

FILE

FAX

**BOEHM, KURTZ & LOWRY**

ATTORNEYS AT LAW  
36 EAST SEVENTH STREET  
SUITE 1510  
CINCINNATI, OHIO 45201  
TELEPHONE (513) 421-2335  
TELECOPIER (513) 421-2764

Via Overnight Mail

February 15, 2010

Public Utilities Commission of Ohio  
PUCO Docketing  
180 E. Broad Street, 10th Floor  
Columbus, Ohio 43215

RECEIVED-DOCKETING DIV  
2010 FEB 16 AM 8:01  
PUCO

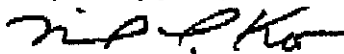
**In re: Case Nos. 09-1947-EL-POR, 09-1948-EL-POR and 09-1949-EL-POR  
Case Nos. 09-1942-EL-EEC, 09-1943-EL-EEC and 09-1944-EL-EEC  
Case Nos. 09-580-EL-EEC, 09-581-EL-EEC and 09-582-EL-EEC**

Dear Sir/Madam:

Please find enclosed an original and twenty (20) copies of OBJECTIONS OF THE OHIO ENERGY GROUP filed in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



David F. Boehm, Esq.  
Michael L. Kurtz, Esq.  
**BOEHM, KURTZ & LOWRY**

MLKkew  
Encl.  
Cc: Certificate of Service

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business  
Technician DLK Date Processed 2/16/2010

**CERTIFICATE OF SERVICE**

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or ordinary mail, unless otherwise noted, this 15<sup>TH</sup> day of February, 2010 the following:



David F. Boehm, Esq.  
Michael L. Kurtz, Esq.

\*Bingham, Deb J. Ms.  
Office of the Ohio Consumers' Counsel  
10 W. Broad St., 18th Fl.  
Columbus OH 43215

\*Kolich, Kathy J Ms.  
FirstEnergy Corp  
76 South Main Street  
Akron OH 44308

O'BRIEN, THOMAS ATTORNEY-AT-LAW  
BRICKER & ECKLER LLP  
100 SOUTH THIRD STREET  
COLUMBUS OH 43215

\*Orahoad, Teresa  
Bricker & Eckler LLP  
100 South Third Street  
Columbus OH 43215-4291

PORTER, ANDRE T  
SCHOTTENSTEIN ZOX & DUNN CO LPA  
250 WEST STREET  
COLUMBUS OH 43215

\*Roberts, Jacqueline Lake Ms.  
EnerNOC, Inc.  
13212 Hayes Corner Road SW  
Pataskala OH 43062

STONE, GARRETT A ATTORNEY  
BRICKFIELD BURCHETTE RITTS & STONE PC  
1025 THOMAS JEFFERSON STREET NW 8TH FLOOR  
WEST TOWER  
WASHINGTON DC 20007-5201

CITY OF CLEVELAND  
601 LAKESIDE AVENUE ROOM 106  
CLEVELAND OH 44114

\*Reisinger, Will Mr.  
Ohio Environmental Council  
1207 Grandview Avenue  
Columbus OH 43212

RINEBOLT, DAVID  
LAW DIRECTOR  
231 WEST LIMA STREET P.O. BOX 1793  
FINDLAY OH 45839-1793

\*Mallamee, Patti  
The Office of the Ohio Consumers Counsel  
10 W. Broad St. Suite 1800  
Columbus OH 43215

WARNOCK, MATTHEW W ATTORNEY  
BRICKER & ECKLER LLP  
100 S THIRD STREET  
COLUMBUS OH 43215

\*Clark, Joe Mr.  
McNees Wallace & Nurick LLC  
21 East State Street, 17th Floor  
Columbus OH 43215

\*Lang, James F Mr.  
Calfco Halter & Griswold LLP  
1400 KeyBank Center 800 Superior Ave.  
Cleveland OH 44114

\*Heintz, Michael E Mr.  
Environmental Law & Policy Center  
1207 Grandview Ave. Suite 201  
Columbus OH 43212

