INTERSTATE GAS SUPPLY, INC.**

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Now comes Interstate Gas Supply, Inc. (“IGS Energy”). On August 7, 2013, the Public Utilities Commission (“Commission”) issued its Opinion and Order in this matter, disallowing recovery by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively “FirstEnergy”) of more than \$43 million for 2011 vintage renewable energy credits (“RECs”), which were purchased in August 2010. The Commission ruled that FirstEnergy should credit its Alternative Energy Resource (“AER”) account in the amount of \$43,362,796.50, plus carrying costs.<sup>1</sup>

Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code, IGS Energy submits this application for rehearing from the August 7, 2013 Opinion and Order, seeking only modification of the Commission’s decision with respect to the manner in which the refund will be administered. IGS Energy does not seek rehearing on the determination of the liability for or the amount of the refund. With regards to the ordered refund, IGS Energy has two concerns. First, given the size of the refund and the diminished number of standard service offer customers in FirstEnergy, IGS Energy is concerned that the refund could

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<sup>1</sup> Opinion and Order at 25-28.

skew the price to compare. The credit could artificially delay a consumer's interest in choosing a competitive supplier, thus adversely affecting the development of the competitive market.

Further, by ordering the refund to occur through only Rider AER, customers who were on standard service in 2011 and are shopping now will be excluded from any the benefit.

Therefore, IGS Energy sets forth two grounds for rehearing:

- (1) The Commission's order is unreasonable and unlawful because the significant refund will decrease the price to compare in such a fashion as to negatively impact the competitive market.
- (2) The Commission's order is unreasonable and unlawful because only current nonshopping customers will receive the ordered refund, even though there are other FirstEnergy customers who paid the costs associated with the 2011 vintage RECs.

WHEREFORE, IGS Energy respectfully requests that the Commission grant rehearing and modify its August 7, 2013 Opinion and Order accordingly to avoid these unreasonable and unlawful consequences. The Commission can avoid the unintended consequences of its decision while still fulfilling the purpose of the refund by requiring that the refund apply to all distribution customers of FirstEnergy. In the alternative, the Commission should require FirstEnergy to identify which customers paid Rider AER at the time of FirstEnergy's error and order FirstEnergy to give those customers the refund, regardless of who currently provides the electric service. If the Commission does not agree with either of the above, the Commission should not require the refund to take place through Rider AER. Instead, the Commission should order the refund via a check or another rider that is "outside" of the generation charges, so that the refund does not displace the competitive market and competitive offers that will be taking place during the refund period.

Respectfully Submitted,



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**MEMORANDUM IN SUPPORT**

Section 4903.10, Revised Code, provides that “[a]fter any order has been made by the public utilities commission, any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing in respect to any matters determined in the proceeding.” Such applications for rehearing shall be filed within 30 days after the entry of the order upon the journal of the Public Utilities Commission of Ohio (“Commission”). Interstate Gas Supply, Inc. (“IGS Energy”), was granted intervention in this proceeding,<sup>2</sup> and as such, is one of the parties who may apply for rehearing.

At page 28 of the Opinion and Order, the Commission ruled that The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company (collectively “FirstEnergy”) must credit the Alternative Energy Resource (“AER”) Rider in the amount of \$43,362,796.50 plus carrying costs, and within 60 days must file tariff schedules that reflect that refund and associated carrying costs. Thus, the Commission ruled that the refund be given to only those customers who currently pay the Rider AER rates. Those customers are not all customers, as FirstEnergy’s Rider AER clearly states:

Applicable to any customer that takes electric service under the Company’s rate schedules. The Alternative Energy Resource Rider (AER) is not applied to

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<sup>2</sup> Opinion and Order at 6, 34.

customers during the period the customer takes electric generation service from a certified supplier.<sup>3</sup>

FirstEnergy's tariffs state in no uncertain terms that shopping customers do not pay the AER rate. Hence, the refund in this case will apply only to those customers who are not shopping at the time the refund occurs. These facts are especially important to recognize the impact of the Commission's decision in this proceeding.

**A. The Commission's order is unreasonable and unlawful because the significant refund will decrease the price to compare in such a fashion as to negatively impact the competitive market.**

The ordered refund is a significant amount of money. It will apply to only those customers that take generation service from the EDU each month for the duration of the refund. Accordingly to the Commission's summary of switch rates for the month ending March 31, 2013, the FirstEnergy nonshopping customers are as follows:

<u>Company</u>	<u>% of Nonshopping Sales</u>
Cleveland Electric Illuminating	14.95%
Ohio Edison Company	23.42%
Toledo Edison Company	24.11% <sup>4</sup>

Thus, these statistics demonstrate that the refund will be given to the minority of customers in each of the FirstEnergy subsidiaries' service territories, regardless of who paid the \$43.3MM. As such, the refund will be concentrated in a proportionally small group of people, and have the ability to distort the price to compare over the period of the refund. In turn, the refund can then affect the competitive retail electric service ("CRES") suppliers' ability to compete with the upcoming rates in the FirstEnergy territories. To be very clear – IGS Energy is

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<sup>3</sup> The Cleveland Electric Illuminating Company Tariffs, PUCO No. 13 at Sheet 84; Ohio Edison Company Tariffs, PUCO No. 11 at 84; and The Toledo Edison Company Tariffs, PUCO No. 8 at Sheet 84.

