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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	Case No. 07-551-EL-AIR
Illuminating Company, and The Toledo Edison)	Case No. 07-552-EL-ATA
Company for the Authority to Increase Rates)	Case No. 07-553-EL-AAMCO
for Distribution Service, Modify Certain)	Case No. 07-554-EL-UNC
Accounting Practices and for Tariff Approvals.)	

REPLY BRIEF OF THE OHIO SCHOOLS COUNCIL

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I. Introduction

The Ohio Schools Council ("Schools") hereby files this reply brief. The Schools will reply to matters of the most significance to our positions. In not addressing each and every position advanced by the parties, we are not expressing agreement necessarily with any such position.

The Schools have proven that their position is supported by factual analysis, the laws of the State of Ohio, and reasonable considerations of public policy. The Companies have failed to discharge their burden under O.R.C. 4909.19 of proving their rate design and tariff rates are just and reasonable as the Schools have shown that the elimination of traditional school rates and the resulting drastic increase in distribution rates for Ohio's public schools is unjust, unfair, unreasonable, and unlawful.

In their filings and throughout this case, the Companies have ignored the Schools. They have tried to force their new rate design on the Schools without considering or analyzing the extreme rate increase impact of their proposals. In response, the Schools have presented detailed factual analysis of the Schools' usage and load characteristics establishing why the Companies' application is unjust and unreasonable and how the proposed distribution rates will impact the Schools dramatically. The reality of these proposed increases for individual school districts has been presented to the Commission, as more than 45¹ school officials testified at the local public hearings held in this case regarding the drastic adverse impact the proposed distribution rate increase will have on their school districts.

¹ At the time Ohio Schools Council filed its post-hearing brief stating that 37 school officials had testified at local public hearings, the transcripts from the Shaker Heights, Mansfield, and Springfield Local Public Hearings were not available. An additional nine school officials testified at these two hearings in opposition to the proposed rate increase.

To be constructive in this proceeding, the Schools have proposed three rate design or adjustment alternatives for the Commission's consideration that would result in reasonable, cost-based School rates:

1. retain school rates currently in place for CEI and TE, and set school rates in OE's service territory; or
2. if the Commission finds it reasonable to eliminate school rates as the Companies propose, a 27% downward adjustment for distribution demand charges for Schools within the General Service Class should be ordered. *See Schools' Brief Attachment A*; or
3. if the Commission finds it more reasonable to follow the Companies' approach to alleviating drastic rate increases on customer classes, a School Demand Credit Rider, similar to the Business Distribution Credit Rider currently proposed by the Companies for gradualism purposes, should be established to temper the drastic increase to School accounts. *See Schools' Brief Attachment B*.

Additionally, the Schools propose revisions to the Companies Contract Demand language and a reasonable reduction of 50 basis points to the Schools' class rate of return based on requested increased revenue stability.

II. The Schools' position is supported by detailed factual analysis, as the Companies' Brief is inaccurate and not persuasive in its attempt to discredit the Schools' analysis.

The Schools' position is supported by the facts in this case. The Schools are the only party that provided the Commission with a complete analysis of the Companies' proposed rate increase on Schools. Neither the Companies nor the Staff put forth the time and effort to analyze the impact of the proposed distribution rates on Schools or

their current cost of service based on existing rates. The Schools provided the Commission with detailed factual analysis of the Schools' demand and usage characteristics, how the Schools are diverse from the General Service Class, and how the Companies' rate design, if approved without adjustment, will over allocate costs to the Schools. (Tr. IV, p. 31 – 33)

Mr. Solganick's testimony on behalf of the Schools analyzes when Ohio's public schools are in and out of session; analyzes schools' air-conditioning usage; explains how the Companies failed to complete the necessary load research and cost-of-service study to assess the proposed rate's impact on Schools; explains how the Companies refused to provide the Schools with load data effectively limiting the Schools options for analysis; analyzes the load characteristics of the Schools; explains the sample selection criteria used and analysis performed in analyzing the Schools' energy demand; and comes to the common sense conclusion that the average school facility has a distinct drop in billing demand during the summer months when Schools are not in session effectively reducing the cost to the Companies to serve School customers. (OSC Ex. 2, p. 14 – 27)

It should also be noted that Mr. Solganick is a well credentialed rate-design and cost-of-service expert with upwards of 25 years of experience. The Companies expend a great deal of rhetoric attempting to discredit Mr. Solganick's analysis by showing that he did not know the *exact* number of school buildings within the *exact* number of schools within *all* 249 school districts represented by OSC. The Companies would have been well served to mind the old adage that people in glass houses shouldn't throw stones as Companies' Witness Hussing, who created the rates that would apply to the schools, stated that he is not an expert on schools and that he did not analyze schools. (Tr. II, p.

