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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Commission Investigation Into the Reliability of the Electric Distribution Service Provided by Ohio's Investor-Owned Electric Companies.	))))	Case No. 08-1299 -EL-UNC

REQUEST FOR AN INVESTIGATION IN WHICH THE ELECTRIC UTILITIES SHOULD BE REQUIRED TO SHOW THAT THEIR SERVICE TO OHIO CUSTOMERS IS ADEQUATE
AND
REQUEST FOR HEARINGS
BY
THE CONSUMERS FOR RELIABLE ELECTRICITY IN OHIO

Respectfully submitted,

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December 15, 2008

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The Office of the Ohio Consumers' Counsel ("OCC"), AARP Ohio, Pro Seniors, Inc., the Edgemont Neighborhood Coalition, Appalachian People's Action Coalition, the May Dugan Center, the Ohio Farm Bureau Federation, the Ohio Farmers Union, the Northwest Ohio Aggregation Coalition, and the Citizens Coalition – which includes Citizens for Fair Utility Rates, the Neighborhood Environmental Coalition, the Cleveland Housing Network, and the Empowerment Center for Greater Cleveland (collectively "Consumers for Reliable Electricity in Ohio" or "CREO"), on behalf of the 4.5 million residential households of Ohio's electric distribution utilities ("EDUs"), request that the Public Utilities Commission of Ohio ("Commission" or "PUCO") initiate an investigation[1] and conduct hearings regarding the reliability of distribution service provided by Ohio's electric utilities. The utilities that are the focus of the instant pleading

[1] The PUCO could open one investigation for all electric utilities or a separate investigation for each utility.

are Duke Energy Ohio, Inc. ("Duke"); Columbus Southern Power Company and Ohio Power Company (collectively "AEP"); Cleveland Electric Illuminating Company ("CEI"), Toledo Edison Company ("TE"), and Ohio Edison Company ("OE") (collectively "FirstEnergy"); and Dayton Power and Light Company ("DP&L"). While in the investigation the PUCO should review the overall distribution service reliability provided by Ohio's electric utilities over the last five years, the investigation should include a thorough review of the utilities' response to the windstorm of September 14, 2008, that resulted in over 2.6 million electric customers enduring protracted outages in Ohio.

The residential customers of Ohio's electric utilities are entitled to adequate service under Ohio law. Indeed, customers pay the utilities for adequate service through the rates charged on their monthly bills. A PUCO investigation is an appropriate legal forum for addressing the reliability of electric service for Ohioans because of the similar issues between utilities, the broad policy implications of the subject matter and the potential impact across all Ohio electric utilities and their customers.

The reasons supporting CREO's Request for a PUCO investigation and hearings are set forth further in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The windstorm outages of 2008 are a tipping point for reliability of electric service to Ohio consumers and businesses. The scope and duration of the outages appear to exceed what can be explained by severe weather alone. The cause of the outages suffered by millions of Ohioans may have its origins in inadequate utility maintenance programs, including the potential for failures when the necessary tree-trimming is not performed, that long preceded the arrival of the September winds. The cost of the outages to Ohio consumers and businesses can be measured in the millions of dollars. There is also a cost to local governments measured in lost tax revenues when businesses are forced to close during an outage and increased expenditures for assistance to the public. It is certainly conceivable that the aggregate cost to all segments of the population exceeded the cost of the utilities to restore power.

More than 2.6 million customers suffered service outages in Ohio in the aftermath of the wind storms on Sunday, September 14, 2008.[2] More than 100,000 homes and businesses were still without power a week later. Other impacts of the storm included:

- 300,000 (out of 515,000) of DP&L's customers lost service as a result of the storms. 51,000 of these customers were still without service a week after the storm. Service was restored 13 days after the storm for the customers who were the last to have their service restored.[3]
- Nearly 1 million of FirstEnergy's customers lost power as a result of the storm.[4]
- More than 600,000 of Duke's customers in its tri-state territory were knocked out of service by the storm and 50,000 of Duke's customer remained without power a week after the storm.[5]
- Approximately 700,000 AEP customers experienced power outages as a result of the storm.[6]

The PUCO should conduct an investigation into the reliability of Ohio's electric distribution companies over the last five years, including how their management decisions impacted both the ice storms in the winter of 2004-2005 and the recent wind storm in terms of the breadth and duration of these outages. The Commission should also revisit the issue of priority restoral for hospitals, nursing homes and critical care facilities, especially during widespread outages. As noted by the Ohio Hospital Association in its Initial Comments in a recent Commission rulemaking:

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[2] Carl Chancellor and Katie Byard, *Residents may wait full week without electricity*, Akron Beacon Journal, September 18, 2008 (no page available).

[3] Tom Beyerlein, *DP&L: Power restored to all,* Dayton Daily News, September 28, 2008 at A6.

[4] Carl Chancellor and Katie Byard, *Residents may wait full week without electricity*, Akron Beacon Journal, September 18, 2008 (no page available).

[5] Associated Press (AP Alert), *Thousands in Ohio still without power*, AP Alert, September 21, 2008. Ohio-specific figures for the total number of customers who lost service are still being researched.

[6] Dan Gearino, *AEP Users to pay up for windstorm*, Columbus Dispatch, November 1, 2008, at 12C.

These facilities have, or are likely to have, patients on medical or life-support systems. While hospitals have emergency generators, that technology sometimes fails and cannot be operated indefinitely.[7]

The restoral of service to those with critical health care needs should be addressed particularly in light of the lengthy outages associated with the September windstorm.

The Ohio General Assembly charged the PUCO with the responsibility to ensure that electric utilities provide "necessary and adequate" service to Ohio consumers and businesses.[8] The General Assembly also established the policy of Ohio that retail electric service must be "adequate, reliable, safe, efficient..."[9]

Under these and other statutes, the PUCO is charged with ongoing oversight of service quality. But this juncture of widespread outages, system maintenance questions and challenges to our Ohio economy—an economy that is dependent on reliable power—necessitates the focal point of a formal investigation to ensure that the standards and protections of Ohio law are satisfied for electric customers in this state.

The opening of a formal proceeding would also be in keeping with certain principles that have been articulated in the debate on Ohio energy policy.[10] The opening of an investigation into outages and other service quality issues affecting millions of Ohioans would serve transparency and accountability to the public.

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[7] In the Matter of the Commission's Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-24, and 4901:1-15 of the Ohio Administrative Code, Case NO. 06-653-EL-UNC, Ohio Hospital Association's Initial Comments (June 6, 2007) at 4.

[8] R.C. 4905.22.

[9] R.C. 4928.02(A).

[10] May 11, 2007, Toledo Regional Chamber of Commerce Legislative Briefing, http://www.governor.ohio.gov/Default.aspx?tabid=254.

