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The Public Utilities Commission of Ohio  
180 East Broad Street  
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## SUBJECT:

In the Matter of the Application of Ohio )  
Edison Company, The Cleveland Electric )  
Illuminating Company and The Toledo )  
Edison Company for Authority to )  
Increase Rates for Distribution Service, )  
Modify Certain Accounting Practices )  
And for Tariff Approvals )

Case No. 07-551-EL-AIR  
Case No. 07-552-EL-ATA  
Case No. 07-553-EL-AAM  
Case No. 07-554-EL-UNC

Dear friends:

We are enclosing a Reply Brief on behalf of the Citizens Coalition.

We have already faxed this. Please file it today. We are mailing by regular mail. Other parties are being served by email. We have also enclosed an envelope addressed back to us. Please time-stamp one of the enclosed copies and return this to us.

Let us know of any problems.

Thank you.

Very truly yours,

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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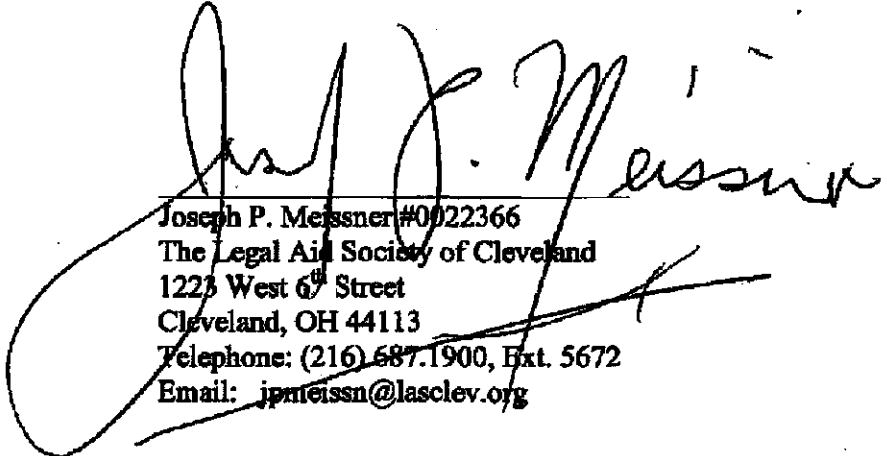
**REPLY BRIEF  
FILED ON BEHALF OF THE  
NEIGHBORHOOD ENVIRONMENTAL COALITION  
THE EMPOWERMENT CENTER OF GREATER CLEVELAND,  
AND  
THE CONSUMERS FOR FAIR UTILITY RATES**

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Now comes The Neighborhood Environmental Coalition (hereinafter "Coalition"), The Consumers for Fair Utility Rates (hereinafter "Consumers"), and The Empowerment Center of Greater Cleveland (hereinafter "Center") who, through their counsel, hereby file this Reply Brief in the above-captioned matters pursuant to Ohio Law, The Rules and Regulations pertaining to the Public Utilities Commission of Ohio,

and the relevant case law and orders. All three of the interveners are hereinafter referred to as "The Citizens Coalition."

Respectfully submitted,



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Greater Cleveland

## **REPLY BRIEF**

### **INTRODUCTION**

This Reply Brief is offered on behalf of the Neighborhood Environmental Coalition, Consumers for Fair Utility Rates, and The Empowerment Center of Greater Cleveland, also known as "the Citizens' Coalition." This Brief will focus on two issues raised in the Initial Briefs of other parties. The First Issue concerns funding for various low income assistance and DSM programs. The Second Issue focuses on whether, especially after considering all the public testimony, any rate increase should be granted at all at this time.

### **ARGUMENT ONE: If The PUCO Grants Any Rate Increase At All, The PUCO Should Insure Adequate Funding is Provided for Low Income Family Assistance Programs, DSM Programs, And Other Energy Assistance Programs.**

The PUCO is being urged by the Utility Companies in this proceeding to order substantial increases in customer rates related to the Companies' Distribution costs and needs. If any increase at all is allowed, the PUCO should insure that some measure of funding is provided for Low Income Family Assistance programs, DSM Programs, and other Energy Assistance Programs.

Ohio Partners for Affordable Energy (OPAE)—which is a premier organization that for many years has been active in promoting and establishing outstanding programs

to help low-income and moderate-income families with their energy needs—has urged that the Utility Companies should be ordered in this rate case to support \$5.5 million in annual programming for these energy programs. (See page 118 of the Utility Companies' Initial Brief.) The Citizens' Coalition considers this annual amount of \$5.5 million to be a minimum and would urge that the Commission undertake increasing this amount. (This could be done through the establishment in this proceeding of a collaborative of all groups including the Utility Companies that would consider and implement an adequate residential consumer energy program.)

In their Initial Brief toward the end, the utility companies raise three basic objections to these programs. First, they question the legality of the PUCO ordering these. Secondly, they question why the utility companies, rather than society in general, should be involved. Thirdly, they question whether these utility-funded programs are even necessary. This Reply Brief will deal with each of these objections.

A. Background of Utility Funded Programs: Funding Of Such Programs by FirstEnergy and Its Predecessor Companies Dates Back Almost Twenty Years.

Before discussing the Utility Company objections, it may be helpful to review the incontrovertible history of utility company involvement in these programs. At least as far back as the 1989 PUCO cases which concerned the Perry Nuclear Plant, Cleveland Electric Illuminating Company (one of FirstEnergy's predecessors and currently an operating utility company of FirstEnergy) began providing funding for these customer programs. This funding continued under Centerior Energy Company, the one-time entity which arose from the merger of CEI and Toledo Edison.

