

IN THE SUPREME COURT OF OHIO

In the Matter of the Adoption of Rules for )  
Alternative and Renewable Energy ) Case No. 2013-13-1472  
Technology, Resources, and Climate )  
Regulations, and Review of Chapters 4901:5- ) Appeal from the Public Utilities  
1, 4901:5-5, and 4901:5-7 of the Ohio ) Commission of Ohio  
Administrative Code, Pursuant to Amended )  
Substitute Senate Bill No. 221. ) Public Utilities Commission of Ohio Case  
No. 08-888-EL-ORD

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**NOTICE OF APPEAL OF APPELLANTS OHIO EDISON COMPANY, THE  
CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON  
COMPANY**

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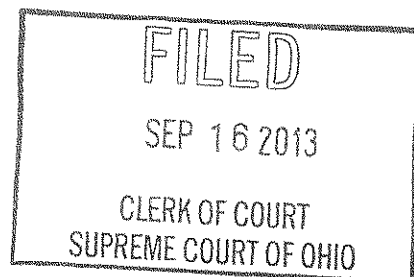
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## NOTICE OF APPEAL

Pursuant to Sections 4903.11 and 4903.13, Revised Code, and Supreme Court Rule of Practice 2.3(B), Appellants, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, "Appellants") hereby give their notice of appeal, to the Supreme Court of Ohio and the Appellee, Public Utilities Commission of Ohio ("Commission"), from: (i) the Commission's Opinion and Order entered on April 15, 2009 (Attachment A); (ii) the Entry on Rehearing entered on June 17, 2009 (Attachment B); (iii) the Entry on Rehearing entered October 15, 2009 (Attachment C); (iv) the Supplemental Entry on Rehearing entered on October 28, 2009 (Attachment D); and (v) the Entry on Rehearing entered on July 17, 2013 (Attachment E) in Commission Case No. 08-888-EL-ORD ("the Commission Case").

Appellants were and are parties of record in the Commission Case. As for the April 15, 2009 Opinion and Order ("April 15 Order"), pursuant to Section 4903.10, Revised Code, Appellants timely applied for rehearing on May 15, 2009. The Commission issued its first entry on rehearing on June 17, 2009 in which certain modifications to the April 15 Order were made. Because the June 17, 2009 Entry on Rehearing raised new issues, Appellants timely applied for rehearing on the June 17, 2009 Entry on July 17, 2009. On August 12, 2009, the Commission granted rehearing for further consideration of the issues raised by various parties in their respective applications for rehearing, and on October 15, 2009, issued an Entry on Rehearing in which further modifications and clarifications were made to the April 15 Order. The October 15, 2009 Entry on Rehearing was supplemented through an Entry entered on October 28, 2009. Because the October 15<sup>th</sup> and October 28<sup>th</sup> Entries raised new issues, Appellants timely applied for further rehearing on November 13, 2009. On December 9, 2009, the Commission granted rehearing for further consideration of issues raised by various parties. On July 17, 2013, the Commission issued its Entry on Rehearing of the

November 2009 Applications for Rehearing in which it denied all issues raised therein, thus making the Commission's April 15, 2009 Opinion and Order and related entries on rehearing final and appealable.

Appellants complain and allege that the Commission's April 15, 2009 Opinion and Order and related Entries on Rehearing (collectively "Order") are unlawful and unreasonable because the Order (i) imposes reporting requirements in conflict with those required by statute; (ii) establishes requirements that result in the exclusion of energy efficiency projects and/or related savings that otherwise would be recognized for compliance with R.C. 4928.66 in violation of said statute; and (iii) sets forth directives that are unconstitutional. More specifically, Appellants complain and allege that the Order is unlawful and unreasonable in the following respects, as set forth in Appellants' Applications for Rehearing:

1. The Order unreasonably and unlawfully imposes requirements that are not supported by law and in conflict with R.C. 4935.04 by mandating that electric utilities file an integrated resource plan as part of a long term forecast report.
2. The Commission's Order unreasonably and unlawfully excludes energy related projects put in place to comply with performance standards established by law, regulation or building code.
3. The Order unreasonably and unlawfully imposed standards not supported by law by establishing a definition of "double counting" that unreasonably precludes the use of a single resource to meet multiple energy-related benchmarks as set forth in Am. Sub. S.B. 221.
4. The Order unlawfully understates the effects of the energy related project or program by requiring that such effects be determined based on a comparison to industry standard new equipment or practices, rather than the actual situation existing prior to the implementation of the project or program.<sup>1</sup>
5. The Order as it pertains to the nature of projects allowed to be counted towards compliance with R.C. 4928.66 is unconstitutional in that it is

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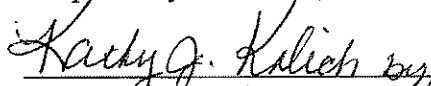
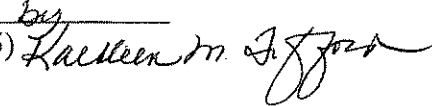
<sup>1</sup> While the Commission corrected this error with regard to mercantile customers, the above standard still applies to non-mercantile related projects. Accordingly, this assignment of error is limited to the latter scenario.

arbitrary, fails to provide meaningful standards as required by fundamental notions of due process and does not bear a rational relationship to public welfare.

6. The Order unreasonably and unlawfully imposes standards not supported by law by establishing a definition of "qualified resources" that improperly imposes geographic and temporal limitations on eligible Renewable Energy Credits.

WHEREFORE, Appellants Ohio Edison Company, The Cleveland Illuminating Company and The Toledo Edison Company submit that the Commission's Opinion and Order entered on April 15, 2009 and its related Entries on Rehearing entered on June 17, 2009, October 10, 2009, October 28, 2009 and July 17, 2013 in Commission Case No. 08-888-EL-ORD, all of which are attached to this Notice, are unlawful and unreasonable by reason of the errors noted above, and should be reversed, set aside, or appropriately modified by this Court. The case should be remanded to the Appellee with instructions to correct the errors complained of herein.

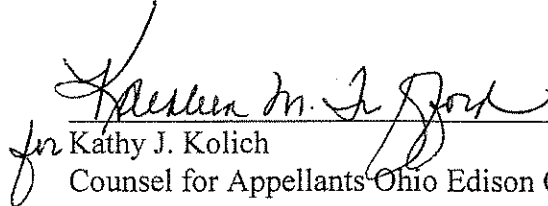
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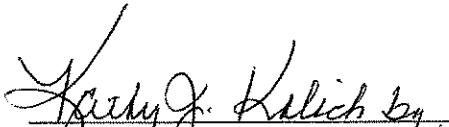
**CERTIFICATE OF FILING**

I hereby certify that a copy of this *Notice of Appeal* was filed in accordance with R.C. §4903.13 with the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio, via hand delivery this 16<sup>th</sup> day of September, 2013.

  
for Kathy J. Kolich  
Counsel for Appellants Ohio Edison Company,  
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The Toledo Edison Company

## CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Notice of Appeal* was served upon the parties of record through the Electronic Docketing Information System of the Public Utilities Commission of Ohio on this 16<sup>th</sup> day of September, 2013, with a courtesy copy being sent via electronic mail to the parties and addresses listed below.

  
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**Case No(s). 08-0888-EL-ORD**

Summary: Notice of Appeal (without attachments) electronically filed by Ms. Kathy J Kolich on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company