Opening an investigation in which customers and utilities can participate in the PUCO's consideration of, among other things, whether the utilities' past practices have been adequate for providing reliable service to customers would meet policy principles that customers should be on equal footing with utilities.

OCEA's comments in the ongoing Electric and Service Safety Standards ("ESSS") rulemaking called attention to the need for more public involvement and more transparency in the Commission's efforts to ensure reliability:

> A common theme that occurs throughout the existing and proposed rules is the lack of transparency in compliance efforts, enforcement, and the development of performance targets. More public dissemination of information regarding the performance of the EDU is warranted. The enforcement or compliance efforts that the staff is undertaking regarding the performance of the EDUs should be publicly available as well. OCC previously requested that staff-issued notices of probable noncompliance be docketed in support of greater transparency regarding the Commission's public role.[11]

An investigation will determine whether electric utilities have used the money collected from customers in rates for such maintenance. In this regard, the PUCO should confirm that electric utilities were not cutting expenditures for reliability so as to increase profits. Recent earnings announcements from utilities suggest that electric utilities have sufficient resources to maintain, and even improve, the reliability of the electric distribution system in Ohio.[12]

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[11] In the Matter of the Commission's Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-24, and 4901:1-15 of the Ohio Administrative Code, Case NO. 06-653-EL-UNC, Consumer Groups' Initial Comments (June 6, 2007) at 4.

[12] Source: Parent Company info at http://moneycentral.msn.com, Subsidiary Company Info – FERC Form 1. For instance, according to the posted information, Columbus Southern Power Company's return on equity ("ROE") was 22.1% for 2007, Ohio Power Company's ROE was 11.7%, DP&L's ROE was 19.8%, Cleveland Electric Illuminating Company's ROE was 18.6%.

Ohio law, reason and facts support the granting of this request for an investigation and hearing with regard to reliability of electric service in this state. These bases for an investigation and hearing will be addressed in detail below, including in a section with recommendations for the scope of the investigation.

II. OHIO LAW PROVIDES THE BASES FOR OPENING AN INVESTIGATION AND CONDUCTING HEARINGS.

As stated above, the Ohio General Assembly charged the PUCO with the responsibility to ensure that electric utilities provide "necessary and adequate" service to Ohio consumers and businesses.[13] The General Assembly also established the policy of Ohio that retail electric service must be "adequate, reliable, safe, efficient." R.C. 4928.02(A).

AEP, DP&L, Duke, and FirstEnergy are electric light companies pursuant to R.C. 4905.03(A)(4) and public utilities pursuant to R.C. 4905.02. Under these provisions, the Commission has jurisdiction regarding companies "engaged in the business of supplying electricity * * * to consumers within this state, including supplying electric transmission service * * *, but excluding a regional transmission organization."[14] The electric utilities are subject to the supervision of the Commission pursuant to R.C. 4905.04, for purposes of this request. In prior cases the PUCO has opened investigations into utility operations, based upon these general supervisory powers under statute.[15]

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[13] R.C. 4905.22.

[14] R.C. 4905.03.

[15] E.g.,*In re the Commission Ordered Investigation of Ameritech Ohio Relative to Its Compliance with Certain Provisions of the Minimum Telephone Service Standards Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 99-938-TP-COI, Entry (August 12, 1999) at 2.

Furthermore, R.C. 4928.11 mandates that, "[f]or the protection of consumers in this state, the public utilities commission shall adopt rules * * * that specify minimum service quality, safety, and reliability requirements for noncompetitive retail electric service supplied by an electric utility in this state." "Retail electric service' means any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption."[16] "Electric utility" means an electric light company that has a certified territory and is engaged on a for-profit basis either in the business of supplying a noncompetitive retail electric service in this state or in the businesses of supplying both a noncompetitive and a competitive retail electric service in this state."[17] The rules required by R.C. 4928.11(A) must:

> include prescriptive standards for inspection, maintenance, repair, and replacement of the * * * distribution systems of electric utilities; shall apply to each substantial type of * * * distribution equipment or facility; * * * and shall otherwise provide for high quality, safe, and reliable electric service; shall include standards for operation, reliability, and safety during periods of emergency and disaster * * *

R.C. 4928.11(B) mandates that the Commission shall "require each electric utility to report annually to the commission * * * regarding its compliance with the rules required under division (A) of this section" and that the reports be made "available to the public." CREO notes that although the existing ESSS contain a requirement that each electric utility file an annual report "regarding its compliance with the minimum service quality,

[16] R.C. 4928.01(A)(27).

[17] R.C. 4928.01(A)(11).

safety, and reliability requirements for noncompetitive retail electric services,"[18] other annual reports required by the ESSS are not filed publicly but are submitted to the PUCO Staff.[19] These additional reports provide valuable information regarding distribution system reliability of the electric utilities and should be publicly filed. Perhaps most importantly, R.C. 4928.11(B) requires the Commission to:

> Periodically as determined by commission rule under division (A) of section 4928.06 of the Revised Code and in a proceeding initiated under division (B) of section 4928.16 of the Revised Code, the commission shall review a utility's report to determine the utility's compliance and may act pursuant to division (B) of section 4928.16 of the Revised Code to enforce compliance.

CREO is unaware of any PUCO proceeding on this issue to date which has been initiated by the Commission. With the recent passage of S.B. 221 and the ongoing questions regarding the reliability of electric service to all Ohioans, such a proceeding is long overdue.

The PUCO promulgated the ESSS in Ohio Adm. Code Chapter 4901:1-10. These rules "[a]re intended to promote safe and reliable service to consumers and the public, and to provide minimum standards for uniform and reasonable practices."[20] The ESSS require, among other things, that electric utilities:

- Submit proposed annual performance targets to the PUCO Staff related to restoration of service after service outages. Ohio Adm. Code 4901:1-10-10(B)(2).
- Submit annual reports to the PUCO Staff which provides annual performance results and an action plan to improve performance if targets are not met. Ohio Adm. Code 4901:1-10-10(C)

[18] Ohio Adm. Code 4901:1-10-26(A).

[19] Ohio Adm. Code 4901:1-10-10 requires an annual reporting regarding each electric utilities ability to meet its reliability targets. Ohio Adm. Code 4901:1-10-11 requires that each electric utility report its worst-performing circuits to PUCO Staff.

[20] Ohio Adm. Code 4901:1-10-02(A)(2).

