**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 for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan. | ) ) ) ) ) ) ) | Case No. 14-1297-EL-SSO |

---

# REHEARING REPLY BRIEF OF INDUSTRIAL ENERGY USERS-OHIO

---

Frank P. Darr (Reg. No. 0025469)
(Counsel of Record)
Matthew R. Pritchard (Reg. No. 0088070)
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
fdarr@mwncmh.com
mpritchard@mwncmh.com

**AUGUST 29, 2016**

**ATTORNEYS FOR INDUSTRIAL ENERGY USERS-OHIO**

## 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 for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan. | ) ) ) ) ) ) ) | Case No. 14-1297-EL-SSO |

---

# REHEARING REPLY BRIEF
# OF INDUSTRIAL ENERGY USERS-OHIO

---

## I. INTRODUCTION

The Staff of the Public Utilities Commission of Ohio ("Commission") recommended that the Commission approve a Distribution Modernization Rider ("DMR Proposal") to provide incentives to the Ohio Edison Company, the Toledo Edison Company, and the Cleveland Electric Illuminating Company ("FE") to begin grid modernization. In its initial rehearing brief, the Office of the Ohio Consumers' Counsel ("OCC") urges the Commission to approve division and allocation of the revenue requirement for the DMR Proposal "on the basis of 50 percent kwh allocation and 50 percent Demand (4 Coincident Peak)." Initial Rehearing Brief by The Office of the Ohio Consumers' Counsel, *et al*. at 45 (Aug. 15, 2016) ("OCC Rehearing Initial Brief"). Staff recommends the revenue requirement be split equally with half allocated based on an undisclosed demand basis and the other half allocated based on energy. Post-Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio at 13-14 (Aug. 15, 2016) ("Staff

Rehearing Initial Brief"). For the reasons presented in the Initial Rehearing Brief of Industrial Energy Users-Ohio ("IEU-Ohio"), the Commission should not approve the OCC or Staff allocation methodologies. Instead, the proper allocation methodology for the DMR Proposal, if it is approved, is based on distribution revenue.

## II. IF THE COMMISSION APPROVES THE STAFF'S DMR PROPOSAL, IT SHOULD ADOPT A RATE DESIGN BASED ON COST CAUSATION AND WHICH SUPPORTS THE STATE'S EFFECTIVENESS IN THE GLOBAL ECONOMY

The Staff recommends the DMR Proposal as a means of jump starting grid modernization. Staff Ex. 15 at 15. Because the intended purpose of the rider is to provide incentives to modernize the distribution system, basing the allocation fully on distribution revenue is a logical and reasonable approach for assigning relative revenue responsibility to customer classes that benefit from grid improvements. OEG Ex. 4 at 2. See, also, Initial Brief on Rehearing by Nucor Steel Marion, Inc. at 6 (Aug. 15, 2016).

Additionally, the use of distribution revenue as a basis for allocation instead of a generation based allocation is consistent with the goal of the State Electric Services Policy to support Ohio's effectiveness in the global economy. Increasing the costs of these industries without also providing additional benefits may leave energy intensive industries less competitive. A distribution revenue-based allocation will avoid a shift of revenue responsibility that would increase the costs of these industries.

## III. THE COMMISSION SHOULD NOT APPROVE ALTERNATIVE ALLOCATION METHODOLOGIES FOR THE STAFF'S DMR PROPOSAL BECAUSE THEY ARE NOT SUPPORTED BY ANY RECORD

In its Initial Rehearing Brief, OCC states that the allocation methodology proposed by OEG is "inappropriate because it would disproportionally allocate costs to residential consumers to the benefit of high usage industrial and commercial customers." OCC Rehearing Initial Brief at 44. In support of this criticism, OCC cites the total revenue responsibility of the residential class. *Id*. at 45. It then claims without record support that an allocation "on the basis of 50 percent kwh allocation and 50 percent Demand (4 Coincident Peak)" would be "a more equitable distribution between a pure demand or pure energy allocation." *Id*.

In its initial rehearing brief, Staff recommends that the revenue responsibility for the DMR proposal be "allocated and charged on a 50/50 demand/energy basis" because "[t]his is the most equitable treatment for all rate classes." Staff Rehearing Initial Brief at 13-14. Staff does not offer any support for this recommendation except a citation to the cross-examination of a Staff witness. *Id*. Additionally, Staff has not provided any proposed rate information or bill impacts to support its recommendation.

The Commission should reject these alternative allocation recommendations because they are not supported by the record.