BEELER, STEVEN L ASSISTANT DIRECTOR OF LAW  
CITY OF CLEVELAND DEPARTMENT OF LAW  
601 LAKESIDE AVENUE ROOM 106

Phone: 216-664-2800

CLEVELAND OH 44114

ENERNOC, INC.  
JACQUELINE LAKE ROBERTS  
191 FEDERAL STREET SUITE 1100  
BOSTON MA 02210

ENVIRONMENTAL LAW & POLICY CENTER  
1207 GRANDVIEW AVE. SUITE 2021  
COLUMBUS OH 43212

INDUSTRIAL ENERGY USERS OF OHIO  
SAMUEL C. RANDAZZO, GENER  
21 E. STATE STREET, 17TH FLOOR  
COLUMBUS OH 43215

CLARK, JOSEPH M ATTORNEY AT LAW  
MCNEES WALLACE & NURICK LLC  
21 EAST STATE STREET, 17TH FL.  
COLUMBUS OH 43215

NATURAL RESOURCES DEFENSE COUNCIL COUNSEL  
50 W BROAD STREET SUITE 2117  
COLUMBUS OH 43215

ECKHART, HENRY  
ATTORNEY AT LAW  
50 WEST BROAD STREET SUITE 2117  
COLUMBUS OH 43215-3301

NUCOR STEEL MARION, INC  
912 CHENEY AVENUE  
MARION OH 43302

LAVANGA, MICHAEL K ATTORNEY  
BRICKFIELD BURCHETTE RITTS & STONE PC  
1025 THOMAS JEFFERSON STREET NW 8TH FLOOR  
WEST TOWER  
WASHINGTON DC 20007-3201

OHIO CONSUMERS' COUNSEL  
10 W. BROAD STREET SUITE 1800  
COLUMBUS OH 43215-3485

ALLWEIN, CHRISTOPHER J  
OHIO CONSUMERS COUNSEL  
10 WEST BROAD STREET, SUITE 1800  
COLUMBUS OH 43215-3485

OHIO ENVIRONMENTAL COUNCIL  
1207 GRANDVIEW AVE. SUITE 201  
COLUMBUS OH 43212-3449

OHIO HOSPITAL ASSOCIATION  
RICHARD L. SITES  
155 E. BROAD STREET 15TH FLOOR  
COLUMBUS OH 43215-3620

KORKOSZ, ARTHUR  
FIRST ENERGY, SENIOR ATTORNEY  
76 SOUTH MAIN STREET LEGAL DEPT.,  
18TH FLOOR  
AKRON OH 44308-1890

KOLICH, KATHY ATTORNEY AT LAW  
FIRSTENERGY CORP  
76 SOUTH MAIN STREET  
AKRON OH 44308

MEISSNER, JOSEPH  
DIRECTOR OF URBAN DEVELOPMENT  
ATTORNEY AT LAW 1223 WEST SIXTH  
STREET

GRUBER, WILLIAM  
ATTORNEY AT LAW  
2714 LEIGHTON ROAD

CLEVELAND OH 44113

ALEXANDER, N TREVOR  
CALFEE HALTER & GRISWOLD LLP  
1100 FIFTH THIRD CENTER 21 EAST STATE  
STREET  
COLUMBUS OH 43215-4243

