

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review )	
of Chapters 4901:1-7 and 4901:1-18 and )	
Rules 4901:1-5-07, 4901:1-10-22, 4901:1- )	Case No. 08-723-AU-ORD
13-11, 4901:1-15-17, 4901:1-21-14, and )	
4901:1-29-12 of the Ohio Administrative )	
Code. )	

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**REPLY TO  
AEP OHIO MEMORANDUM CONTRA  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,  
CLEVELAND HOUSING NETWORK, EMPOWERMENT CENTER OF  
GREATER CLEVELAND, THE NEIGHBORHOOD ENVIRONMENTAL  
COALITION, CONSUMERS FOR FAIR UTILITY RATES, UNITED  
CLEVELANDERS AGAINST POVERTY, SUPPORTS TO ENCOURAGE LOW-  
INCOME FAMILIES, CITIZENS UNITED FOR ACTION, PRO SENIORS,  
HARCATUS TRI-COUNTY COMMUNITY ACTION ORGANIZATION, OHIO  
INTERFAITH POWER AND LIGHT, THE OHIO FARM BUREAU  
FEDERATION, THE OHIO FARMERS UNION, AND THE EDMONT  
NEIGHBORHOOD COALITION**

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On September 10, 2008, the above-listed organizations ("Consumer Groups") filed a motion asking the Public Utilities Commission of Ohio ("PUCO" or "Commission") to open a Commission-ordered investigation ("COI") into the appropriate credit and disconnection rules to be adopted by the Commission, focusing on payment plans and disconnection rules that will enable customers – especially low-income customers -- to retain service without unduly burdening other companies or the gas and electric companies subject to those rules.<sup>1</sup> On September 18, 2008, Columbus Southern Power Company and Ohio Power Company (collectively, "AEP Ohio") filed a one-and-

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<sup>1</sup> Motion for a Commission-Ordered Investigation into Amendments to the Commission's Credit and Disconnection Rules (September 10, 2008) ("Motion").

one-half page memorandum contra the Consumer Groups' Motion. The Consumer Groups file this reply.<sup>2</sup>

AEP Ohio has two objections to a COI. First, AEP Ohio asserts that a COI “would be terribly inefficient for rule making.”<sup>3</sup> Second, AEP Ohio argues that “written comments should be able to convey to the Commission the ‘facts’ that ... are necessary for the Commission to make informed decisions” on these rules.<sup>4</sup> Both objections disregard the aspects of this rulemaking that make facts especially important.<sup>5</sup>

The Consumer Groups' Motion correctly pointed out that the rules under consideration here are especially dependent on the facts of company disconnection and payment practices, and of customers' responses to those practices. For example, the level of customers' payment patterns under utility-offered and Commission-ordered payment plans, including the percentage of income payment plan (“PIPP”) are crucial to determining the proper payment requirements under those plans. As seen in the initial comments filed in this proceeding, those patterns vary considerably, as described (not always consistently) by the utilities. It is vital that the Commission have a clear understanding of these facts before adopting rules that will impact whether customers will retain gas and electric service in these difficult economic times.

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<sup>2</sup> The reply is filed pursuant to Ohio Adm. Code 4901-1-12(B).

<sup>3</sup> AEP Ohio Memorandum Contra at 1.

<sup>4</sup> Id. at 2.

<sup>5</sup> AEP Ohio indignantly states that a COI “is particularly inadvisable at a time when several of the joint movants have asked for continuances of proceedings pending before the Commission under Sec. 4928.141-4928.143, Ohio Rev. Code, because those entities are unable to meet the procedural schedules established for those cases.” Id. at 1. The joint movants are perfectly aware of the burden on all parties created by the General Assembly's decision to place tight deadlines on the new breed of electric cases, and have indeed requested extensions that will allow parties a reasonable opportunity to investigate the massive rate increases proposed by the electric companies in those cases. The motion for a COI did not propose a specific timeline for the investigation, and scheduling the main part of the investigation after the conclusion of the pending electric cases might be best for all parties.

Contrary to AEP Ohio's view, such an understanding is best – and likely more efficiently – gained through the processes of an investigation. These would include ample discovery<sup>6</sup> and a hearing at which parties' witnesses could be cross-examined. As John Henry Wigmore stated, "Cross-examination is the greatest legal engine ever invented for the discovery of truth."<sup>7</sup> And the truth about what current payment requirements produce is especially crucial to adopting rules that will encompass such requirements for Ohio consumers.

AEP Ohio also seems to be confusing the motion for a Commission-ordered investigation with the Consumer Groups' earlier motion for local public hearings.<sup>8</sup> In the earlier motion,<sup>9</sup> the Consumer Groups noted the numerous occasions in rulemakings where the Commission has held hearings to hear directly from the public<sup>10</sup> rather than depending exclusively on the comments filed in its dockets.

Finally, as an alternative to a COI, AEP proposes a "round table" discussion process facilitated by PUCO Staff.<sup>11</sup> Although AEP claims that workshops were effective "for implementing rules required to implement customer choice,"<sup>12</sup> the PUCO

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<sup>6</sup> R.C. 4903.082.

<sup>7</sup> Wigmore on Evidence, Vol. 3 at 3.

<sup>8</sup> See AEP Ohio Memorandum Contra at 2.

<sup>9</sup> Motion for Local Public Hearings (July 8, 2008).

<sup>10</sup> Id. at 1, n.2 and at 2, n.7,

<sup>11</sup> AEP Memorandum Contra at 2.

<sup>12</sup> Id.

should recognize that an approach is less relevant here where there is extensive historical experience.<sup>13</sup>

AEP Ohio's Memorandum Contra does not refute the many reasons expressed in the Consumer Group's Motion for why a COI is appropriate and necessary for development of these rules. The Consumer Groups' Motion should be granted.

Respectfully submitted,

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<sup>13</sup> Which is not to say that a rulemaking with comments and workshops is not likely preferable to one limited to comments.

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **Reply Memorandum** was served by first class United States Mail, postage prepaid, to the persons listed below, on this 25<sup>th</sup> day of September 2008.

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Summary: Reply Reply to AEP Ohio Memorandum Contra by The Office of the Ohio Consumers' Counsel, Cleveland Housing Network, Empowerment Center of Greater Cleveland, The Neighborhood Environmental Coalition, Consumers for Fair Utility Rates, United Clevelanders Against Poverty, Supports to Encourage Low-Income Families, Citizens United for Action, Pro Seniors, HARCATUS Tri-County Community Action Organization, Ohio Interfaith Power and Light, The Ohio Farm Bureau Federation, The Ohio Farmers Union, and The Edgemont Neighborhood Coalition electronically filed by Ms. Deb J. Bingham on behalf of Richard C. Reese