- Submit to the PUCO Staff proposed methods to calculate performance measures. Ohio Adm. Code 4901:1-10-11(B)(1).
- Annually, submit to the PUCO Staff the companies' eight percent worst-performing circuits and an action plan to improve the performance of such circuits. Ohio Adm. Code 4901:1-10-11(C).
- File an annual report regarding compliance with the ESSS. Ohio Adm. Code 4901:1-10-26(A). The report shall include "A qualitative characterization of the condition of the electric utility's system." Ohio Adm. Code 4901:1-10-26(B)(3)(a).
- Establish and maintain written programs, procedures and schedules for the inspection, maintenance, repair, and replacement of its transmission and distribution circuits and equipment. Ohio Adm. Code 4901:1-10-27(E).

The investigation should include a review of the extent to which the electric utilities have complied with the rules. Also, the investigation should include whether the utilities' performance under the rules should be improved for the future, and whether the rules themselves should be modernized to address growing reliability issues. For instance, power *quality* issues, which can be reflected in the number of momentary outages on a circuit, are of increasing concern to residential and business customers. The PUCO Staff stated in its Report in the AEP Reliability Case:

> Momentary interruptions are becoming a nuisance to customers because devices such as computers, digital clocks, and electric motors with variable speed drives so sensitive to voltages fluctuations that, when a momentary interruption occurs, these products generally shutdown and need to be reset or restarted.[21]

[21] *Staff Concerns and Recommendations About Columbus Southern Power Company And Ohio Power Company's Provision of Electric Service*, May 1, 2003.at 3 The report was filed in *In re the Commission' Consideration of a Settlement Agreement between the Staff of the Public Utilities Commission and Columbus Southern Power Company and Ohio Power Company*, Case No. 03-2570-EL-UNC, Motion for Acceptance of the Stipulation (December 31, 2003) ("AEP Reliability Case").

In a case currently pending before the Commission the cause of momentary outages was discussed[22] as was the increasing reliance on dependable power quality.[23] It is time for the Commission to focus more attention power quality issues as well as long-term service reliability issues. The investigation should encompass all facets of the distribution system reliability.

Further, the investigation should review the utilities expenditures for vegetation management, pole replacement and distribution reliability in general, including the number of employees on work crews that are available to conduct routine inspections and maintenance as well as to respond to outages throughout the service territory. The level of expenditures over the last five years should be compared to historic expenditures prior to the last five years and also to the amount that has been included in rates in the last case for service reliability. Stated differently, the investigation should include an accounting of ratepayer dollars included in rates for these services to determine if those dollars were spent and whether the expenditures were cost-effective and prudent.

The Commission has the authority to investigate the sufficiency and adequacy of Ohio's electric utilities and to hold a hearing regarding the level of service being provided:

> Upon complaint in writing by any person, firm or corporation, or *upon the initiative or complaint of the public utilities commission* that any * * * service rendered * * * is in any respect unjust,

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[22] *In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO et al., Direct Testimony of Karl G. Boyd (July 31, 2008) at 4. "Equipment failures caused approximately 33 percent of sustained, non-major event outages on AEP Ohio's system during this time period, while tree related outages caused approximately 20 percent. Short momentary interruptions can also occur when a tree branch is blown against a line causing conductors to come together."

[23] Id. at 11. "The more customers rely on electricity for virtually every facet of their lives, the more sensitive they become to service interruptions, even momentary interruptions."

> unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any * * * practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be , in any respect, unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be inadequate or cannot be obtained * * * *the commission shall fix a time for hearing* and shall notify and shall notify the complainants and the public utility thereof[24]

Upon the completion of the investigation the PUCO may "determine the regulations, practices and services to be installed, used, and rendered.[25]

R.C. 4905.38 authorizes the Commission to order repairs and improvements "to promote the convenience or welfare of the public or of employees * * *" or "to secure adequate service ***." Upon determination that "service is unjust, unreasonable, insufficient, unjustly discriminatory, unjustly preferential, or in violation of law, or that any service is inadequate or cannot be obtained, the public utility found to be at fault shall pay the expenses incurred by the commission upon such investigation."[26] The Commission also has authority to consider the management policies and practices of public utilities, including electric utilities:

> If the commission finds after a hearing that the management policies, practices, or organization of the public utility are inadequate, inefficient, or improper, the commission may recommend management policies, management practices, or an organizational structure to the public utility.[27]

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[24] R.C. 4905.26 (Emphasis added).

[25] R.C. 4905.37.

[26] R.C. 4903.24. In the event the Commission finds violations of Ohio law, the General Assembly has provided for penalties and other consequences. See e.g., R.C. 4905.46(A) (restriction on dividend"), 4905.54 ("forfeitures"), 4905.60 ("mandamus and injunction"), and 4905.99 ("penalties").

[27] 4909.154.

The distribution system-related management policies and practices that have been the concern of the PUCO Staff and OCC in the AEP Service Quality case, in the current AEP ESP case, as well as in the recent FirstEnergy rate case, indicate that a review of the electric utilities reliability-related efforts are overdue. The massive, long-term outages caused by the 2004 -2005 winter ice storm and the September windstorm only heighten such concerns.

III. THE HISTORY OF ELECTRIC RELIABILITY ISSUES IN OHIO SUPPORTS THE OPENING OF AN INVESTIGATION THAT INCLUDES HEARINGS.

A. The PUCO Should Investigate and Determine the Reasons for the Recent History of Electric Outages

"Those who cannot remember the past are condemned to repeat it."[28] Ohio, for the sake of millions of customers in homes and businesses, cannot afford to repeat electric service outages that could be prevented or minimized by proper maintenance. Not in this economy. Not with today's reliance on electronics in homes and businesses. And not with state law that requires adequate and reliable service.

1. Outage-related concerns grew in 2003.

While the outages related to the windstorms of September 14, 2008, have not been formally investigated as yet, there does seem to be a common and potentially avoidable thread connecting past outage problems with current problems. Concerns over the condition of distribution system electric reliability in Ohio have risen steadily over the last five years. One of the recent triggers for these concerns was the blackout that occurred primarily in FirstEnergy's service territory on August 14, 2003. In addition, outages that resulted from summer storms on July 7th and 8th of 2003 had raised issues

[28] Life of Reason, Reason in Common Sense, Scribner's, 1905, page 284.

about AEP's reliability. As a result of the blackout and the concerns with the distribution system related outages in July of 2003, OCC and other parties looked into actions the PUCO was taking to ensure electric reliability in the state. While the cause of the blackout was traced to a problem with the transmission facilities of FirstEnergy, the Commission's oversight of distribution facilities came under scrutiny as well, particularly related to tree trimming.