When deregulation and the electric industry restructuring came to Ohio in 2000, FirstEnergy agreed to provide \$5 million a year for five years for these customer energy programs. This continued until 2005 when the initial restructuring plan ended and the Rate Stabilization Plan (RSP) was initiated covering the years 2006 until the end of 2008. Under the RSP FirstEnergy continued to provide funding for these plans, although the annual amount of funding was only about sixty percent of the prior amount. (In 2006, the annual salary for the Chief Executive of FirstEnergy had increased from \$1 million in 2000 to some \$5 million five years later while the amount FirstEnergy was willing to provide for the energy programs had decreased from \$5 million to only a little more than \$1 million annually. (See citation later in this Reply Brief for this. )

The point of this brief history is that FirstEnergy and its predecessors not only have been providing funding for these energy programs, but these companies themselves have offered such funding. Unfortunately with the ending of the RSP by the beginning of 2009, funding from FirstEnergy and the Utility Companies may no longer be available. Perhaps it is a bit naïve and trusting to hope—especially given how the utility industry has deteriorated and how FirstEnergy in its quest for profits and ever-greater executive salaries has lost some of its “public” commitment—that FirstEnergy and its operating companies would voluntarily offer funding for these consumer energy programs even now. The Citizens Coalition would request that the Attorneys for the Applicant Companies—Stephen L. Feld, Kathy J. Kolich, Arthur E. Korkosz, James W. Burk, Mark A. Hayden, Ebony Miller, and Mark A. Whitt—would take back a request to FirstEnergy CEO Anthony Alexander and the other Company Executives that adequate funds be

provided for these consumer energy programs so that the utility company tradition of support for these will continue into 2009 and succeeding years.

**B. Despite the Utility Companies Contention That There Is No Legal Basis For Company Funding Of These Programs, There Is A Legal Basis, Especially In O.R.C. 4905.70 and O.R.C. 4928.02.**

In their Initial Brief, the Company Attorneys make the following statement:

"....(The) fact of the matter is that there is no basis, statutory or otherwise, for the Companies to provide such funding." (See page 119 of the Utility Companies' Initial Brief.)

Before looking at the statutes, let us consider the "or otherwise" first. In Section A above, we have provided some historical background. None of this is debatable. Administrative Notice can be taken of this past history and the relevant cases. Moreover, these cannot be explained away as some kind of "voluntary largess by the utility companies." Where would the Companies have a legal basis for such "largess" with customer rate funds? Furthermore, in the RSP case for these companies in 2005, the PUCO actually ordered a shifting of some \$5 million from one Company program for economic development into additional funding for the various programs for low income programs. How could the PUCO do this unless there was a basis, "statutory or otherwise," for such an order? The precedent of the support of the PUCO and the Utility Companies for these programs over almost twenty years duration is a sufficient basis for the Commission ordering funding of these programs in this proceeding for the years 2009 and beyond.

Let us take a look at the statutory support for such Commission action. At least two sections of the Ohio Revised Code are applicable. First, the following section offers support for such programs:

**4905.70 Energy Conservation Programs.**

The public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs.

Much testimony was offered on how the various customer programs can "promote and encourage conservation of energy and a reduction in the growth rate of energy consumption." Certainly, all the DSM programs satisfy this statutory provision. Other energy conservation programs would also comply.

A second section that offers statutory support is O.R.C. 4928.02:

**4928.02 State policy.**

It is the policy of this state to do the following throughout this state beginning on the starting date of competitive retail electric service:

- (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;
- (B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;
- (C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;
- (D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service;
- (E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote effective customer choice of retail electric service;
- (F) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;



(G) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa;

(H) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;

(I) Facilitate the state's effectiveness in the global economy.

Several of these sections are directly relevant to the PUCO ordering the Utility Companies to fund these various programs. Such programs "(e)nsure the availability" to low income customers of "adequate...efficient...and reasonably priced retail electric service." (See Section 02(A).) These programs by supporting DSM activities "(e)ncourage innovation and market access for cost-effective....demand-side retail electric service." (See Section 02.(D).) These programs--by assisting customers who otherwise could not afford such programs--"(e)ncourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote effective customer choice of retail electric service." (See Section 02(E).) These programs can assist with the "continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment." (See Section 02(F).) These programs certainly provide low and moderate income families with "protection against...unreasonable market deficiencies, and market power." (See Section 02(G).) Finally, through saving on energy consumption and promoting conservation, thus reducing the costs of Ohio products and services, these programs "(f)acilitate the state's effectiveness in the global economy." (See Section 02.(H).)

In conclusion, the questionable statement in the Utility Companies' Brief about the authority for the PUCO ordering these consumer energy programs can be turned into a true statement by simply making one change, that is, dropping the word "no." Here is

the final edited statement: "(t)he fact of the matter is that there is ... (a) basis, statutory or otherwise, for the Companies to provide such funding."

C. Despite the Utility Companies' Effort to Excuse Themselves from Supporting Such Programs, There Are Important Moral, Legal, and Social Policy Rationales for the Companies' Involvement In Implementing and Financing These Programs.

The Initial Brief of the Utility Companies tries to excuse the companies from being involved in these energy programs with the following assertions: "Poverty is a social problem that should be addressed by society at large. The problems that low income people have in paying their energy bills should be handled like other social problems and addressed comprehensively at the state and federal level." (See page 119 of Utility Companies' Initial Brief.)

