

**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.)	

**MEMORANDUM CONTRA OF INDUSTRIAL ENERGY USERS-OHIO
TO THE APPLICATION FOR REHEARING OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND
THE NORTHWEST OHIO AGGREGATION COALITION**

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I. INTRODUCTION

On March 31, 2016, the Public Utilities Commission of Ohio's ("Commission") issued its Opinion and Order modifying and approving an Electric Security Plan for The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("FirstEnergy"). FirstEnergy and several intervenors filed applications for rehearing of the Opinion and Order. On May 11, 2016, the Commission issued an Entry on Rehearing in which it granted rehearing of the Opinion and Order to afford itself additional time to consider the matters raised in the applications for rehearing (May 11 Entry"). On June 10, 2016, the Office of the Ohio Consumers' Counsel ("OCC") and Northwest Ohio Aggregation Coalition ("NOAC") filed an Application for Rehearing challenging the lawfulness of the May 11 Entry ("OCC/NOAC Application for Rehearing"). In their Application for Rehearing, OCC and NOAC seek an order from the Commission

directing FirstEnergy to withdraw from the modified and approved electric security plan (“ESP”) application.¹ Because the relief sought is not lawful, the Commission should deny the Application for Rehearing.

II. ARGUMENT

If the Commission grants their Application for Rehearing of the May 11 Entry, OCC and NOAC state that FirstEnergy is required to withdraw and terminate its ESP application because of a decision by the Federal Energy Regulatory Commission (“FERC”). OCC/NOAC Application for Rehearing at 5. If FirstEnergy will not act unilaterally to withdraw the ESP application, OCC and NOAC request that the Commission grant rehearing and “abrogate or modify its order to require FirstEnergy to withdraw and terminate its application.” *Id.*

Ohio law sets out the options for addressing the ESP application and its withdrawal. 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).

Under the facts of this case, the conditions necessary for the Commission to issue the order directing FirstEnergy to continue its most recent standard service offer do not

¹ Industrial Energy Users-Ohio takes no position regarding the merits of the assignments of error presented in the Application for Rehearing.

exist. The Commission has not rejected the application, and FirstEnergy has not withdrawn its application. Thus, the relief sought by OCC and NOAC exceeds the Commission's authority.²

Further, the relief sought by OCC and NOAC would unjustly injure other parties that are relying on the Commission's Opinion and Order modifying and approving the ESP application and the tariffs implementing that order.³ 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 OCC and NOAC. 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

² Moreover, the election to withdraw from an ESP rests with the EDU. R.C. 4928.143(C)(2)(a); *see, also, In re Application of Ohio Power Co.*, 144 Ohio St.3d 1, 2015-Ohio-2056, ¶¶ 24, 26-30.

³ 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).*

Energy Group at 24-25 (Feb. 16, 2016) (“OEG Initial Brief”); and Initial Brief in Support of 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, the relief sought by OCC and NOAC will harm not only large energy users, but all customers of FirstEnergy.

III. **CONCLUSION**

For the foregoing reasons, Industrial Energy Users-Ohio (“IEU-Ohio”) urges the Commission to deny the request by OCC and NOAC that the Commission require FirstEnergy to withdraw and terminate its application.

Respectfully submitted,

/s/ Matthew R. Pritchard

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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 *Memorandum Contra of Industrial Energy Users-Ohio to the Application for Rehearing of the Office of the Ohio Consumers' Counsel and the Northwest Ohio Aggregation Coalition* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio, to the following parties of record this 20th day of June 2016, via electronic transmission.

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