The July 2003 summer storm outages resulted in 176,000 customers suffering power outages in AEP's central and Southeastern Ohio service areas.[29] Four days later, approximately 10,000 customers were still without power. [30] AEP spokesman Craig Rhoades noted the severity of the storms during an interview with the *Columbus Dispatch,* but pointed out the number one culprit of power failures was vegetation:

> The No. 1 cause of power outages in the Columbus area is trees, Rhoades said. Falling trees and limbs can sever overhead power lines and bring down poles. Even if the branches just touch the lines, fuses blow, switches are tripped and equipment in substations can fail.[31]

In a follow-up article, the *Columbus Dispatch* focused on problem areas in the city of Upper Arlington. The article focused on one area of Upper Arlington where historically power outages have been a problem, due to a particular circuit. Within the article, vegetation was again listed as a significant problem:

> AEP has committed to replacing equipment and stepping up tree-trimming in the area, which is roughly bounded by Ridgecliff, Tremont, Canterbury and south Dorchester roads. They say those

[29] Ken Stammen, *AEP HEARS PUBLIC REFRAIN: 'WHAT'S TAKING SO LONG?', Columbus Dispatch,* July 11, 2003, at 01A.

[30] Id.

[31] Id.

> steps will reduce the frequency of power failures and the number of people affected. "Circuit 303 -- that has been a bad situation," Fenstermaker acknowledged. "We're not happy with that situation. The trees got ahead of us in that area. . . . If we get those trees out of the lines and we get that taken care of, we think the reliability in there will be good."[32]

The AEP spokesman further noted the increased number of utility crews trimming trees in the area, and again stressed the problems caused by vegetation:

> AEP officials stress that in areas with mature trees, the company needs cooperation from property owners so crews can trim and keep branches away from overhead lines. Trees and animals that climb them, such as squirrels, are the biggest cause of power failures, AEP says.[33]

The conditions that led to the lengthy outages were clearly related to vegetation management issues, yet subsequent to the summer storms of 2003 and further weather-related outages yet to occur, vegetation management and other distribution system reliability issues have been inadequately addressed.

2. Ice Storm of December 23, 2004

An ice storm, on December 23, 2004, caused 360,000 AEP customers to go without power for several days. Following the storm, the Company's tree trimming policies and efforts were again called into question by some observers.

The *Columbus Dispatch* article pointed back to the 2003 PUCO Staff's Investigative Report:

> In August 2003, the PUCO released a report blasting AEP for failing for a decade to maintain its distribution lines and equipment, leading to frequent power disruptions. Inadequate tree trimming was repeatedly cited. The PUCO said the company saved $88.5 million by skimping on maintenance, including not

[32] Ken Stammen, *POWER FAILURES NO STRANGER TO UPPER ARLINGTON AREA*, *Columbus Dispatch*, July 29, 2003, at 01B.

[33] Id.

> following standards of trimming trees near power lines every four to six years.[34]

In addition, the *Columbus Dispatch* noted that, despite evidence of tree-trimming by AEP, the PUCO had no information on where the trimming was occurring, or how effective it was:

> The PUCO began its investigation into AEP service after customer complaints doubled between 2001 and 2002. Eiselstein and AEP spokeswoman Terri Flora said the utility began an extensive tree-trimming campaign after the PUCO's report. Flora said AEP focused on areas with mature trees that threatened power lines such as Clintonville, Upper Arlington and Worthington. The PUCO yesterday did not have statistics on where AEP has trimmed or how effective it has been.[35]

In a follow-up article, as some customers went more than a week without power, the PUCO announced that, although the storm was considered the major cause of the extended outage, it would look into all factors:

> "Right now we're treating this as a storm-related event, but after power is restored we're going to do an assessment of what other factors may have played a role," said Shana Eiselstein, a spokeswoman for the Public Utilities Commission of Ohio, which regulates utilities in the state.[36]

OCC also voiced concerns about other possible causes of the storm. OCC called on the Commission "to establish uniform tree-trimming and line-maintenance standards for electric utilities and hold them accountable. Tree limbs coming into contact with power lines were a major cause of the power failures."[37]

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[34] Id.

[35] Id.

[36] Ken Stammen, *AFTERMATH OF ICE STORM; PUCO TO STUDY AEP'S RESPONSE TO OUTAGES*, Columbus Dispatch, December 30, 2004, at 01A.

[37] Id.

The newspaper pointed out that government data on power outages indicated that AEP was slower to restore power to customers than most other utilities across the nation:

> A Dispatch review of U.S. Energy Information Administration data from 2003 and 2004 shows that utilities routinely restored power after major storms more quickly than AEP is doing now.[38]

AEP responded by noting that the ice was thick and not melting (making repairs difficult and roadways hazardous), that the timing of the storm (2 days before Christmas) meant that many employees were on vacation, and that crews could not be "borrowed" from neighboring utilities due to weather-related problems in other areas.[39] Subsequent to ice storms, OCC again requested that the Commission investigate the outage restoral performance of the electric utilities.[40] OCC's motion noted that the Commission had immediately dismissed the possibility that tree-trimming practices could have been responsible for the extent of the outages. This appeared inconsistent with the recent PUCO Staff Service Quality Report cited above which stated that "Trees are perhaps the biggest potential cause of outages."[41]

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[38] Id.

[39] Id.

[40] *In the Matter of the Commission Investigation Into the Policies and Practices of the Electric Distribution Utilities of American Electric Power Regarding the December 2004 and January 2005 Power Outages*, Case No. 05-46-EL-UNC, Motion for a Commission Investigation and Management Audit, Motion for Hearing, and Motion for Local Public Hearings Regarding American Electric Power's Policies and Practices Related to December 2004 and January 2005 Power Outages by the Office of the Ohio Consumers' Counsel (January 12, 2005)("OCC Motion for AEP COI").

[41] Staff Report at 8.

3. The Rapid Response Team

After the ice storm disrupted power to thousands of customers in Ohio Edison and AEP service areas, Governor Bob Taft wrote a letter to Commission Chairman Alan Schriber, asking for an investigation:

> As a result of the recent winter storm, many Ohioans experienced several days without power during a time of bitterly cold temperatures posing not just an inconvenience, but a risk to their health and safety as well. Accordingly, I would like you to assess the timeline and effectiveness of the combined effort of Ohio's utilities taken to restore power to their customers.[42]

In addition, OCC requested that the Commission launch an investigation into the outages. Of particular interest to OCC were the vegetation management practices of the companies[43]

According to a news report, the PUCO Chairman directed that the inquiry performed in response to the Governor's December 2004 letter would focus on cooperation between the utilities:

> Alan R. Schriber, PUCO chairman, said the commission will deliver a report to Taft next week that will focus on assistance agreements between utilities. Schriber said he will rule later on the need for public hearings.[44]

The brief report from the PUCO chairman to the Governor focused on communication between utilities during the restoration efforts after the storm:

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[42] Letter from Bob Taft, Governor of Ohio, to Alan Schriber, Chairman of the Public Utilities Commission of Ohio (December 30, 2004).

