

FILE

RECEIVED-DOCKETING DIV
2007 JAN 29 PM 4:04
PUCO

**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 Establish)
a Competitive Bid Process to Supply Market-)
Based Generation)

Case No. 06-1112-EL-UNC

REPLY COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

Samuel C. Randazzo, Trial Attorney
Lisa G. McAlister
Daniel J. Neilsen
Joseph M. Clark
McNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215
(614) 469-8000 (T)
(614) 469-4653 (F)
sam@mwncmh.com
lmcalister@mwncmh.com
dneilsen@mwncmh.com
jclark@mwncmh.com

January 29, 2007

**Attorneys for Industrial Energy
Users-Ohio**

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician SB Date Processed 1/30/07

**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)	Case No. 06-1112-EL-UNC
Edison Company for Authority to Establish)	
a Competitive Bid Process to Supply Market-)	
Based Generation)	

REPLY COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

I. INTRODUCTION AND BACKGROUND

On June 9, 2004, the Public Utilities Commission of Ohio ("PUCO" or "Commission") approved a rate stabilization plan ("RSP") for Ohio Edison Company, The Toledo Edison Company, and The Cleveland Electric Illuminating Company (collectively "FirstEnergy" or "Companies").¹ The Office of the Ohio Consumers' Counsel ("OCC") appealed the Commission's decision to the Ohio Supreme Court ("Court") and while the Court largely affirmed the Commission's decision, it remanded the RSP because it failed to provide an option for customer participation in the electric market through competitive bids or other reasonable means, as required by Section 4928.14(B), Revised Code.² The Commission, in response to the Court's remand, required FirstEnergy to file a proposal for a competitive bid process ("CBP"), which

¹ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Continue and Modify Certain Regulatory Accounting Practices and Procedures, for Tariff Approvals and to Establish Rates and Other Charges Including Regulatory Transition Charges Following the Market Development Period*, PUCO Case No. 03-2144-EL-ATA, Opinion and Order (June 9, 2004).

² *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 109 Ohio St.3d 328, 2006-Ohio-2110, at ¶138.

FirstEnergy submitted to the Commission on September 29, 2006.³ By Entry dated December 13, 2006, the Commission allowed interested persons and entities to file initial and/or reply comments by January 12, 2007 and January 22, 2007, respectively.⁴ Pursuant to the Commission's January 17, 2007 Entry granting FirstEnergy's requested extension of time to file reply comments, Industrial Energy Users-Ohio ("IEU-Ohio") hereby submits its Reply Comments regarding FirstEnergy's CBP Application. The failure of IEU-Ohio to specifically address every issue raised within the proposed CBP should not be construed as endorsement or agreement with that specific issue.

II. COMMENTS

IEU-Ohio applauds OCC for its recognition that it may not be prudent (beneficial to customers) to establish a price for a generation supply service option for customers based on a CBP and that the Commission should not undertake a CBP "...merely for the sake of conducting one." OCC Comments at 4. As OCC has acknowledged in other places,⁵ the wholesale market and its many working parts orchestrated by regional transmission owners or the Federal Energy Regulatory Commission ("FERC")

³ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Continue and Modify Certain Regulatory Accounting Practices and Procedures, for Tariff Approvals and to Establish Rates and Other Charges Including Regulatory Transition Charges Following the Market Development Period*, PUCO Case No. 03-2144-EL-ATA, Entry at 3 (July 26, 2006); *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Competitive Bid Process to Supply Market-Based Generation*, PUCO Case No. 06-1112-EL-UNC, Proposal to Establish a Competitive Bid Process to Supply Market-Based Generation (September 29, 2006).

⁴ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Competitive Bid Process to Supply Market-Based Generation*, PUCO Case No. 06-1112-EL-UNC, Entry at 1 (December 13, 2006).

⁵ See OCC's June 1, 2006 presentation to the Harvard Electricity Policy Group at http://www.ksq.harvard.edu/hepg/Papers/Migden-Ostrander_Wholesale_Retail_0606.pdf

are decidedly dysfunctional. Any CBP laid on top of this dysfunction will do nothing to help Ohio electricity customers secure better service or better prices.

Nonetheless, OCC continues to advocate in favor of a CBP or, additionally or in the alternative to a CBP, OCC proposes a "Green Pricing Competitive Bidding Option" (which OCC otherwise calls the "Green Pricing Option"). IEU-Ohio does not believe that Ohio's current electric restructuring legislation provides the Commission with jurisdiction to adopt OCC's Green Pricing Option.

Rather than inviting further chaos or wasting more time and money by entertaining a CBP or OCC's Green Pricing Option, IEU-Ohio urges the Commission and OCC to jointly request the Court to stay any obligation the Commission may have to comply with the remand order until December 31, 2008 because it makes no good sense for the Commission to establish a competitive bidding option. This will leave more time for the Commission, OCC and other stakeholders to work on the larger issues that must be addressed by Ohio to ensure reliable service and reasonable electric rates.

Respectfully submitted,



Samuel C. Randazzo, Trial Attorney

Lisa G. McAlister

Daniel J. Neilsen

Joseph M. Clark

MCNEES WALLACE & NURICK LLC

21 East State Street, 17th Floor

Columbus, Ohio 43215

(614) 469-8000 (T)

(614) 469-4653 (F)

Attorneys for Industrial Energy Users-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 29th day of January 2007, via electronic transmission, hand-delivery or ordinary U.S. mail, postage prepaid.



Lisa G. McAlister

James Burk
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

On Behalf of FirstEnergy Service Company

David Rinebolt
Ohio Partners for Affordable Energy
P.O. Box 1793
Findlay, OH 45839-1793

On Behalf of Ohio Partners for Affordable Energy

Leslie A. Kovacik, Senior Attorney
420 Madison Avenue, Suite 100
Toledo, OH 43604-1219

**On Behalf of the City of Toledo
(The Northwest Ohio Aggregation Coalition)**

Lance Keiffer
Assistant Prosecuting Attorney
711 Adams Street, 2nd Floor
Toledo, OH 43624-1680

On Behalf of Lucas County

Sheilah McAdams, Law Director
Marsh & McAdams
204 West Wayne Street
Maumee, OH 43537

On Behalf of the City Maumee

Brian Ballenger, Law Director
Ballenger & Moore
3401 Woodville Road, Suite C
Toledo, OH 43619

On Behalf of the City of Northwood

Paul Goldberg, Law Director
4853 Monroe Street, Suite 400
Toledo, OH 43623-4353

On Behalf of the City of Oregon

James Moan, Law Director
4930 Holland-Sylvania Road
Sylvania, OH 43560

On Behalf of the City of Sylvania

Peter Gwyn, Law Director
110 West Second Street
Perrysburg, OH 43551

On Behalf of the City of Perrysburg

Paul Skaff
Assistant Village Solicitor
Leatherman, Witzler, Dombey & Hart
353 Elm Street
Perrysburg, OH 43551

On Behalf of the City of Holland

Thomas R. Hays, Solicitor
3315 Centennial Road, Suite A-2
Sylvania, OH 43560

On Behalf of Lake Township

Janine Migden-Ostrander
Consumers' Counsel
Kimberly Bojko
Ann Hotz
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485

**On Behalf of The Ohio Consumers'
Counsel**

David Boehm
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202-4454

On Behalf of Ohio Energy Group, Inc.

M. Howard Petricoff
Vorys, Sater, Seymour & Pease
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008

**On Behalf of Constellation
NewEnergy, Inc. and WPS Energy
Services**