This hardly sounds like "compassionate conservatism."

More pointedly, the Social Darwinist philosophy expressed in these statements and presumably approved at the higher levels of the Utility Companies is hardly consonant with what these companies have actually done for almost twenty years in funding such energy programs.

Of course, it is true that such problems should be "addressed comprehensively at the federal and state level," but that does not mean others cannot play a significant role. This has been realized throughout the utility industry where many companies take seriously the admonition that they are "public" utilities, and that they "owe" more back to their customers than do strictly capitalist enterprises. In many ways, public utilities benefit from their legal role, which includes notions of "reasonable rates of return,"

governmental support, and legal procedures, such as emergency rate relief and Construction Work in Progress legislation.

In this particular case, the Utility Companies are seeking to raise rates for a service that is absolutely necessary for life itself. The Companies know that their rate request will further burden senior citizens living on fixed incomes, school children for whom less funds will be available, merchants and businesses who either must raise their own prices after these rate increases or find themselves looking at hard times, and low-income and moderate-income families already worried about over-stretched budgets. The Companies may not have manufactured the gun, but the Companies are pulling the trigger. As a benefiting actor in this scenario, the Companies have a moral obligation to consider their role.

The Utility Companies can certainly help, given their high level of profits. This past year the Utility Companies earned some \$1.2 billion in profits. Is it too much to expect that they could provide less than half a percent (\$5.5 million is less than .005 of \$1.2 billion) of these profits to helping their own needy customers? Furthermore, in so far as these programs result in savings both for the Companies and for their customers, should not public policy call for ordering the Companies to participate in these programs? The answer is obvious, especially in light of the policy declarations of O.R.C. 4928.02, cited above.

Finally, the Companies should be ordered to participate because they have the expertise, knowledge, and experience which can help to insure these moneys will be well-spent and beneficial to the customers. FirstEnergy and its Companies, for example, have worked successfully for many years with Ohio Partners for Affordable Energy

(OPAE). These working relationships should be continued since they are to the advantage of the company, its customers, and the agencies through OPAE who serve the low income and moderate income clients' energy needs expeditiously, economically, and skillfully.

Along with efforts to excuse themselves, the Utility Companies also seek to drag their feet on DSM and other energy-saving activities, by seeking all sorts of research and cost-effective studies. (See pages 40 to 43 of the Initial Brief of the Utility Companies.) If the efforts of the Utility Companies are reduced to just these "bean-counting" activities, then a significant source of help for residential customers will have been effectively destroyed. Also the capabilities built up by OPAE and the other community groups will be lost, perhaps forever. This Commission should not allow the utility Companies to use these delaying tactics, but instead should order the Companies to spend at least \$5.5 million annually on these programs in keeping with the past activities of these Companies.

**D. Contrary to the Indication from the Utility Companies, There Is A Need-- As In The Past--for Further Funding from the Utility Companies For These Energy Programs.**

There is an indication in the Initial Brief of the Utility Companies that in light of some programs that already exist to help the poor and moderate-income families "further funding from the Companies is unnecessary and unwarranted." (See page 120 of the Initial Brief of the Utility Companies.) Following this assertion, the Companies' Brief then goes on to enumerate and briefly describe some programs that now exist to help families with their energy needs.

While, of course, there are programs, these are nowhere near sufficient to meet the need that exists. Various witnesses and parties have already presented testimony on this. The Citizens' Coalition will simply indicate its support and agreement with all of this. At the Public Hearings in Cleveland, there was sworn testimony on the need for these programs by an expert and professional who has dedicated over twenty years of her life to helping low-income and moderate-income utility customers. Here is her testimony:

My name is Liz Hernandez. I'm employed by the Cleveland Housing Network which is a nonprofit affordable housing organization in the City of Cleveland serving Cleveland and beyond. My purpose in giving testimony today is to confirm the need, the ever-growing need for low income customer assistance programs in the areas of bill assistance and energy conservation.

Cleveland Housing Network has provided housing and energy conservation services in the City of Cleveland and throughout northeast Ohio since 1984. Specifically we've managed the Home Weatherization Assistance Program in the City of Cleveland since 1987, as well as the Dominion East Ohio Gas Housewarming Program since 1989, as well as the funding provided to us by the Cleveland Electric Illuminating Company in 1989 for the Community Connections Program.

Cleveland Housing Network also manages funding from Cleveland Public Power and the city water department all with the purpose of lowering utility bills of lower income residents in the City of Cleveland and throughout the utility territory.

In addition to the above, Cleveland Housing Network is also involved in the oversight of four HEAP sites, that's the Home Energy Assistance Program for those who may be unfamiliar, which are processing assistance to applicants who qualify for emergency assistance or regular HEAP on their utility bills, both electric and gas, as well as to sign up those who qualify for the Percentage of Income Program.

The need for assistance with the low income community continues to grow. There's also a great need for assistance for those who don't qualify, quite honestly, for the energy assistance program, both on their bills and for conservation in their homes. They don't qualify because their income is above the limits of 150 percent of poverty or 175 percent of poverty, depending on the program. ....

It is clear that the energy burden for the low income people of northeast Ohio is great. Our HEAP sites have seen an increase of about 20 percent in the numbers of people seeking help. At Cleveland Housing Network's HEAP sites,

we also have seen an increase in the persons requesting the Percentage of Income Program. That has increased by about 25 percent.

.....