POULOS, GREGORY J ATTORNEY  
OHIO CONSUMERS' COUNSEL  
10 WEST BROAD ST. SUITE 1800  
COLUMBUS OH 43215-3485

\*DUFFER, JENNIFER MRS.  
ARMSTRONG & OKEY, INC.  
222 EAST TOWN STREET 2ND FLOOR  
COLUMBUS OH 43215

MOONEY, COLLEEN L. ATTORNEY AT LAW  
OHIO PARTNERS FOR AFFORDABLE ENERGY  
1431 MULFORD RD  
COLUMBUS OH 43212

CITIZENS COALITION  
JOSEPH MEISSNER  
1223 WEST SIXTH STREET  
CLEVELAND OH 44113

CLEVELAND HOUSING NETWORK  
2999 PAYNE AVENUE  
CLEVELAND OH 44114

CONSUMERS FOR FAIR UTILITIES RATES  
TIM WALTERS  
4115 BRIDGE AVENUE  
CLEVELAND OH 44113

EMPOWERMENT CENTER OF GREATER  
CLEVELAND  
3030 EUCLID AVENUE UNIT 100  
CLEVELAND OH 44115

INDUSTRIAL ENERGY USERS OF OHIO  
SAMUEL C. RANDAZZO, GENER  
21 E. STATE STREET, 17TH FLOOR  
COLUMBUS OH 43215

NATURAL RESOURCES DEFENSE COUNCIL

SHAKER HEIGHTS OH 44120

\*REESE, RICHARD ATTORNEY AT LAW  
10 WEST BROAD STREET SUITE 1800  
COLUMBUS OH 43215-3485

ALEXANDER, N TREVOR  
CALFEE HALTER & GRISWOLD LLP  
1100 FIFTH THIRD CENTER  
21 EAST STATE STREET  
COLUMBUS OH 43215-4243

ECKHART, HENRY  
ATTORNEY AT LAW  
50 WEST BROAD STREET SUITE 2117  
COLUMBUS OH 43215-3301

\*LANG, JAMES F MR.  
CALFEE HALTER & GRISWOLD LLP  
1400 KEYBANK CENTER 800 SUPERIOR AVE.  
CLEVELAND OH 44114

VINCEL, MATTHEW D  
THE LEGAL AID SOCIETY OF CLEVELAND  
1223 WEST 6TH STREET  
CLEVELAND OH 44113

ROBINSON, THEODORE S STAFF ATTORNEY  
CITIZEN POWER  
2121 MURRAY AVENUE  
PITTSBURGH PA 15217

CLARK, JOSEPH M ATTORNEY AT LAW  
MCNEES WALLACE & NURICK LLC  
21 EAST STATE STREET, 17TH FL.  
COLUMBUS OH 43215

(RETURNED MAIL)

XXXXXXXXXXXXXXXXXXXXXXXXXX  
2 N RIVERSIDE PLAZA # 2250  
CHICAGO IL 60606-2600

ECKHART, HENRY W.  
50 WEST BROAD STREET #2117  
COLUMBUS OH 43215

NEIGHBORHOOD ENVIRONMENTAL  
COALITION  
REV. MIKE FRANK, CO-CHAIR  
5920 ENGLE AVE.  
CLEVELAND OH 44127

MEISSNER, JOSEPH  
DIRECTOR OF URBAN DEVELOPMENT  
ATTORNEY AT LAW 1223 WEST SIXTH STREET  
CLEVELAND OH 44113

RINEBOLT, DAVID C  
OHIO PARTNERS FOR AFFORDABLE ENERGY  
231 WEST LIMA ST P O BOX 1793  
FINDLAY OH 45839-1793

SMALL, JEFFREY  
OHIO CONSUMERS' COUNSEL  
10 WEST BROAD STREET SUITE 1800  
COLUMBUS OH 43215-3485

SIERRA CLUB OHIO CHAPTER  
BRANDI WHETSTONE  
131 N HIGH ST., STE. 605  
COLUMBUS OH 43215

UNITED CLEVELANDERS AGAINST POVERT  
TIM WALTERS  
MAY DUGAN CENTER 4115 BRIDGE AVENUE  
CLEVELAND OH 44113

**BEFORE THE  
PUBLIC UTILITY COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanisms	:	Case Nos.	09-1947-EL-POR 09-1948-EL-POR 09-1949-EL-POR
In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Initial Benchmark Reports.	:	Case Nos.	09-1942-EL-EEC 09-1943-EL-EEC 09-1944-EL-EEC
In the Matter of the Energy Efficiency and Peak Demand Reduction Program Portfolio of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	:	Case Nos.	09-580-EL-EEC 09-581-EL-EEC 09-582-EL-EEC

---

**OBJECTIONS OF  
THE OHIO ENERGY GROUP**

---

**1. This Proceeding Is Not The Appropriate Venue For Determining Whether Interruptible Riders ELR And OLR Should Be Extended.**

In its Application the Companies stated that its plan "*contemplates the substitution of (Riders ELR and OLR) in 2011 with a revised program in which the customers bid in their interruptible load in response to a Company RFP.*"<sup>1</sup> However, in response to Nucor's inquiry as to whether the Companies are "*seeking approval in this proceeding for a Company RFP to procure interruptible load beginning in 2011, even though this RFP is already being litigated in the Company's MRO proceeding,*" the Companies responded that it is "*only seeking approval in this proceeding to include the results of the Interruptible RFP program (however it is ultimately approved in the MRO proceeding) for purposes of*

---

<sup>1</sup> Application p. 5.