[43] *In re the Request for a Commission Investigation Into the Policies and Practices Of the Electric Distribution Utilities of American Electric Power Regarding the December 2004 and January 2005 Power Outages*, Case No,. 05-46-EL-UNC, OCC Motion (January 12, 2005) at 8.."The prudency of AEP's tree-trimming program should be a key component of the Commission's investigation of the recent outages."

[44] Id.

> The events surrounding the December 2004 electric outages were initiated by an extreme weather event that resulted in numerous Ohio citizens and businesses losing electric power for a sustained period of time. As you requested, over the last two weeks, we have assessed the effectiveness of the communications and cooperation among Ohio utilities to restore power to customers in Ohio, and we have identified hurdles that were faced in restoring power. The goal is to provide information on how the situation can be improved in the event of future major outages.[45]

In the letter, the Chairman stated that in order to address "future major outage events," the PUCO would develop a "rapid response team":

> Therefore, for future major outage events, the PUCO will establish a *rapid response team* between the PUCO and the Ohio electric utilities. Each utility will be asked to designate an operations person to represent it on this team. The team will be proactive and will initiate communications as soon as severe weather is forecasted and will continue to communicate thought the event. In addition, each utility will designate a person to be available at the state emergency operations center to coordinate restoration activities with state officials.[46] (Emphasis added).

In addition to the rapid response team, each utility would provide the PUCO with accurate, up to the minute data on the outages:

> Furthermore, each electric utility will be asked to provide the PUCO with access to real-time outage information. This approach will enable Ohio's electric utilities to work together to share information concerning restoration responses, maximize the available utility and state resources, and provide a common place and time to provide information to state officials.[47]

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[45] Letter from Alan Schriber, Chairman of the Public Utilities Commission of Ohio, to Bob Taft, Governor of Ohio (January 17, 2005).

[46] Id.

[47] Id.

OCC expressed disappointment that the report did not "get to the heart of the matter," and that no hearings would be held.[48] Another newspaper article in the *Lancaster Eagle Gazette* criticized the report for focusing solely on restoration rather than prevention, and felt that the report offered utility customers nothing new.[49]

In 2005, the PUCO again disregarded the relationship between electric outages and distribution system maintenance efforts, including vegetation management efforts. Whether the "rapid response team" was put into action following the windstorm of September 14, 2008 is not known. There have been no public reports of the coordination efforts of this team formed in 2005.

B. Previous and ongoing proceedings do not offer an adequate opportunity to investigate the reliability of Ohio's investor-owned electric utilities

It is entirely possible that the breadth and duration of the recent outages would have been mitigated for many Ohio consumers if the maintenance protocols of the electric utilities were sufficient. There are a number of pending cases, as well as recently decided cases, that deal directly with distribution system reliability issues, but none of the cases provides an adequate opportunity to resolve the statewide reliability issues.

1. AEP Service Quality and Self-Complaint Cases

The stipulation from the AEP Service Quality Case required, among other things, that AEP needed to improve the performance of its worst-performing circuits.[50] The

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[48] Ken Stammen and Phil Porter, *PUCO CALLS FOR TEAMWORK*, Columbus Dispatch, January 20th, 2005, at 01D.

[49] Editorial, *A Report by the Public Utilities Commission of Ohio Failed to Address the Real Issues Behind the Recent Storm-related Power Outages*, Lancaster Eagle Gazette, January 25, 2005, at 4A.

[50] *In the Matter of the Commission Consideration of a Settlement Agreement between the Staff of the PUCO and Columbus Southern Power and Ohio Power Company*, Case No. 03-2570-EL-UNC, Stipulation (December 31, 2003). ("AEP Service Quality Case").

PUCO Staff Investigative Report, which precipitated the stipulation, outlined serious, multiple violations of administrative rules and made detailed recommendations regarding needed improvements by AEP. The apparent impetus for the PUCO Staff's investigation was the repeated reporting of certain circuits as "worst performing" in areas served by AEP.[51] The PUCO Staff, however, also identified problems with AEP's policies and programs, AEP's failure to follow its stated policies and programs, and AEP's failure to maintain records properly that would aid in an investigation into service quality. The Stipulation did not address most of the recommendations contained in the PUCO Staff Investigative Report.

The Stipulation recommended a two-year program to improve some of AEP's circuits and the stipulating parties agreed to further negotiations. *See* Stipulation at 2-5.[52] In contrast, the Staff Investigative Report contained nineteen sections of recommendations regarding problems with AEP's policies and programs, AEP's failure to follow its stated policies and programs, and AEP's failure to maintain records properly to aid in an investigation into service quality. The PUCO Staff Investigative Report recommended action regarding a variety of AEP policies and practices including tree trimming, wind mitigation, animal mitigation, deterioration of equipment, pole inspection, and AEP's failure to keep adequate records--issues that continue to be of

[51] PUCO Staff Investigative Report at 3.

[52] AEP agrees in the Stipulation "to withdraw [its] request dated December 30, 2002 to change [its] ESSS Rule 10 system performance targets." Stipulation at 4, ¶7. AEP's "request" does not appear to have been docketed.

concern.[53] It has been particularly troubling that AEP has focused on performance-based tree trimming over the last number of years:

> However, the use of a vegetation management policy that rations tree trimming and other vegetation management activities only to those distribution circuits that exhibit especially poor electric service reliability due to tree-related faults probably comes at a cost to overall system reliability.[54]

The Stipulation lacked the detailed resolution of the problems identified in the Staff Investigative Report, instead offering a two-year program to improve the average performance of some AEP circuits.[55]

The Stipulation also revealed PUCO Staff's concern in numerous areas regarding electric utilities in general -- such as the "proper methodology to standardize the Companies' * * * reporting with that utilized by the other electric distribution utilities in the state"[56] -- that should be addressed in the context of an investigation of best practices in the industry. The Stipulation was, therefore, both inadequate to remedy the extensive problems that were specifically identified in the PUCO Staff Investigative Report. OCC subsequently filed a Motion to intervene in the case and moved the Commission to open an investigation into the reliability of the quality of service provided by all of Ohio's electric utilities.[57]

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[53] PUCO Staff Investigative Report at 8-30.

[54] Testimony of OCC Witness Peter J. Lanzalotta in the AEP Self-Complaint case at 37.

[55] Stipulation at 2-3.

[56] Stipulation at 4 ¶6.

[57] *In the Matter of a Commission Investigation Into the Reliability of "Wires" Service by Ohio's Investor-Owned Electric Companies*, Case No. 04-23-EL-UNC.