I would like to speak to the need for weatherization and energy efficiency programs that will lower the energy costs for low income residents as well as others if they were eligible to participate. As rates continue to climb, energy conservation is one of the only ways that struggling low income residents will be able to impact their disproportionate energy burden.

Cleveland Housing Network is able to provide comprehensive services both electrical base load energy efficiency programs, as well as gas conservation, in addition to providing health and safety measures which allow for full weatherization measures to be installed. In other words, a health and safety measure would be the correction of faulty wiring needed to ensure the safe installation of cellulose materials to insulate the walls and attic.

Energy savings in both gas and electric conservation programs that are provided reaches, in some cases, over 25 percent, 30, we've seen up to 50 percent. The network of providers, nonprofits, throughout northeast Ohio has really evolved over the last 10 years and the expertise has become really state of the art. We're able to significantly impact the burden when we have enough dollars to do so.

Funding is currently not meeting the needs of low income residents in FirstEnergy's territory. (Emphasis supplied.) Currently, \$2.7 million is allocated towards electric base load measures, such as the replacement of an energy-hog refrigerator with Energy Star appliances.

.....

The FirstEnergy funding in 2007 was expended well before the end of the funding cycle.... with most agencies who had access to these funds requesting additional money to meet the need. There were no additional dollars to be had. The funding needs to be doubled at a minimum [which would be two times the current \$2.7 million or \$5.4 million which approximates the amount sought by OPAE of \$5.5 million] to continue to meet the ever-growing demand for conservation services.

The only way to reduce the impact of the energy burden of those who are low income or even middle income is to invest in conservation programs. The number of persons eligible and in need of service far outweighs the availability of funding to provide such services

In summary, CHN is advocating that FirstEnergy Community Contributions program, which, by the way is mentored through the Ohio Partners for Affordable Energy [OPAE], be funded at a much higher level. At least double the current funding would allow agencies to get a little closer to meeting the ever-growing needs. (This is from Cleveland Public Hearings at pages 96 to 101.)

This eloquent and comprehensive testimony from someone who has been in the forefront of helping electric and gas customers for some two decades more than adequately

answers the unsubstantiated statements from lawyers of the Utility Companies that there is no need for additional programs to help low and moderate-income families. Also this testimony (which went unchallenged by utility company counsel answers some of the issues)—explicitly or impliedly--raised in the Initial Brief of the Utility Companies.

These energy programs do help customers significantly. These programs have depended upon Company funding in the past. Ohio does have an excellent set of agencies for administering and implementing these programs, including the Cleveland Housing Network (CHN) and Ohio Partners for Affordable Energy (OPAE). Let us continue to make use of these valuable capabilities, which includes ordering the Companies to provide at least \$5.5 million in annual funding. .

**ARGUMENT TWO: Based on the Strong And Persuasive Sworn Testimony at the Public Hearings, the PUCO Should Refrain At This Time from Granting Any Rate Increases to the Utility Companies. Any Rate Increases Should Only Be Allowed After Various Changes in Conditions As Well As Various Changes in the Companies' Behavior.**

The obvious goal of the Initial Brief of the Utility Companies is to support their request for significant rate increases. This Reply Brief of the Citizens' Coalition opposes any rate increases at the present time. Six reasons, all based on the Public testimony, are discussed below with citations to support the position that the PUCO should not grant any rate increases at the present time. Any one of these reasons is in itself sufficient for the PUCO to postpone any rate increases until either there has been a significant change in conditions or until the Utility Companies have altered their own behavior for the better.

A. FirstEnergy and the Utility Companies Are Earning Record Profits and Are In No Need of the Increases In Funds That Would Be Provided By This Current Case. Similarly, Company Stockholders Are Doing Extremely Well and Rate Increases Are Not Needed For Them At This Time.

Over and over again, witnesses at the Public Hearings asked why rate increases should be granted to the Utility Companies when the latter are enjoying colossal record profits. "They're showing a profit," testified Mr. Rich Colonna, "Why are we even here?" (See Austintown Public Hearings at page 46.) Mr. Ron Vereb bluntly stated, "Like many of the folks who spoke here tonight, and I think it's important to mention, that at a time when Ohio Edison and FirstEnergy is coming to us for a rate increase, they have record profits of 1.3 billion. We've heard that a number of times here tonight." Mr. Vereb went on to cite utility company officials: "Top corporate officials called 2007 a solid year and predicted even better results this year. So not only did they have a record profit, their own testimony is they're predicting a better year next year." (See Austintown hearings at page 51.)

Another Public Witness, Mr. Chad Holko, found himself almost speechless when he considered these profits, "They had record profits last year, in the ballpark of \$1.3 billion. That's amazing. Who here can actually – you can't fathom that much money." (Geneva Public Hearings at pages 60-1.) Ms. Connie Kline of the Concerned Citizens Network of Lake, Geauga, Cuyahoga, and Ashtabula Counties made this argument: "This rate increase isn't needed by a company that has had recent record billion dollar profits that have placed FirstEnergy in, quote, the best financial position I have seen in my 34 years, according to its Chief Executive officer, Anthony Alexander." (See Shaker Public Hearings at pages 8-9.)



Rev. Mike Frank testified that FirstEnergy has been doing quite well not only this past year, but also for several years:

What we have here is FirstEnergy who three years ago made a \$800 million profit; 2 years ago 1.2 billion; 1 year ago 1.2 billion. In 2000 FirstEnergy pledged \$5 million for energy programs for the poor and they paid their CEO \$1 million. 2006, they paid their CEO \$5 million and said they could only afford \$1 million to help for energy programs to the poor.

