

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company and The Toledo)	
Edison Company for Authority to Provide)	Case No. 14-1297-EL-SSO
for 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 TO JOINT INTERLOCUTORY APPEAL,
REQUEST FOR CERTIFICATION TO FULL COMMISSION
AND APPLICATION FOR REVIEW BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,
NORTHWEST OHIO AGGREGATION COALITION, AND
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

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I. INTRODUCTION

On June 3, 2016, an Attorney Examiner of the Public Utilities Commission of Ohio ("Commission") issued an Entry establishing a discovery and hearing schedule in this matter. Entry at 4-5 (June 3, 2016) ("June 3 Entry"). The scope of the hearing will be limited to the provisions of and alternatives to a proposal by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("FirstEnergy") to modify the proposed Retail Rate Stability Rider ("RRS"). *Id.* at 3.

On June 8, 2016, the Office of the Ohio Consumers' Counsel, Northwest Ohio Aggregation Coalition, and the Ohio Manufacturers' Association Energy Group ("Appellants") filed a Joint Interlocutory Appeal, Request for Certification to Full Commission, and Application for Review of the June 3 Entry ("Interlocutory Appeal"). In the Interlocutory Appeal, the Appellants assert that the Attorney Examiners should certify

the appeal for consideration by the Commission because the June 3 Entry presents a novel question of law and departs from past precedent. Interlocutory Appeal at 2.¹ If the Commission grants the appeal, the Appellants request the Commission to reverse the June 3 Entry and direct FirstEnergy to withdraw its current application, thereby terminating it, and file a new standard service offer (“SSO”). *Id.*

The termination of the current electric security plan (“ESP”) sought by the Appellants is unlawful under the facts presented here and would injure customers that reasonably relied on the Commission’s order modifying and approving the ESP. Accordingly, the Commission should reject the Appellants’ request that the Commission direct FirstEnergy to withdraw its current application.

II. ARGUMENT

Under R.C. 4928.143(C)(1), the Commission may approve, modify and approve, or disapprove an application. If the Commission modifies and approves an application, the electric distribution utility (“EDU”) may withdraw its application, thereby terminating it. R.C. 4928.143(C)(2)(a). If the EDU terminates an application or the Commission disapproves the application, the Commission “shall issue such order as is necessary to continue the ... utility’s most recent standard service offer.” R.C. 4928.143(C)(2)(b).

In its March 31, 2016 Opinion and Order, the Commission modified and approved the application. Since then, FirstEnergy has not withdrawn its application, directly or constructively. Instead, it has filed tariffs that the Commission determined comply with the Commission’s Opinion and Order. Finding and Order at 3 (May 25, 2016). Additionally, FirstEnergy filed an Application for Rehearing to address modifications to

¹ Industrial Energy Users-Ohio (“IEU-Ohio”) takes no position regarding the allegations supporting the Appellants’ arguments in support of the Interlocutory Appeal.

the RRS among other things. Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Application for Rehearing ("FirstEnergy Application for Rehearing") (May 2, 2016). Because the Commission did not disapprove the application and FirstEnergy has not withdrawn its application, there is no lawful basis for the Commission to order the utility to file tariffs to continue the most recent SSO.

Moreover, requiring FirstEnergy to withdraw its application and file tariffs implementing the prior ESP would have consequences for customers that have relied on the Commission's approval of the ESP.² The ESP that became effective on June 1, 2016 contains provisions expanding the interruptible program and a transmission pilot that will offer the opportunity for some customers to reduce their total energy bills by managing their demand levels. Customers have already entered into contracts in reliance on these provisions. An order terminating the ESP would disrupt this reliance without lawful basis.

Moreover, the damage caused by an order terminating the ESP would not be limited to customers that relied on the ESP. Because these programs approved as a part of the ESP may reduce system demand during peak periods, they have the potential to benefit all customers, including those represented by Appellants. For example, the benefits of the interruptible program include increased system reliability and stability, the prevention of load shedding (*i.e.*, rolling blackouts) during emergency events, and job retention. See citations to transcript in the Post-Hearing Brief of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company at 108 and n. 521-23 (Feb. 16, 2016) ("FirstEnergy Initial Brief"); Post-Hearing Brief of the Ohio Energy Group at 24-25 (Feb. 16, 2016) ("OEG Initial Brief"); and Initial Brief in Support of

² IEU-Ohio and Ohio Energy Group have raised these concerns previously. See, for example, Industrial Energy Users-Ohio's Memorandum Contra the Application for Rehearing of the Office of the Ohio Consumers' Counsel and Northwest Ohio Aggregation Coalition at 7-8 (June 9, 2016).

ESP IV Stipulation by Nucor Steel Marion, Inc. at 12-15 (“Nucor Initial Brief”). By providing eligible customers a means of reducing their electric generation expenses, continuation of a modified interruptible program also furthers Ohio industrial companies’ effectiveness in the global economy. FirstEnergy Initial Brief at 148. As the record demonstrates, an interruptible rate program advances “numerous benefits, including the promotion of economic development and the retention of manufacturing jobs.” *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO, *et al.*, Opinion and Order at 40 (Feb. 25, 2015). Thus, directing FirstEnergy to withdraw its application and file tariffs implementing the prior ESP will harm not only large energy users, but all customers of FirstEnergy.

III. **CONCLUSION**

A Commission order terminating the ESP would be unlawful and would injure all customers. The Commission, therefore, should reject the Appellants’ request for an order directing FirstEnergy to withdraw its current application.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, "The PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties." In addition, I hereby certify that a service copy of the foregoing *Industrial Energy Users-Ohio's Memorandum Contra to Joint Interlocutory Appeal, Request For Certification To Full Commission and Application For Review By the Office Of The Ohio Consumers' Counsel, Northwest Ohio Aggregation Coalition, and Ohio Manufacturers' Association Energy Group* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio, to the following parties of record this 10th day of June 2016, via electronic transmission.

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