In January of 2005, subsequent to ice storms that resulted in a number of outages throughout the state, OCC again requested that the Commission investigate the outage restoral performance of the electric utilities.[58] The Motion for Investigation filed by OCC was dismissed by the Commission in October of 2007 without taking any action on the matter. The Commission determined that the $10 million that AEP had been ordered to spend on its vegetation management, as a result of its failure to comply with the provisions of the stipulation in the AEP Service Quality Case, addressed the "underlying issues" of OCC's earlier motion.[59]

AEP also sought additional funding for certain alleged "enhanced" reliability-related programs in a self-complaint case filed at the conclusion of the AEP Service Quality Case.[60] The self-complaint case was eventually withdrawn after case participants raised concerns about AEP's proposals.

2. AEP's proposed Enhanced Service Reliability Plan

AEP filed a similar plan in September of 2008, entitled an Enhanced Service Reliability Plan ("ESRP") as part of its Electric Security Plan. The ESRP consists of many of the same components as those proposed in AEP's Self-Complaint Case. AEP proposes that the costs for the "enhanced" activities connected with tree-trimming,

[58] *OCC Motion for AEP COI..*

[59] AEP Service Quality Case, Entry (October 10, 2007) at 2-3.

[60] *In re AEP's Self-Complaint Regarding Service Reliability*, Case No. 06-222-EL-SLF, Complaint at 5 (January 31, 2006) ("AEP Self-Complaint Case").

overhead line maintenance and other activities, be borne by customers through increases in distribution rates over and above current base rates.[61]

3. FirstEnergy's Distribution Rate Case

The 2007 FirstEnergy distribution rate case again focused to a great degree on the reliability of the Company's distribution service, especially regarding its vegetation management practices.[62] While there has been no decision in the case, the reliability testimony of both the PUCO Staff and OCC was concerned with the failure of FirstEnergy to meet its outage restoral performance targets and its failure to follow its own, voluntary vegetation management programs.

In the FirstEnergy rate case OCC recommended that:

> Due to the depth and breadth of the problems associated with the FirstEnergy Companies' service reliability programs, the OCC recommends that the Commission utilize its authority to investigate the sufficiency and adequacy of service provided by the FirstEnergy Companies and to hold a hearing regarding that service quality.[63] The residential customers of the FirstEnergy Companies pay for, and thus deserve, reliable service. The Commission should take action to ensure that residential and other customers receive that reliable service. * * * Routine PUCO Staff audits, as well as investigations conducted for the Staff Reports in this rate case, call into question the adequacy of distribution service provided by the FirstEnergy Companies. * * * The Commission should recognize that poor service has resulted from the FirstEnergy Companies' past failures, and many issues are both ongoing and persistent. The Commission should hold a separate

[61] Testimony of AEP Witness Boyd. Exhibit DMR-4 to the testimony of AEP Witness Roush indicates that Columbus Southern Power customers would experience a distribution rate increase of approximately 4.04% for the ESPR while Ohio Power customers would experience a 6.5% increase to their distribution rates attributable to the ESRP.

[62] *In re 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 et al.

[63] Ohio law, R.C. 4905.22, provides that "[e]very public utility shall furnish necessary and adequate service and facilities . . . ." The General Assembly required, by enacting R.C. 4928.02(A), that electric service in Ohio shall be "adequate, reliable, [and] safe . . . ."

> hearing to consider the breadth and depth of the distribution reliability problems that have been revealed in these cases (including the assessment performed by UMS).[64]

The Commission has yet to issue a decision in the FirstEnergy rate case. But FirstEnergy's failures to meet certain Electric Service and Safety Standards ("ESSS") warrant additional Commission consideration in a proceeding focusing solely on reliability. A Commission investigation such as the one recommended in this motion would be an appropriate vehicle to consider FirstEnergy's ongoing service issues.

4. FirstEnergy's Electric Security Plan and the proposed Delivery System Improvement Rider

FirstEnergy has proposed to implement a Delivery System Improvement Rider ("DSIR") as part of its July 31, 2008 ESP filing.[65] The DSIR would be implemented in addition to base rates that FirstEnergy's customers already pay. FirstEnergy also proposes to modify certain of its reliability targets, making them more lenient, as part of its proposal. As with other cases pending before the Commission, it is at best premature for the Commission to be considering rate increases while the adequacy of past efforts of the EDUs concerning distribution system reliability are in question.

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[64] OCC Initial Brief in FirstEnergy Rate Case at 43-44.

[65] See Testimony of FirstEnergy Witness Schneider in *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO, et al.

5. DP&L's Electric Security Plan

DP&L filed an ESP with the PUCO on October 10, 2008[66] DP&L proposes in its ESP to implement a Customer Conservation and Energy Management Project ("CCEM"). The CCEM consists of several components including an Energy Efficiency and Demand Response Plan, an Advanced Metering Infrastructure Plan, and a Smart Grid Development Plan.[67] The various pieces of the CCEM would involve expenditures of $297 million in capital and $186 million in Operation and Maintenance expenses over the next seven years.[68] These costs entail improvements to DP&L's distribution system that, DP&L proposes, would and will be borne by customers. A review of these expenditures will necessarily include an analysis of whether prior expenditures on the distribution system were sufficient. Recent press accounts call into question DP&L's prior efforts in this regard:

> Consumer advocates say DP&L and the other utilities may have gotten lax in performing the routine maintenance like tree trimming and pole replacement that can ease the severity of storm damage. DP&L's own budget numbers, filed with the Federal Energy Regulatory Commission, show that the company slashed spending on maintenance of overhead transmission and distribution lines in the late 1990s and early this decade, during a time when ousted President and CEO Peter H. Forster was building a controversial $1 billion private equity fund, which DP&L's parent has since sold. The numbers have been increasing since Forster's mid-2004 ouster, and especially since Barbas took the helm in 2006. "Since I got here two years ago, we started focusing on rebuilding the utility," Barbas said. "I told Scott (Kelly, senior vice president of operations) we needed to spend what we had to spend to maintain the lines[69]."

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[66] *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan*, Case No. 08-1094-EL-SSO, et al. ("DP&L ESP Case").

[67] DP&L ESP Case - Testimony of DP&L Witness Kelly at 4.

[68] Id. at 3.

[69] Tom Beyerlein, *DP&L reflects on storm response,* Dayton Daily News, October 9, 2008 at A7.

The ESPs of AEP, DP&L, and FirstEnergy each contain distribution reliability proposals and seek additional funding to cover the costs of the proposals. The ESPs are before the Commission at this time and the recent reliability performance of each of these utilities is at issue.