This is how we see their request for money. It's as if Jesse James had robbed a bank and dropped one of the money bags and now he's going back to the sheriff to see if he won't get the money bag for him to take... It's ludicrous, outrageous. (See Cleveland Public Hearings at pages 40-41.)

Stockholders in FirstEnergy have also done very well. "Stockholders," according to Ms. Gail Long, "had seen the value of their stock go up by something like 40 percent." (See Shaker Public Hearings at page 33.)

The Utility Companies are so profitable at present that the rate increase is not really needed in terms of supplying them with funds. So the PUCO should feel under no pressure to hurry this proceeding and grant any rate increase. At the very most, if any rate increase is granted, the actual collection of this from customers should be put off for several years and accrued as an asset without piling up burdensome and unnecessary interest.

**B. Given The Unreliability of FirstEnergy and the Utility Companies To Supply Electricity to Their Customers And The Failure of These Companies To Meet Their Obligations Regarding Reliability, No Rate Increases Should Be Granted At Present Until These Companies Do Satisfy Their Legal Obligations.**

Many people at the Public Hearings complained about electric outages and the unreliability of the FirstEnergy System to provide consistent and reliable electricity. Ms. Diana King, a CEI Customer, provided this testimony:

....I would like to comment on how important electricity is. My second son is seven and has a variety of learning and functional disabilities. He is smart and has been improving each year, but one thing he does fear are the lights going out.

If he comes home from school and the electricity is off, he will ask me, "Mom, did you pay the bill?" "Mom, will we have lights before it gets dark?" He becomes very fearful and scared as time passes and the electricity remains off.

Because of this I work very hard to make sure that we make payments and prevent disconnects. Unfortunately, this does not prevent us from losing power which has happened at times over the past years. While I can understand this happening during a major storm, we have also lost power at times for no apparent reason. This is what upsets my son the most. I can assure him that we have paid the bill, yet we still do not have power. He asks why and I don't have an answer for him.

It's important to my family that we have reliable power at a price that we can afford. I do not believe that we should approve any increases at this time. I believe we should demand that the utility company make sure that we who pay our bills do not have to worry about losing our power.

Ms. King makes a very reasonable request. She pays her bill as required, she should get reliable and consistent power. If the Utility Companies cannot provide that, then the PUCO should withhold any rate increases until the Companies do meet their obligations.

Mr. Tim Walters, a Community Organizer on Cleveland's West Side, pointed out some of the problems caused by the Companies power shortages: "I have experienced outages in the past year. This is an inconvenience because my food spoils in my freezer and refrigerator and I don't have any money to replace the food." (See Cleveland Public Hearings at page 45.)

Public witness John Ball had collected his own statistics on outages: "My concern tonight is how sporadic the power outages are in our village of Roaming Shores. It's a village just over 40 years old that have grown to 800 – over 800 homes. In 2007, I recorded 14 power outages. They weren't in the wintertime; they were August, July, whenever. 2008, already there's been seven power outages." (See Geneva Public Hearings at page 32.) Ms. Connie Kline, already quoted above, testified that "our family

has been a victim of power interruptions by CEI." She related, "We lost power to – our refrigerator was ruined and our heat pump was ruined." (See Shaker Public Hearings at pages 11 and 12.).

Mr. Terry White related his family's experiences with these Utility Companies:

"In 2004, we lost power and called customer service and they said, 'Rent a generator and we'll see.' We then rented a generator from Canfield equipment. The generator cost was a hundred dollars for two days. We then submitted a bill and they said they can't pay the bill because it was an act of God." (See Austintown Public Hearings at page 24.)

Mr. Anthony Skulina voiced his concerns about outages: "The quality of service is something to be desired. And even though our development has underground wiring, on January 24<sup>th</sup> the power went out at midnight and it came back on 18 hours later. I'm not sure what their problem was, but it was not weather related. It was also read and you'll hear testimony from others here about the situation with regard to outages as even published in the Cleveland "Plain Dealer" about an article on outages dated February 28<sup>th</sup> of 2008." (See Cleveland Public Hearings at page 60.)

Very eloquent and insightful testimony was presented by Attorney William Gruber who has assiduously pursued legal activities against FirstEnergy and its related utility companies because of the power outages and reliability failures experienced by the residents of the City of Shaker Heights. (See Shaker Public Hearings at pages 14 to 31.) Despite years of work by Shaker Heights and Attorney Gruber, the utility company still has not fulfilled its long-standing obligations and commitments. Here is Attorney Gruber's summation: "And by July 2007, which was after the date when all the upgrade was expected to be completed, CEI had completed 93 percent of the engineering work

and just about all of the tree trimming work, but only 39 percent of the construction work. And as of today, through February 2008, almost nine months after the promised completion date, only 49 percent of the construction work has been completed." (Shaker Public Hearings at page 19.) The grade of "49%" is a failing grade in anyone's bookkeeping.

In the evidentiary hearings in Columbus and in the Initial Brief of the Utility Companies, there is much discussion about the reliability issues and about the UMS Report from the UMS Group. (See page 102, as well as pages 101 to 118 of Initial Brief of Utility Companies.) The bottom line is that the Companies have done some things, but there are many actions they have not done and many goals still left unachieved. We are then left with promises from these utility companies that they will eventually satisfy most of the UMS recommendations.

Are these promises sufficient?