11,13) Similarly, the Companies' attempt to discredit the Schools' analysis based on the use of a school sample and the manner in which the sample was selected is itself without merit. The only reason a sample was used was because the Companies never completed the necessary load research and cost of service studies for Schools to support its rate design proposal and failed to complete the load research and cost-of-service study requested by the Schools during this case, inevitably forcing the Schools to complete their own load research. (Schools' Brief, p. 10, fn. 5) Mr. Solganick sets forth in his testimony exactly how he derived the sample data to complete his load analysis and the results of his analysis. (OSC Ex. 2, p. 26-27) Again, the Companies should not throw stones, as the Companies have lauded at length their own rate-of-return witness, Dr. Vilbert, whose analysis used a similarly created sample set from which to analyze data as set forth in his testimony. (Companies' Brief, p. 50, fn. 36, 53-54)

Other than the Companies' puffery, their only substantive argument (based on their only substantive analysis) is that Mr. Solganick's use of schools' average demand ratio as opposed to weighted average demand ratio mischaracterizes when peak demand occurs for schools and identifies the wrong month as the peak month. It is the Companies, not the Schools, who are mischaracterizing what these analyses show. As explained in the Schools' Brief, a review of Mr. Solganick's HS-7 and the Companies' Witness Hussing's Table 3 and Table 3A actually shows that the Schools' average and weighted average demand is lowest during the month of July, which, in contrast, is when the Companies are having their highest summer peak. (Schools Brief, p. 11) This is directly contrary to the argument the Companies make regarding the impact of weighting the Schools' average demand, and supports the testimony of Mr. Solganick.

Further, the Companies' Brief is misleading in stating that Mr. Solganick's approach identifies the wrong month as the peak month. What *both* the Schools' and the Companies' demand analyses show is that the Schools' peaks do not occur during the summer months of June, July, and August when Schools are not in session. This is in direct contrast to the remainder of the General Service Class which is summer peaking. If the Companies had not neglected to perform a school cost of service study or even a complete weighted average demand analysis for the General Service class, the Schools' position would almost certainly be even more indisputable.

As explained in the Schools' brief, the Companies' efforts in this case should be graded "F". (Schools Brief, p 8-12) The Companies have failed in their application and throughout this case to properly consider the demand characteristics of the Schools or properly analyze the proposed rate's impact on this customer class. The Companies failed to complete the necessary load research and cost-of-service study to analyze how its proposed rate increase would impact the Schools' class. This lack of analysis is particularly suspect in light of CEI and TE's previous rate cases during the 1990's where the Companies themselves asserted that Schools are not in use during the Companies' peak summer period and, for this reason, are less expensive to serve than other commercial customers. (Schools' Brief, p. 4-5)

The Companies now assert that their rate design is based on service voltage as if the truth of this statement should trump the fact that Schools have substantially different usage patterns than other General Service customers resulting in substantially lower costs of service to the Companies. Similarly, Staff also accepts that Schools may have different levels of cost-causation than the other members of the General Service class, but

supports a rate design slavishly based on service voltage rate-simplification that ignores the actual impact on customer groups such as the Schools. The Schools do not refute the argument that their service voltage is identical to the other customers in the General Service class. But, just as rational distinctions were used to distinguish residential customers who also take service at the same voltage level as the GS-Secondary class, the Schools request that rational and reasonable distinctions be made for this unique customer class as well.

Finally, and most importantly, the Schools take strong issue with the Companies' factually baseless and analytically inaccurate attempts to slander the Schools' valid arguments by suggesting the Schools are asking for a subsidy. The Schools are not asking for a subsidy at all as alleged by the Companies. Rather, the Schools are asking the Commission to recognize that because Schools factually have a lower cost-of-service to the Companies, this lower cost causation factor should be reflected in the proposed cost-based rate design developed for Schools. The only reason the Companies can still advance an argument unproven in this case that a subsidy is being requested is because they have failed to complete and present to the Commission any school cost-of-service study, load research comparing Schools to the General Service class, or any explanation why the Schools' usage characteristics and costs are different than they were during the 1990's when the Companies themselves agreed that Schools had lower costs and deserved School rates.

III. The Schools' position is also supported by Ohio law, which the Commission may apply to develop a just resolution for the Schools.

The Schools' position is supported by Ohio law on several bases. First, as stated above, the Companies have failed to discharge their burden under O.R.C. 4909.19 of

proving their rate design and tariff rates are just and reasonable. The Schools have shown that the elimination of traditional school rates and the resulting drastic increase in distribution rates for Ohio's public schools results in unjust, unfair, unreasonable, and unlawful rates as to the Schools. The Schools request that the Commission, after due consideration of the testimony and factual analysis presented by the Schools, find that the Companies' rate design and tariff rates are unjust and unreasonable as to their impact on the Schools, and accept one of the three alternate proposals made by the Schools in this case.