6. Duke

The windstorm affected 700,000 Duke customers, or about 90% of Duke's Ohio and Kentucky customers. According to a news report quoting a Duke spokeswoman the windstorm-related outages were the largest ever in the Ohio-Kentucky area.[70] Some 50,000 Duke customers remained without power a week after the storm.[71] The breadth of the outages experienced by Duke's customers warrants a closer look by the PUCO. Duke's outage restoral performance as measured by the System Average Interruption Duration Index ("SAIDI") has also declined in recent years as noted in a recent PUCO Staff Report and in response to discovery.[72] While Duke may have still been hitting its "targets" as part of its compliance with Ohio Adm. Code 4901:1-10-10(B)2), the decline in performance is troublesome.

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[70] Kantele Franko, *Hundreds of thousands still without power in Ohio,* Thomson Financial News, September 16, 2008, at 1.

[71] AP Alert – Ohio, *Thousands in Ohio still without power*, September 21, 2008.

[72] *In re the Application of the Cincinnati Gas & Electric Company for an Increase in Electric Distribution Rates*, Case No. 05-0059-EL-AIR et al., Staff Report (September 9, 2005) at 83. *See* also Duke Energy Ohio, Inc. response to OCC Interrogatory 01-003 in *In re the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates,* Case No. 08-709-EL-AIR

IV. PROPOSAL FOR COMMISSION INVESTIGATION

The Commission should investigate the distribution system reliability of the investor-owned electric utilities in the state of Ohio, and undertake the following in connection with its investigation:

A. Investigate, monitor and determine if the electric utilities are complying with reliability standards as set forth in the ESSS rules of the Commission, the National Electric Safety Code and any other applicable safety and reliability standards. The Commission should hold evidentiary and local public hearings in order to determine whether the applicable rules and laws are being complied with by all electric utilities.

B. Undertake an evaluation of the effectiveness of the current ESSS rules, including setting performance targets for momentary interruptions, to promote reliability and to determine if such rules should be amended to help ensure safe and reliable distribution operations by the electric utilities, and effective oversight by the Commission, and provide a mechanism that ensures that all electric utilities are complying with the ESSS rules.

C. Require each electric utility to file a comprehensive report of its past and current activities to control vegetation in right-of-ways, including current tree-trimming programs and remedial plans. This should include development of a reasonable, routine vegetation management cycle plan, including the requirement for annual reports on the progress and efforts to maintain system reliability

D. Provide significant financial consequences for failure to meet reliability standards, including the provision of bill credits to customers who experience extended outages.

E. Review all formal and informal reliability complaints filed at or submitted to the Commission, with OCC and others having access to review the complaints.

F. Review the electric utilities' compliance with the provisions of Ohio Adm. Code 4901:1-10-27(D) which require electric utilities to establish and maintain a program "for the inspection, maintenance, repair, and replacement of its transmission and distribution equipment," including "[c]onductors."[73] In the recent AEP Service Quality Case, Staff found that AEP's circuits experienced "a high

[73] Ohio Adm. Code 4901:1-10-27(E)(1)(b).

number of wind-caused outages"[74] that can result from failure to "properly maintain[] the sag on and spacing of each circuit's phases and neutral (the electric wires)" and that AEP treatment of a wind-caused outage was to "add a protective zone"[75] that assists some customers but does not "address the root cause of the problem" that affects other customers.[76] The Staff's findings regarding wind-caused outages should be revisited in light of the extent of the recent windstorm-related outages.

G. Review the electric utilities' compliance with the provisions of Ohio Adm. Code 4901:1-10-27(D) which provide that an electric utility must, "at a minimum, inspect its electric transmission and distribution facilities (circuits and equipment) to maintain safe and reliable service," inspecting "at least one-fifth of all distribution circuits and equipment * * * annually" and inspecting "transmission and distribution substations and equipment * * * at least once each month." The utilities' performance relative to this standard should be reviewed in the investigation.

H. Review the electric utilities' compliance with the provisions of Ohio Adm. Code 4901:1-10-27(D) which require electric utilities to establish and maintain a program "for the inspection, maintenance, repair, and replacement of its transmission and distribution equipment," including "[p]oles and towers."[77] Staff reported an alarming number of poles that needed replacement or reinforcement during its inspections of AEP equipment, having "a major impact on the reliability and performance of the Companies' systems [and] also * * * public and employee safety.[78] The Staff's concerns regarding pole inspections should be incorporated into the investigation of all the utilities.

I. Review the electric utilities' compliance with the provisions of Ohio Adm. Code 4901:1-10-27(D) which require electric utilities to "maintain records sufficient to demonstrate compliance with its transmission and distribution facilities inspection, maintenance, repair, and replacement programs." The Commission should require an independent audit to include the recordkeeping practices of each electric utility. Should such independent audit find that the

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[74] Id. at 16.

[75] Id.

[76] Id. at 17.

[77] Ohio Adm. Code 4901:1-10-27(E)(1)(b).

[78] Id. at 22.

recordkeeping practices of an electric utility are not in compliance with Ohio Adm. Code 4901:1-10-27(D), the utility should not be permitted to recover the costs of the audit from ratepayers. The results of the audit should be publicly filed with the Commission and be available for the public and evidentiary hearings conducted as part of the Commission's investigation.

J. Review the electric utilities' compliance with the provisions of Ohio Adm. Code 4901:1-10-27(D)which provide that electric utilities must inspect their distribution facilities and maintain a program of preventative maintenance of its transmission and distribution systems. The adequacy of the electric utilities' preventative programs must be evaluated as part of the COI. A remedial preventative maintenance program should be ordered by the PUCO and the Commission should require an independent audit to review the transmission and distribution facilities inspection, maintenance, repair, and replacement programs of each electric utility. Should such independent audit find that the relevant practices of an electric utility are not in compliance with Ohio Adm. Code 4901:1-10-27(D), the utility should not be permitted to recover the costs of the audit from ratepayers. The results of the audit should be publicly filed with the Commission and be available for the public and evidentiary hearings conducted as part of the Commission's investigation.

K. Review whether the electric utilities' failure to timely restore service after interruptions in service caused by the windstorm may be an unreasonable, unjust, inadequate, insufficient, improper and inadequate practice that is causing unreasonable, unjust, insufficient, improper and inadequate service to end-use consumers, including residential customers, who are served by the electric utilities. The Commission should remedy this situation by requiring an independent audit to review the outage restoral efforts of each electric utility to the windstorm. The audit should include a review of the electric utilities' mutual assistance agreements and how the implementation of such agreements may have exacerbated problems with outage restoral efforts subsequent to the windstorm. Should such independent audit find that the outage restoral practices of an electric utility are not sufficient, the utility should not be permitted to recover the costs of the audit from ratepayers. The results of the audit should be publicly filed with the Commission and be available for the public and evidentiary hearings conducted as part of the Commission's investigation.