Ms. Evelyn Schaeffer presented extensive testimony about her experiences with power outages. She cited to the Staff Report and the uncontested findings and recommendations about the power outages, about the lack of performances by the utility companies, and what the Company must do to correct this situation. She also cites to the UMS report and its "two-and-one half page list of recommendations from the UMS Group that goes right to the heart of what we experience here on the ground in Ashtabula County. I know that I frequently experience brief interruptions. These occur several times a month and often in clusters on the same day." She also discusses longer outages her family has experienced. (See Geneva Public Hearings at pages 53 to 57.) Here is her conclusion: "I ask the Commission to order CEI to implement all of the UMS

recommendations immediately. We pay very high rates, and it seems only fair that we should receive a decent level of service." (See Geneva Public Hearings at page 57.)

Again, we raise the question: Are the promises of the Utility Companies sufficient at this point after all these years of reliability problems? The answer is no. Promises are not enough. Action is needed to meet all the reliability obligations including those in the UMS Report. Until the Utility Companies fully comply, no rate increases should be permitted.

C. Since According to the Public Testimony CEO Anthony Alexander of FirstEnergy Is Paid An Excessive Salary And Since Such An Enormous Salary Can Be Expected to Set a Poor Example for the Entire Company, No Rate Increase Should be Granted Until Corrective Action Is Taken.

A number of Public Hearing Witnesses expressed their concerns and opposition to the high salary paid to FirstEnergy CEO Anthony Alexander. Congressperson Dennis Kucinich sent a letter to PUCO Chairperson Alan Schriber which contained the following statement:

According to the publication "Businessweek," the President and CEO of FirstEnergy received a total calculated compensation of \$12,753,326 in 2006, 5 times the industry average for that same year for the same position. The amount represents 11.7 percent of the additional \$109 million, customers of FirstEnergy's Cleveland Electric Illuminating Company, or CEI, will pay in 2009 alone. (See Cleveland Public Hearings at page 29.)

These statements went unchallenged by Attorney Arthur E. Korkosz, Senior Attorney for the Applicant Utility Companies, although earlier he had objected and properly prevented Dr. David A. Cottrell who works for the Intervening Party Ohio Schools Council from testifying. In other words, this Commission can accept the figure of \$12,753,326 as the annual compensation for Mr. Alexander and that this is Five Times the industry average

for what others in similar positions to Mr. Alexander earn. If Mr. Alexander were to resign and the Utility Companies hired another CEO at the industry average pay for such a position, the savings could be used to offset a significant part of the increases in rates sought by the Companies.

Besides the Congressperson, others testified at the Public Hearings about their concerns on this CEO compensation. Mr. Leonard Skulina offered this calculation: "It already has been commented on the profitability of the company in their \$1.3 ....billion revenue just for 2007, and also the earnings of their chief -CEO, which is \$12.7 million in compensation. Or I figure about \$6,100 an hour is his rate of pay." (See Cleveland Public Hearings at pages 59-60.) This is a bit above the statutory minimum hourly compensation.

Mr. Herman Baerkircher urged the following: "As long as the company CEO rakes in an obscene salary, hundreds of times more than that of the average wage earner, it is unjustifiable to further burden the consumer with rates that, for Toledo, are already notorious throughout the state for being high." (See Maumee Public Hearings at page 50.) Ms. Kelli O'Neill saw the problem as broader than just the CEO: "The executives of FirstEnergy are still bringing in huge, bloated salaries." (See Geneva Public Hearings at page 49.)

Some other comparisons also may be helpful in evaluating whether Mr. Alexander's compensation is excessive. Administrative Notice can be taken of the fact The President of the United States is paid \$400,000 in annual compensation. Mr. Alexander is paid thirty times more than our President. Administrative Notice can also be taken of the fact that this one FirstEnergy CEO is paid as much as all our Ohio

General Assembly Representatives which includes 99 members of the House and 33 members of the Senate. Does it seem possible that this one CEO is worth as much as all of our General Assembly? Is he worth thirty times more than the U.S. President? The answers are obvious—the FirstEnergy CEO is vastly overpaid. This conclusion is firmly supported by comparing his compensation with his peers which shows him receiving five times the industry average of what others receive for similar positions. Furthermore, witnesses not only voiced their opposition to the huge salaries of this CEO, the salaries of other FirstEnergy executives were a concern.

How does Mr. Alexander's compensation affect his utility companies and their activities? What can we expect? We point to some history behind this CEO's compensation. In 2000, Mr. Alexander received about \$1 million, while in 2006 his annual compensation was some \$5 million. At the same time, low-income groups received about \$5 million of programming in 2000 while in 2006 FirstEnergy said it could only provide a little over \$1 million in funding for the poor. (See Cleveland Public Hearings at page 40.) How could a "public-minded" company allow this to happen? Furthermore, how should we expect other FirstEnergy and utility company employees-- when they see these actions of their company leaders-- to be motivated by a commitment to public service at a public utility, or will they also seek out "bloated salaries"? And what about the ordinary utility company workers? How can we expect them to react? The concern of the Citizens Coalition is that the excessive CEO salary sets a bad example for the entire FirstEnergy family of companies. Customers are opposed to rate increases when the executives are paid so excessively. Corrective action should be taken before the Commission grants any rate increase, This could include voluntary reductions in

salaries by Mr. Alexander and the other executives. Such a magnanimous step would be a good example for the entire company and for the entire region where many people are suffering from the poor economic situation and loss of employment.