<sup>4</sup> "Summary of Switch Rates from EDUs to CRES Providers in Terms of Sales for the Month Ending March 31, 2013," Public Utilities Commission of Ohio, <http://www.puco.ohio.gov/puco/index.cfm/industry-information/statistical-reports/electric-customer-choice-switch-rates/> (accessed August 19, 2013).

not taking issue with the refund itself in this request for reconsideration. However, IGS Energy believes that the impact of the ordered refund will have consequences beyond correcting the error made by FirstEnergy. The ordered refund will have an unreasonable and unlawful chilling effect on the competitive retail electric service market. Such an effect will be contrary to Sections 4928.02(A), (B) and (G), Revised Code, which state:

It is the policy of this state to do the following throughout this state:

- (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.
- (B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs.

\* \* \*

- (G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment.

The Commission found FirstEnergy's purchase of the 2011 vintage RECs to be imprudent and sought to correct FirstEnergy's error. However, refunding through FirstEnergy's AER Rider will cause problems in the competitive part of the market.

**B. The Commission's order is unreasonable and unlawful because only current nonshopping customers will receive the ordered refund, even though there are other FirstEnergy customers who paid the costs associated with the 2011 vintage RECs.**

As reflected earlier, the ordered refund will apply to only the current nonshopping customers of FirstEnergy. In other words, any customer who is not shopping when FirstEnergy implements the tariff changes in the near future will receive the refund. However, when FirstEnergy made its decisions in 2010, there were other customers who paid the costs associated with those REC purchases. They will not all receive the benefit of the refund if the

Commission's order remains. This is borne out simply by comparing the shopping statistics maintained by the Commission:

<u>Company</u>	<u>% of Nonshopping Sales (March 31, 2013)</u>	<u>% of Nonshopping Sales (December 31, 2010)</u>
Cleveland Electric	14.95%	31.28%
Ohio Edison Company	23.42%	32.75%
Toledo Edison Company	24.11%	31.80% <sup>5</sup>

If we accept that the overall number of FirstEnergy customers is the same between December 2010 and March 2013,<sup>6</sup> then the refund will not go to 16.33 percent of the Cleveland Electric Illuminating customers who paid Rider AER in December 2010, 9.33 percent of the Ohio Edison Company customers who paid Rider AER in December 2010, and 7.69 percent of the Toledo Edison Company customers who paid Rider AER in December 2010. IGS Energy also is of the belief that even more customers have migrated since March 2013, given that competitive rates continue to be below the EDU rates and five additional months have expired since the last statistics were available.

The manner in which the Commission has ordered the refund in this case will not give the benefit of the refund to those other customers simply because they elected to shop. This is not a fair outcome and modification to the order should be made.

**C. Fair and reasonable modifications can be accomplished.**

The Commission does not need to "gut" its decision or significantly alter it. The Commission can avoid the unintended consequences of its decision while still fulfilling the purpose of the refund by either (a) refunding the dollars to all customers regardless of whether

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<sup>5</sup> "Summary of Switch Rates from EDUs to CRES Providers in Terms of Sales for the Month Ending March 31, 2013" and "Summary of Switch Rates from EDUs to CRES Providers in Terms of Sales for the Month Ending December 31, 2010," Public Utilities Commission of Ohio, <http://www.puco.ohio.gov/puco/index.cfm/industry-information/statistical-reports/electric-customer-choice-switch-rates/> (accessed August 19, 2013).

<sup>6</sup> IGS recognizes that some customers may have moved in and out of the FirstEnergy service territories, but has presented the percentage difference as a simple means of demonstrating that the ordered refund overlooks many customer who paid for the error at some point.

they take generation service from the EDUs or (b) identifying those customers that paid for the RECs and directly refunding the dollars to those customers regardless of where they get their generation service at the time of the refund. In either instance, the refund should not be associated with the generation rates. The first option, refunding the dollars to all customers, is particularly attractive because it will ensure that whomever paid for the RECs will see a refund of some level and because it is administratively simple.

If the Commission does not agree with either of the above, the Commission should not require the refund to take place through Rider AER. Instead, the Commission should order the refund via a check or another rider that is “outside” of the generation charges, so that the refund does not displace the competitive market and competitive offers that will be taking place during the refund period.

One final note. CRES also must meet renewable energy portfolio standards. However, for a CRES supplier, any costs associated with meeting those standards must be contained within the prices that are charged to the consumers that enroll on their products. Poor purchasing decisions translate directly into poor product performance in the market. As long as EDUs remain in the merchant function, this type of situation remains likely to reoccur. A fully open competitive market without an EDU-provided default service eliminates the ability for this type of issue to occur, because the price to the consumer is the final price. Out-of-market purchases simply will not be favored by consumers, and sellers making such decisions will be less successful in the market.



**D. Conclusion**

WHEREFORE, IGS Energy respectfully requests that the Commission grant rehearing and modify its August 7, 2013 Opinion and Order in this proceeding in one of the manners recommended herein.

Respectfully Submitted,



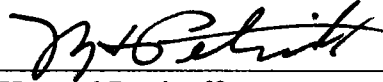
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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail on the following persons this 30<sup>th</sup> day of August, 2013.



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Summary: App for Rehearing Application for Rehearing electronically filed by M HOWARD PETRICOFF on behalf of Interstate Gas Supply, Inc.