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October 6, 2008

**VIA HAND DELIVERY**

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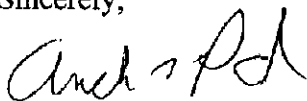
RE: Case No. 08-936-EL-SSO

Dear Sir/Madam:

I am enclosing for filing with your agency, an original and twenty (20) copies of The City of Cleveland's Post-Hearing Brief, pursuant to Rule 4901-1-02 of the Ohio Administrative Code.

Please provide one (1) time-stamped copy of the enclosed document to the representative hand-delivering this information.

Sincerely,



Andre Porter

ATP:rac

Encl.

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Ohio	)	
Edison Company, The Cleveland Electric	)	
Illuminating Company and The Toledo Edison	)	Case No. 08-936-EL-SSO
Company for Approval of a Market Rate Offer	)	
to Conduct a Competitive Bidding Process for	)	
Standard Service Offer Electric Generation Supply,	)	
Accounting Modifications Associated with	)	
Reconciliation Mechanism, and Tariffs for	)	
Generation Service.	)	

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**THE CITY OF CLEVELAND'S POST-HEARING BRIEF**

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## INTRODUCTION

The Ohio General Assembly passed Amended Substitute Senate Bill 221 ("SB 221") which requires that, in order to provide Standard Service Offers ("SSO") of electric utility service in Ohio beginning January 1, 2009, electric distribution utility companies must submit electric security plans ("ESP") applications for review and approval by the Public Utility Commission of Ohio ("Commission"). An ESP application is required to include "provisions relating to the supply and pricing of electric generation service" and describe the basis for charges, rates, and terms for the provision of electric utility service under an SSO. R.C. 4928.143(B)(1). SB 221 also allows electric distribution utility companies to file, simultaneous with ESP filings, applications for approval to procure supply for a SSO via a Market Rate Offer ("MRO"), whereby the pricing to the electric distribution utility's customers would be determined by the price that the electric distribution utility company pays an electric generating company to provide electricity after a Competitive Bidding Process ("CBP") is conducted. The MRO and CBP would subject SSO customers to volatile market prices whereas the ESP would insulate customers from fluctuations in energy prices.

On July 31, 2008, The Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company ("First Energy") initiated this proceeding by submitting the above captioned MRO application. First Energy simultaneously submitted an ESP application (Case No. 08-935-EL-SSO) which is also currently pending before the Commission. The City of Cleveland ("Cleveland" or "City") intervened in this proceeding to ensure that the interests of the City were addressed and to ensure that the wellbeing of its residential and commercial citizenry was made a priority. The City was granted intervention by the Commission prior to the commencement of public hearings in this proceeding.

## STATEMENT OF ISSUES

First Energy's MRO application proposes to dramatically alter the rates, terms and conditions under which Cleveland and its citizens receive retail electric utility service. The MRO includes a "reconciliation mechanism . . . to adjust generation pricing to SSO customers to ensure that billed amounts do not exceed the costs the Companies [First Energy] incur and to ensure that the Companies [First Energy] collect sufficient amounts to pay SSO Suppliers in full for SSO Generation Service, and to otherwise keep the Companies [First Energy] whole." (MRO Application Pg. 5, Ex. C). Additionally, the MRO includes a Rate Conversion Process ("RCP") under which SSO generation charges "would be set, including sample retail tariffs for SSO generation service." (MRO Application Pg. 9).

Under R.C. 4928.142(B)(3), the Commission may reject the MRO application if it determines that the MRO application is deficient and does not meet statutory requirements or the Commission may "direct the electric distribution utility regarding how any deficiency may be remedied." Cleveland submits this statement of issues, to illustrate the basis under which the Commission should reject the MRO application or alternatively at a minimum require that First Energy modify the application so that it meets R.C. 4928.142 requirements. While the City believes that the issues cited herein were adequately previously raised in the expert testimony of John T. Courtney, as filed with the Commission on behalf of Cleveland on September 9, 2008, further review of an emphasis on these issues is warranted in this instance in order to make certain that the interests of the City and its citizens are adequately addressed.

### **I. First Energy's Proposed RCP Should Give Proper Recognition To The Load Characteristics Of The Individual Rate Classes.**

First Energy's MRO should be rejected because it fails to give proper recognition to the load characteristics of each class. In the alternative, the MRO application should be modified so that the unique load characteristics of each class are recognized. If load characteristics are

recognized with specificity, customers will be charged rates appropriate to the manner in which they use electricity, thereby resulting in appropriate pricing and likely cost savings. Exhibit C of the First Energy Companies' MRO sets forth the following proposed RCP:

The rate conversion process is used to convert the Blended Bid Price to a retail rate, which will be referred to as the Standard Service Offer Generation Charge ("SSOGC"). The solicitations in the Competitive Bid Process for generation supply will result in three different clearing prices. The clearing prices will be averaged using the number of tranches purchased at each price as weights to obtain the Blended Competitive Bid Price. The SSOGC for each rate class (SSO Rate Class Charge) will be determined by dividing the Blended Competitive Bid Price by 1 minus the appropriate distribution loss factor, in percentage of power supply. The Rate class specific result will then be adjusted to incorporate the Seasonal Application Factor (SAF) and the Commercial Activity Tax (CAT) to arrive at the SSOGC.