In conclusion, CEO Alexander receives excessive compensation. This also may be true for the other Utility company executives. Until the Companies correct this, the PUCO should refrain from granting any rate increases.

D. Given the Extremely Harsh Economic Times Confronting Customers in the FirstEnergy Territory, These Customer Families Should Not Be Burdened With Any Rate Increases Until The Situation Improves and These Families Are Able To Pay Any Necessary Increases.

Time and again at the Public Hearings, testimony was offered on the tough economic situations now confronting FirstEnergy customers. Mayor Timothy Wagner of Maumee City summed up all the economic problems:

Why and how can a company that holds a virtual monopoly on the delivery of electrical power and the companies whose net profit exceeded one billion dollars in 2007 come before you again and request another disastrous increase in rates.

These are troubled times to be sure, as you well know. Our citizens on fixed incomes cannot absorb much more. The housing crisis in this country has hit this region extremely hard. Gasoline is threatening to hit \$4 per gallon by summer. Inflation in all areas is on the increase and manufacturing jobs are being damaged by unfair and inequitable competition overseas. I ask, how are we, as community leaders, supposed to attract businesses to our region with some of the highest energy rates in the nation? How many large and small businesses need to shut their doors before these utility conglomerates realize that by making it impossible to pay high utility costs they are cannibalizing their own future customers.

What we are seeing in Northwest Ohio's economy today may very well be some of the fallout from previous rate hikes scaring off potential investors in our area, new businesses, scaring them away. Scaring current businesses and the further deterioration of the middle class and the flight out of Ohio of high paying jobs. It hurts us and it hurts First Energy and Toledo Edison. (See Maumee Public Hearings at pages 11-12,)



Mr Charles Brainard commented: "You cannot continue to let them raise the rates on us, we can't afford it. People are moving out of Toledo, you look at the numbers, you know, just people moving out, Toledo is going away. The rest of the cities are going to -- we have the highest rates around." (See Maumee Public Hearings at page 55.)

Ms. Gail Long stated, "I'm particularly concerned that in our area annual incomes have fallen, foreclosures continue to go up, and I don't think we've seen the bubble burst on that one yet, and, in fact here in our own city we have had hearings around that issue over the last several months. Cleveland is the poorest major city in the country, and jobs continue to leave Ohio, and I think Northeast Ohio has suffered particularly in that area.: (See Shaker Public Hearings at page 34.)

Mr. William Stapleton summarized "And our state economically is not doing well. ... Home foreclosures in our state are out of control, property taxes are out of control." (See Springfield Public Hearings at pages 16-17.)

Mr Jim Iona was quite blunt in his assessment: "In northeast Ohio we're facing a recession, whether they admit it or not. Money's tight. My background, I'm a real estate broker. I am in individual's homes and businesses on a daily basis and I hear the complaints through my chamber and my business of the dollar's stretched to the maximum. People cannot afford an increase with utilities. Business is down." (Akron Public Hearings at page 18.)

Mr. Iona then offered this very practical advice which we implore the PUCO to take: "I think they [the utility companies] deserve one [a rate increase] but not in the immediate year to year and a half like they're asking for. ... But in a nutshell, my

concern is that with all the other costs, it's just going to put people in a deeper hole that we don't need to be in northeastern Ohio." (See Akron Public Hearings at page 19.)

Mr. Frank Moran called for sacrifice by all including the utility companies: "And I think that Ohio Edison or FirstEnergy should take a very good look at what they're asking. Just as we have to tighten our belts because of the -- all the prices that we have to stand for, as far as the increase is concerned, they should have to do that, too." See Austintown Public Hearings at page 23.)

Mr. John Zordich recommended, "Plain and simple, this rate increase should not be approved due to the present economic situations in Ohio, such as job losses, home foreclosures and unemployment numbers." (See Austintown Public Hearings at page 18.

In conclusion, because of the serious and ongoing financial crises faced by our cities and region, the Citizens Coalition urges the PUCO to delay any rate increases until economic conditions improve and people are better able to afford these.

E. If the PUCO Does Grant A Rate Increase for Distribution Issues, This Is Liable to Lead to High, Unjust, and Unreasonable Overall Rates Since Customer Bills Will Then Include Not Only Higher Distribution Charges But Also The Very Substantial Transition Costs (aka Stranded Costs, aka Rate Stabilization Charges) Which Were Supposed to Be Taken Out Of Rates By Now.

Let us suppose that the PUCO does grant the rate increases for various costs related to Distribution needs. Customers do not just pay a Distribution Cost in their bill, but pay an entire bill which includes the current transition costs (aka stranded costs, aka rate stabilization charges). A number of witnesses at the Public Hearings pointed out that these transition costs were supposed to have come out of their rates by now.

Mr. Mike Hurd summed this up: "Now, in 2001 the stranded costs started and they were supposed to end in 2005 originally.... We've already seen stranded costs extend two years beyond what they're supposed to and now a big rate increase because probably utility companies see they can't make a marketable share when a deregulation hits, so they want a rate increase on their distribution side so they can make up for it." (See Wauseon Public Hearings at pages 32 -33.)

Another witness, Ms Connie Kline, expounded: "At least part of FirstEnergy's record profits are the result of the PUCO allowing FirstEnergy to continue charging customers for Perry and Beaver Valley nuclear power plant construction cost overruns that were 1,000 percent over original projections and have been paid off three times. First in the rate case deal in 1989, then in the market development period from 2001 to 2005, and now under the Rate Stabilization Plan of 2005 to 2008. FirstEnergy has been setting record profits by gouging rate payers out of 12 billion dollars for the rate stabilization charge, formerly called the transition or stranded costs for the Perry and Beaver Valley reactors. That charge is still in our bills even though the plants have been paid for three times over." (See Shaker Public Hearings at page 9.)