R.C. 4903.09 requires the Commission to make findings of fact and base its decision on those findings of fact. A decision not supported by the record is unreasonable. *In re Columbus S. Power Co*., 128 Ohio St.3d 512, 519 (2011). Neither OCC nor the Staff has provided any basis in the record to support their recommendations concerning the allocation of the DMR revenue requirement. Without an adequate record, there is no basis for the Commission to find that the OCC or Staff proposal is "more equitable" or "the most equitable treatment of all rate classes."

Additionally, OCC's claim that its proposed allocation would be more equitable than a pure demand or a pure energy allocation is irrelevant. Even if OCC had provided some evidence to support the comparisons it was trying to make (and it did not), no party is proposing either a pure demand or a pure energy allocation. By comparing its proposal to a strawman that no one is advocating, OCC adds nothing to the resolution of the allocation of the DMR revenue requirement.

## IV. CONCLUSION

If the Commission authorizes the Staff's DMR Proposal, the Commission should approve an allocation of the DMR revenue requirement based on distribution revenue. Because this rider is proposed to provide an incentive for distribution infrastructure modernization, an allocation based on distribution revenue responsibility ties revenue responsibility to cost causation. This approach also is supported by the record. OEG Ex. 4. Additionally, an allocation methodology based on distribution revenue responsibility would reduce the burden on Ohio's energy intensive industries, relative to a generation-based approach, in keeping with the goal of the State Electric Services Policy to ensure the competitiveness of Ohio in the global economy.

Respectfully submitted,

*/s/ Frank P. Darr*

Frank P. Darr (Reg. No. 0025469)
Matthew R. Pritchard (Reg. No. 0088070)
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
fdarr@mwncmh.com
mpritchard@mwncmh.com

**Attorneys for Industrial Energy Users-Ohio**

## 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 *Rehearing Reply Brief of Industrial Energy Users-Ohio* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio, to the following parties of record this 29th day of August 2016, *via* electronic transmission.

*/s/ Frank P. Darr*
Frank P. Darr

cdunn@firstenergycorp.com
jlang@calfee.com
talexander@calfee.com
dakutik@jonesday.com
cmooney@ohiopartners.org
drinebolt@ohiopartners.org
tdoughtery@theoec.org
mkurtz@BKLlawfirm.com
kboehm@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
larry.sauer@occ.ohio.gov
Maureen.willis@occ.ohio.gov
joliker@igsenergy.com
schmidt@sppgrp.com
ricks@ohanet.org
stnourse@aep.com
mjsatterwhite@aep.com
yalami@aep.com
wttpmlc@aol.com
mkl@smxblaw.com
gas@smxblaw.com
lhawrot@spilmanlaw.com
campbell@whitt-sturtevant.com
glover@whitt-sturtevant.com
dwilliamson@spilmanlaw.com
meissnerjoseph@yahoo.com
trhayslaw@gmail.com
lesliekovacik@toledo.oh.gov
cynthia.brady@exeloncorp.com
david.fein@exeloncorp.com
lael.campbell@exeloncorp.com
christopher.miller@icemiller.com
gregory.dunn@icemiller.com
jeremy.grayem@icemiller.com
BarthRoyer@aol.com

athompson@taftlaw.com
Marilyn@wflawfirm.com
blanghenry@city.cleveland.oh.us
hmadorsky@city.cleveland.oh.us
kryan@city.cleveland.oh.us
bojko@carpenterlipps.com
gkrassen@bricker.com
dstinson@bricker.com
dborchers@bricker.com
mfleisher@elpc.org
kfield@elpc.org
todonnell@dickinsonwright.com
jeffrey.mayes@monitoringanalytics.com
twilliams@snhslaw.com
sechler@carpenterlipps.com
gpoulos@enernoc.com
mjsettineri@vorys.com
glpetrucci@vorys.com
thomas.mcnamee@ohioattorneygeneral.gov
thomas.lindgren@ohioattorneygeneral.gov
sfisk@earthjustice.org
msoules@earthjustice.org
tony.mendoza@sierraclub.org
laurac@chappelleconsulting.net
gthomas@gtpowergroup.com
stheodore@epsa.org
mdortch@kravitzllc.com
rparsons@kravitzllc.com
dparram@taftlaw.com
charris@spilmanlaw.com
dwolff@crowell.com
rlehfeldt@crowell.com
dfolk@akronohio.gov
Kevin.moore@occ.ohio.gov
William.michael@occ.ohio.gov
rsahli@columbus.rr.com
ajay.kumar@occ.ohio.gov

callwein@keglerbrown.com
ghiloni@carpenterlipps.com
kristin.henry@sierraclub.org
rkelter@elpc.org
mwarnock@bricker.com
whitt@whitt-sturtevant.com