Cleveland agrees with, its expert, Mr. Courtney's assertion that the RCP is not an appropriate method for determining the SSO generation charge for each rate class because the proposed RCP fails to give proper recognition to the load characteristics of the individual rate classes. As Mr. Courtney explains in his testimony, the load characteristics of a rate class:

[are] a reflection of a class' peak load and energy requirements, as well as its load profile [and] each rate class has its own distinct load characteristics. For example, the peak demand for residential customers typically occurs during the late afternoon or early evening hours of the day, while the peak demand for industrial customers typically occurs during the late morning or early afternoon hours of the day.

Courtney Testimony Pg. 4. First Energy has the ability to account for the differences between each rate class. The MRO application accounts for differences under at least two other scenarios. The First Energy application accounts for seasonal differences and resulting expenses to serve its customer classes. MRP Application Pgs. 5-6. Additionally, the First Energy MRO accounts for distribution losses in each rate class. First Energy states in its MRO that, "the Distribution Losses (DL) in percentage is the only difference in the calculation for each Rate Class." The distribution losses factor gives recognition to the fact that customers in different rate classes are served at different voltage levels and, as such, reflects the difference in losses that

First Energy may incur as a result of distribution in each rate class and allows an adjustment so that First Energy can be made whole for any losses.

If First Energy can account for rate class differences when such differences are to the benefit of First Energy, then First Energy should most certainly also be able to account for rate class differences to ensure that customers in different rate classes pay appropriate rates for electric utility service. For this reason, Cleveland agrees with Mr. Courtney's assertion that First Energy should be required to develop factors that take into consideration the load characteristics of the individual rate classes and incorporate these factors into the RCP Formula. Such calculations, we believe, will lead to appropriate pricing and likely cost savings for retail electric utility customers.

In rebuttal to Cleveland's expert, John Courtney, First Energy's witness, William R. Ridman, testified in response that the costs for electric "in the wholesale market I would say it's generally higher on-peak than off-peak." Transcript Volume V, pg 19 lines 18-19. Mr. Ridman continued by stating that "I don't know of any reason why they (on peak & off peak rates) couldn't be designed that way. . ." Transcript Volume V, pg. 21, lines 6-8. It is apparent that First Energy's own expert witness understands the cost differences between rate classes and also understands and agrees that, by recognizing these differences, pricing can be adjusted with specificity to each rate class.

**II. First Energy's Should Not Be Permitted To Obtain Automatic, 100% Recovery Of Non-Quantified, Unidentified And Uncontrolled Costs (Delta Revenue). And Any Delta Revenue Should Only Be Recovered With Adequate Review And Comment By The Commission, Its Staff, Customers And Other Interested Parties.**

First Energy's proposed Rider CRT is designed to allow First Energy an automatic one hundred percent (100%) recovery of the differential between SSO revenue received and fees paid for SSO generation charges. MRO Application, Exhibit C. The proposed Rider CRT would

allow First Energy to charge SSO customers for variances and delta revenue resulting from economic development schedules, energy efficiency schedules, reasonable arrangements, governmental special contracts or unique arrangements.

There is no authority under R.C. 4928.142 for such automatic recovery by First Energy. The only costs and recovery items addressed under R.C. 4928.142 are costs incurred by an electric distribution utility as a result of, or related to, the competitive bidding process or to procure generation service to provide the SSO. There is no statutory reference for the granting of an electric distribution utility automatic recovery of one hundred percent (100%) of its delta revenues.

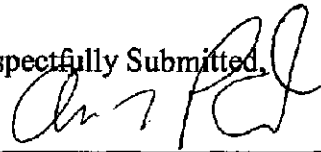
Cleveland agrees with Mr. Courtney's assertion that First Energy has "not provided any information in their filing with regards to the potential magnitude of these delta revenues or the costs related to alternative energy resources. In essence, Rider CRT would provide [First Energy] a blank check to pass on to its customers 100% of non-quantified, unidentified and uncontrolled delta revenues they incur associated with special contracts and costs they incur related alternative energy resources." Cleveland also agrees with Mr. Courtney's testimony that "future recovery of these items should be subject to full review [and comment] of the Commission, its staff, customers and other interested parties as a part of a full rate setting process." Without more oversight or a formalized process to review the costs that customers may incur, Rider CRT results in a blank check that would provide First Energy unprecedented and unfettered discretion to pass untested and unsubstantiated costs on to customers without public review.

### **CONCLUSION**

Under R.C. 4928.142(B)(3), the Commission has authority to reject First Energy's MRO application if it does not meet statutory requirements. As stated herein, First Energy should have

accounted for differences in the load characteristics in each rate class. Additionally, First Energy's MRO application would permit it to automatically recover one hundred percent (100%) of delta revenues without review and comment by the Commission and other interested parties. R.C. 4928.142 does not permit such recovery. For these reasons, First Energy's MRO application should be rejected. In the alternative, the Commission should require that First Energy modify its MRO application so that the issues raised herein are adequately addressed.

Respectfully Submitted,



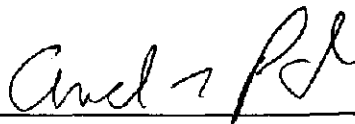
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of The City of Cleveland's Post Hearing Brief was served via electronic mail to the parties listed on the attached Exhibit A and by regular mail service to the parties listed on the attached Exhibit B on the 6<sup>th</sup> of October, 2008.

Additionally, a copy of The City of Cleveland's Post Hearing Brief was hand delivered to Jones Day, Mark A. Whitt, Andrew J. Campbell, P.O. Box 165017, 325 John H. McConnell Blvd. Suite 600, Columbus, OH 43216-5017 and the Public Utilities Commission, 180 East Broad St., 3rd Floor, Columbus, OH 43215.

A handwritten signature in black ink, appearing to read "Andre T. Porter", is written over a horizontal line.

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