If the PUCO increases rates in this case, then the overall bills of customers will increase although rates should actually go down since the transition charges (aka stranded costs, aka rate stabilization charges) should have already been subtracted from our rates. The PUCO should insure that customers are not charged excessive, unfair, and unreasonable rates. The only way to do that is for the PUCO to hold off any rate increase in this case until the transition charges (aka stranded costs, aka rate stabilization charges) are removed from our rates and our bills.

F. Given That Immense Changes May Be About to Take Place In Ohio's Electric Utility Laws And That No One Can Predict What These Will Be And Given That The Utility Companies In Their Initial Brief Suggested That The PUCO Should Wait Before Deciding Certain Issues. The Citizens Coalition Would Urge the Commission To Adopt Generally the Approach Recommended By The Utility Companies and Put Off Any Decision In This Case Until After The Legislative Changes Are Enacted and Signed Into the Law By The Governor of Ohio.

We are all aware of the tremendous legislative and executive efforts now taking place in Ohio to provide for new legislation for the electric industry. The Governor of our State, many businesses, many companies, many cities, and many individuals have been involved in this ongoing debate. Nobody can predict what will eventually happen, but this could have an enormous impact upon the PUCO, regulation and deregulation in Ohio, and even on issues in this very proceeding.

The Utility Companies in their Initial Brief pointed out how the new legislation could impact on one area of concern in this case, namely "energy efficiency and DSM efforts." (See Utility Companies Initial Brief, p. 43.) The Utility Companies seem to be suggesting that any PUCO decision on these crucial consumer issues and programs should await the outcome of the new legislation.

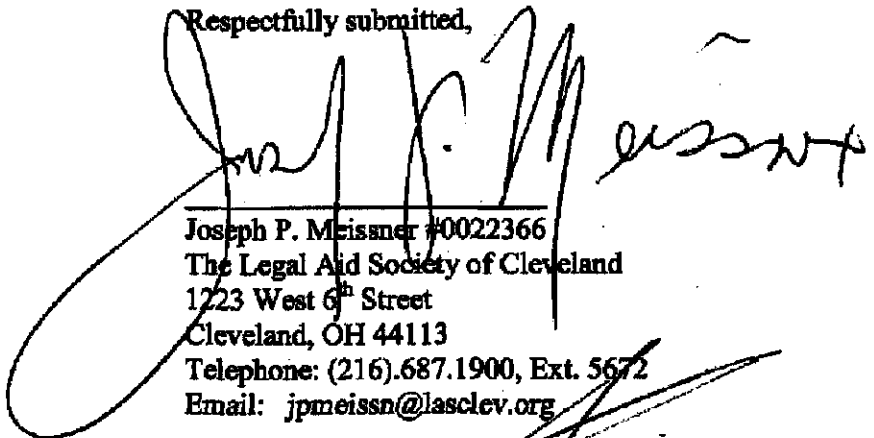
The Citizens Coalition would like to join the Utility Companies in a general policy that the PUCO should not decide this current case until after all of us see what new legislation emerges from Columbus. At this time, we would urge the PUCO not to rush to judgment, especially since there is no way generally under current Ohio utility law for customers to recover for bills already paid. If, for example, the PUCO raises our rates when eventually the new legislation would have resulted in decreases, customers may forever lose what they paid in the increased bills. Rather than have this happen, the

PUCO should await the outcome of the proposed legislation and consider how that impacts the issues in this proceeding.

### **CONCLUSION**

Wherefore, Coalition, Consumers, and Center (The Citizens Coalition) respectfully request, first, that the PUCO, if it grants a rate increase, insure that utility company funding--as it has been in the past--is provided for customer energy programs from the beginning of 2009 and into the future. Secondly, the Citizens Coalition would request that the PUCO not grant a rate increase at this time for the reasons outlined in the Reply Brief above.

Respectfully submitted,



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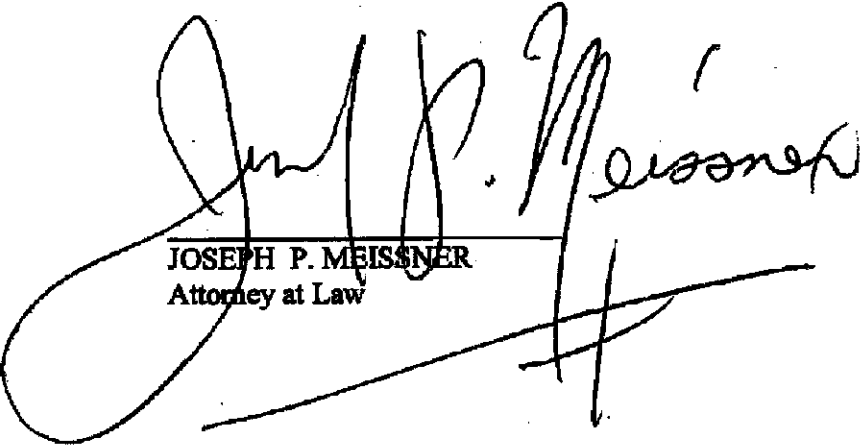
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### CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply Brief was served by either Email or by regular U.S. Mail, postage prepaid, upon the parties of record identified below on this 18th day of April, 2008.



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