Second, Ohio Revised Code Chapter 4905² provides that a public utility shall not unreasonably or unduly disadvantage or prejudice any customer or customer class in the formation of rates and provision of utility service, and that different rates should be established based on actual and measurable differences in the furnishing of services. *Ohio Consumers' Counsel v. PUC* (2006), 109 Ohio St. 3d 328, 847 N.E.2d 1184. Factors to be considered include the "quantity used, the time when used, the purpose for which used, the duration of use, and other reasonable considerations which essentially distinguish the service required to meet the various demands." *County Comm'rs Asso. v. Public Utilities Com.* (1980), 63 Ohio St. 2d 243, 246, 17 Ohio Op. 3d 150, 407 N.E. 2d

² Specifically,

4905.33(A) No public utility shall directly or indirectly, or by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person, firm, or corporation **a greater or lesser compensation for any services rendered, or to be rendered**, except as provided in Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code, than it charges, demands, collects, or receives from any other person, firm, or corporation for doing a like and contemporaneous service under substantially the same circumstances and conditions. (Emphasis added)

4905.35(A) No public utility shall make or give any undue or unreasonable preference or advantage to any person, firm, corporation, or locality, **or subject any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage**. (Emphasis added)

534, 536 citing *Cleveland Elec. Illum. Co. v. Public Util. Comm.* (1975), 42 Ohio St. 2d 403, 330 N.E.2d 1.

The Schools have demonstrated in this case, as both the Commission and the Companies have agreed in previous cases, that the Schools' usage and cost of service are distinctly lower than that of general commercial customers within the General Service class. The Schools submit that the elimination of School rates and the inclusion of the Schools in the General Service class without a proper rate adjustment to reflect the Schools' actual and lower cost of service constitute an unreasonable, undue and unlawful prejudice and disadvantage to this customer class contrary to Ohio law.

Third, the Schools also note that the Ohio Supreme Court previously has upheld the establishment of school-specific rates by the Commission as reasonable based on the unique status of school customers. *County Comm'rs Assn. v. Public Utilities Com.* (1980), 63 Ohio St. at 246³. The Schools request the Commission, after due consideration of the testimony and factual analysis presented by the Schools, find that the Companies' rate design and tariff rates unreasonably and unduly disadvantage and prejudice the Schools; that the Schools have a unique status; and adopt the Schools' proposals in this case.

IV. The Schools position is supported by public policy.

As expressed by Governor Ted Strickland in his first inaugural State of the State address, "The future of a school child is *our* future . . . [E]ducation will feed the economy." Ohio's public schools play a critical role in creating Ohio's future.

³ Ohio public utility law (RC§ 4905.34) specifically contemplates that public utilities can enter into special contracts with subdivisions of the State including boards of education at reduced rates. The Companies have entered into such contracts with the 249 boards of education participating in OSC's Energy for Education II program, which expires on December 31, 2008.

Ohio's public school districts have expressed through the local public hearing process their heartfelt opinions why the proposed rate increase is unreasonable and unfair, and how it will directly affect their ability to provide Ohio's school children with a satisfactory level of education. (Schools Brief, p. 12-14) These rate increases also come at a time of record profits and prosperity for the Companies and their shareholders compared to widespread stagnation of State support for Ohio's public schools. (Schools Brief, p. 14, 21) The City of Cleveland also agrees with the Schools' position in this case. Cleveland's brief argues that Schools' unique status and singular mission to educate Ohio's children and the positive impact on quality of life within Ohio's communities that Schools foster should be given special consideration by the Commission. (Citing O.R.C. 4905.34) (City of Cleveland Brief, p. 4)

Contrary to the Companies' position, Schools are unique on both a public policy and cost-of-service basis. This is *not* a subsidy. No other customer class presents the same combination of public importance and limited resources, and also actual diverse demand characteristics and lower costs of service. Although the Companies posit that establishing school rates will add complexity to the rate schedules, the Schools' proposals endeavor to provide the Commission with alternatives to minimize the complexity, while ensuring that the Schools receive just and reasonable rates.


V. Conclusion

The Schools' position in this case is supported by detailed factual analysis, Ohio law, and considerations of public policy. The Companies have ignored historical precedent and common sense in designing rates to apply to the Schools. The Companies are asking the Commission to approve drastic rate increases for Ohio's public schools,

putting Ohio's current taxpayers against Ohio's school children and Ohio's future. The Schools have shown that the Companies' attempts to refute the Schools' analysis are at best either window dressing or supportive of the Schools' analysis. The Schools have been the sole party in this case to present a complete analysis of the Schools' usage characteristics and the impact of the rate increase on Ohio's public schools.

The Schools respectfully request that the Commission adopt the proposals presented by the Schools in its brief in this case (Brief p. 23-27, Attachments 1 and 2).

Respectfully submitted,



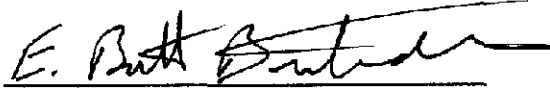
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply Brief of the Ohio Schools Council is being served by electronic or regular mail as previously agreed to by the parties this 18th day of April, 2008.



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