*compliance with R.C. 4928.66(A) benchmarks.*<sup>2</sup> OEG reads this Response to Nucor to mean that FirstEnergy is not proposing that the Commission make any ruling on the issue of whether the current interruptible Riders can be replaced with an RFP process that would require interruptible customers to submit bids in order to determine interruptible credits in this proceeding. The Companies response indicates that it believes that this issue is more appropriately decided in its pending MRO proceeding (Case No. 09-906-EL-SSO). OEG concurs.

The Commission should not address whether Riders ELR and OLR should be extended in this case. The FirstEnergy MRO proceeding contains an extensive record, including voluminous testimony and briefs from various parties, on this issue. The record in this proceeding lacks sufficient detail to allow the Commission to determine the future of the interruptible program. The MRO proceeding is the appropriate venue for the determination of the ELR/OLR issue.

**2. DSE2 Cost Are Appropriately Allocated Among Large Business Customers Based On Distribution Revenue.**

In its Application the Companies proposed to recover its Peak Demand Reduction (PDR) and Energy Efficiency (EE) costs ("DSE2 costs") from GP, GSU and GT customers according to each class's energy usage.<sup>3</sup> Such an allocation would overstate the expected benefit that transmission voltage customers would derive from EE/PDR programs.

The manufacturing operations of transmission voltage customers typically consist of highly specialized processes that do not lend themselves to generalized PDR and EE programs. It would be very difficult for an outside party to enter an industrial facility and effectively identify methods to

---

<sup>2</sup> See FirstEnergy's Response to Nucor Set 1, DR-16(c).

<sup>3</sup> See Exhibit SEO-C1, lines 9-18.

reduce energy consumption in complicated manufacturing processes better than the managers and engineers of that facility.

Further, due to the highly competitive nature of large manufacturing operations it is likely that transmission voltage customers have already implemented nearly every cost-effective PDR and EE measure. Electricity costs are such a significant part of the total costs of a large manufacturing operation that the Companies' industrial customers have been working to reduce energy consumption out of business necessity long before the Companies' EE and PDR programs were proposed.

As a result of these factors, it is unlikely that large manufacturers will be able to take advantage of the benefits of the Companies' PDR and EE programs at the same level as distribution voltage customers. OEG recommends that the Commission allocate DSE2 costs to GP, GSU and GT customers based on distribution revenue. This allocation methodology will allocate more of the program costs to the customers that are likely to use these programs. Once GT customers are allocated their share of costs based on distribution revenues, costs should be collected through a kWh charge to GT customers.

Additionally, OEG recommends that total program costs should be equal to the budget projected by the Companies in its filing. This amount should be trued-up to actual dollars spent on an annual basis. The Commission should direct the Companies that Rate GT program costs should approximate the amount of money initially allocated to Rate GT programs in its projected budget. Of course the Companies should be free to spend more on GT programs if the Companies reasonably believe that such expenditures are necessary in order to meet statutory energy efficiency requirements.



**3. The Current Interruptible Program That Was Approved In FirstEnergy's ESP Filing Should Be Used To Satisfy The Requirements Of RC §4928.66.**

In Case No. 08-935, the Commission approved Riders ELR and OLR. These Riders provide customers a credit in exchange for the customer's agreement to allow a service interruption during 870 hours during the year. By approving these rates the Commission determined that the interruptible program is a valuable source of peak demand reduction. This is exactly the type of program contemplated in RC §4928.66.

This Section clearly includes the interruptible program. FirstEnergy and its customers are already absorbing the costs of the interruptible programs. It would be wasteful and illogical for the Commission to not count the demand-reduction capacity provided by these programs.

Respectfully submitted,



David F. Boehm, Esq.

Michael L. Kurtz, Esq.

**BOEHM, KURTZ & LOWRY**

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: 513.421.2255 Fax: 513.421.2764

E-Mail: [dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com)

[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)

**COUNSEL FOR THE OHIO ENERGY GROUP**

February 15, 2010