L. Perform an audit to determine actual utility expenditures since January 1, 1995, as compared to the amount customers paid in rates for adequate and reliable service. It should also be determined to what extent customers have prepaid for improvements that utilities have failed to deliver on. The calculation of any over or under-recovery dating from January 1, 1995 to present should be expressed based on the net present value.

The focus of an investigation should be the enforcement of standards for the reliable provision of electric distribution service to electric customers. CREO recommends that any investigation should include an audit which reviews the distribution reliability practices of the electric utilities as noted above. As in prior service quality-related cases, the Commission should order the electric utilities to file proposals "in the docket which would provide information regarding who would perform such an audit, their qualifications, the proposed scope of the audit and proposed timelines * * *."[79] In the Ameritech Service Quality Case, the PUCO Staff "developed a Request for Proposal ("RFP") to solicit responses for conducting the audit...," and the Commission then reviewed the RFP.[80] That approach should be followed here, for any retaining of an auditor. The PUCO should also ensure that any selection of an auditor is for an "independent, outside auditor..." and not for the utilities' internal auditors.[81] The auditor should consider the PUCO Staff, not the electric utilities, as its client.

In the Ameritech Service Quality Case, the PUCO directed the auditor to "not rely on Ameritech for regulatory interpretations or clarifications of the applicable Commission rules" and to instead "consult with the Staff regarding Commission

[79] In re Ameritech Ohio, Case No. 99-938-TP-COI, Entry (October 18, 2000)("Ameritech Service Quality Case") at 1.

[80] Id. at 3.

[81] Id. at 2.

interpretations and clarifications..."[82] of rules and regulatory requirements. Similarly, the PUCO should direct the auditor to rely on the PUCO Staff for regulatory interpretations and clarifications, if the PUCO decides that an auditor should be retained as part of the investigation.

Further, any auditor should be required to meet with the Staff and other parties to the case prior to commencing the audit to discuss interpretations of the ESSS and other applicable outage restoral practices.[83] Finally, the PUCO should ensure that the "conclusions, results or recommendations" of an auditor "may be examined by any participant" during the course of the proceeding.[84]

The investigation costs, whether those of the PUCO Staff itself or in concert with an independent consultant chosen by the Commission and can be paid by Ohio's electric utilities under R.C. 4903.24:

> If the public utilities commission finds after investigating * * * that any service is inadequate or cannot be obtained, the public utility found to be at fault shall pay the expenses incurred by the commission upon such investigation.[85]

The Commission has previously required a public utility to pay for an independent consultant to review its recordkeeping and other service quality-related performance, including in the Ameritech Service Quality Case.[86] An investigation of the electric utilities' reliability, coupled with the findings of the auditor and the facts gathered

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[82] Id. at 3.

[83] Id. at 3. This is consistent with the Ameritech Service Quality Case.

[84] Ameritech Service Quality Case, Entry (January 4, 2001) at 2.

[85] R.C. 4903.24.

[86] Ameritech Service Quality Case, Opinion and Order (July 20, 2000) at 41.

through both evidentiary and public hearings, should determine if the electric utilities are providing reliable service. If the proceedings determine that the efforts of the utilities have been subpar in maintaining their distribution systems then R.C. 4905.38 authorizes the Commission to order repairs and improvements "to secure adequate service ***."

Ohio's residential ratepayers have a right to know whether the rates they pay are being put to good use to ensure that reliable, safe electric service is being provided to them. The transparency of an investigation will afford Ohioans an opportunity to be heard. The transparency of an investigation should also provide Ohioans with the information for them to judge for themselves if Ohio's electric utilities are properly maintaining their electric distribution system infrastructure. Customers pay for reliable service. Ohio's electric utilities have the obligation to provide such reliable service and should not profit from or otherwise be rewarded for allowing their distribution service to deteriorate.

V. THE PUCO SHOULD GRANT THE REQUEST FOR HEARINGS, INCLUDING LOCAL PUBLIC HEARINGS

The weather-related events, prior PUCO Staff reports, and Commission proceedings cited above, highlight the need for hearings for expert testimony and local public hearings. Hearings would establish a transparent process that permits parties to explore the electric utilities' reliability in order to present the Commission with a record upon which appropriate corrective action could be ordered. Transparency should be a main driver in addressing this issue as a result of the Administration's initiative on

creating a transparent government process[87] and the heightened awareness by the media and citizens of Ohio to the reliability issue raised by the recent windstorm.

Transparency will also be served by conducting public hearings in local communities throughout Ohio to hear from customers directly affected by electric reliability issues. Even in proceedings before the Commission in which local public hearings (beyond a minimum requirement) were not expressly required by Ohio law or Commission rule, the PUCO recognized the importance of gathering public input and held local public hearings in several communities.[88]

The Commission has ordered evidentiary hearings and public hearings in similar cases in the past. For example, the Commission ordered a hearing in both the Ameritech Service Quality Case, and in AEP's Self-Complaint Case. In the Self-Complaint Case the Commission ordered evidentiary hearings and a full presentation of reliability concerns from the public and intervening parties.[89]

A similar procedure is warranted to accommodate a proper review of the distribution system reliability provided by Ohio's electric utilities that affect each and every electric utility customer in Ohio. The windstorm of September 14, 2008, had a dramatic effect on 2.6 million electric customers in Ohio. Many customers were not only inconvenienced by the storm but were forced to replace spoiled food and missed time from work potentially resulting in lost wages. A hearing would permit parties to explore

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[87] Governor Strickland's speech to the Toledo Regional Chamber of Commerce on May 11, 2007,regarding the development of the Ohio Energy Compact. *Principle Three: Transparency and Accountability are priorities throughout the Strickland Administration.*

[88] *In the Matter of the Application of Ohio American Water Company to Increase its Rates for Water and Sewer Services,* Case No. 07-1112-WS-AIR, Entry (July 22, 2008) at 1-2..

[89] AEP Self-Complaint Case, Entry (July 26, 2006) at 2.

the electric utilities' reliability in order to present the Commission with a record upon which appropriate corrective action could be ordered.

VI. CONCLUSION

The Commission should grant CREO's request and order an investigation and conduct hearings regarding the service quality being provided by Ohio's electric utilities. Such an investigation should be conducted so that customers of electric service are assured of receiving the reliable service from utilities for which they have paid and to which they are entitled under Ohio law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Request for an Investigation in which the Electric Utilities Should Be Required To Show That Their Service To Ohio Customers Is Adequate and Request for Hearings by the Consumers For Reliable Electricity In Ohio* has been served upon the below-stated individuals, via regular U.S. Mail, postage prepaid, this 15th day of December, 2008.

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