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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio     )  
Edison Company, The Cleveland Electric     )  
Illuminating Company and The Toledo     ) Case No. 10-176-EL-ATA  
Edison Company for Approval of a New     )  
Rider and Revision of an Existing Rider.     )

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**REQUEST FOR CLARIFICATION AND, IN THE ALTERNATIVE,  
APPLICATION FOR REHEARING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC"), pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35(A), seeks clarification and rehearing of the Finding and Order ("Order") issued by the Public Utilities Commission of Ohio ("PUCO" or "Commission") on March 3, 2010. The Order follows in time after an application ("Application") was filed by Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy" or "Companies") on June 7, 2007 regarding generation rates, and also after motions ("Motions") were filed by the OCC on February 25, 2010 in support of residential rate reductions.

The Order should be clarified and, in the alternative, the Commission erred in its Order in the following particulars:

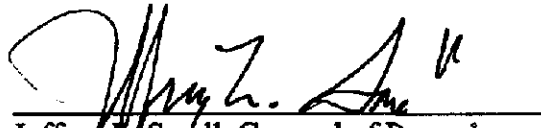
- A) The Order is unclear, or the Commission erred, when providing rate relief for "all-electric" customers without specifying that those customers are the same customers who would benefit from lower rates under the OCC's Motions;
- B) The Order is unclear, or the Commission erred, when providing for bill impacts without specifying that new tariffs should restore the relationship between the standard residential rates and each non-standard residential rate that existed prior to elimination of the non-standard rates, on both a distribution and generation basis;

- C) The Order is unclear, or the Commission erred, when providing for PUCO Staff investigation without specifying that the Staff should investigate any FirstEnergy promises and inducements that caused (directly or indirectly) customers to commit to equipment in reliance upon such promises and inducements that were not kept by the Companies and without providing for appropriate methods to properly inform the Commission as part of the investigation;
- D) The Commission erred when it failed to grant the OCC's Motion to Intervene.

The reasons for granting this Request for Clarification are set forth in the attached Memorandum in Support.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

FirstEnergy filed its Application on February 12, 2010. The Application proposed adjustment of certain residential electric rates, which are applicable to some of the Companies' approximately 1.9 million residential customers who were served according to non-standard rates.

The OCC, the state agency that represents Ohio's residential utility consumers, moved to intervene in this case on February 23, 2010. The OCC's Motions were filed on February 25, 2010, and (among other matters) identified the customers who should receive rate adjustments as well as the method according to which the rate adjustments should be calculated.

The Commission issued its Order on March 3, 2010. The Order addresses a few main points: A) discounting rates "for the all-electric residential subscribers,"<sup>1</sup> B) FirstEnergy tariffs that "provide bill impacts commensurate with FirstEnergy's December 31, 2008, charges for those customers,"<sup>2</sup> C) the PUCO Staff is directed "to investigate

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<sup>1</sup> Order at 3, ¶(10).

<sup>2</sup> Id.

and file a report in this proceeding regarding the appropriate long-term rates”<sup>3</sup> subject to “comments by interested persons” at a later date,<sup>4</sup> and D) “defer[ral of] the difference between the rates and charges to be charged to the all-electric residential customers as the result of the Commission’s order and the rates and charges that would otherwise be charged to those customers.”<sup>5</sup> The OCC seeks clarification on the first three of these main points, and in the alternative seeks rehearing based upon the OCC’s arguments in this case.

Also, the Commission erred in its Order when it failed to grant the OCC’s Motion to Intervene that was submitted on February 23, 2010.

## **II. ARGUMENT**

### **A) The Order Is Unclear, Or The Commission Erred, When Providing Rate Relief For “All-Electric” Customers Without Specifying That Those Customers Are The Same Customers Who Would Benefit From Lower Rates Under The OCC’s Motions.**

#### **1. Eligibility for non-standard residential rates should determine eligibility to receive the lower rates.**

The Order uses the term “all-electric residential customers” for those customers who will receive reduced rates without defining that term.<sup>6</sup> While this same term is used in the OCC’s Motions, the OCC defined that term for the purpose of the February 25, 2010 pleading as those customers who were eligible to be served according to “non-

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<sup>3</sup> Id., ¶(12).

<sup>4</sup> Id. at 4, ¶(13).

<sup>5</sup> Id., ¶(11).

<sup>6</sup> Id. at 3, ¶(11).

standard” residential rates.<sup>7</sup> These are the customers who should be provided rate relief, and the Order should be clarified in this respect.

The discussion of the “all-electric” issue should be undertaken in greater detail, and must be undertaken to determine the appropriate tariffs for filing. The removal of non-standard residential rates have generally been the subject of the controversy cited in the Order,<sup>8</sup> which is also demonstrated by the number of protests filed in this docket. The complete list of the former non-standard residential rate tariffs is shown in the attached tariff sheets for the Companies.<sup>9</sup> While all three distribution companies had such non-standard tariffs, these non-standard residential rates for OE and CEI include those provided under the “Special Provisions” section of the standard residential rates.<sup>10</sup> Customers who would qualify for all these tariff provisions should be provided rate relief.

**2. Rate reductions should not depend upon whether the customer was “grandfathered” under rate determinations that are unraveled in the Order.**

The Order states that “all-electric residential customers” will receive reductions, and thereafter discusses that these reductions will depend upon those charges as of December 31, 2008. The date is apparently selected, like those selected in the OCC’s Motions,<sup>11</sup> to pre-date the initial change in tariffs that eliminated the non-standard tariff

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<sup>7</sup> See, e.g., OCC’s Motions at footnote 1, as well as at 1 and 7.

<sup>8</sup> Order at 3, ¶(9).

<sup>9</sup> See attached Original Sheet 81 for each of the Companies. The OCC attaches tariff sheets for all three distribution utilities because the Order, unlike the Application, includes changes in rates for TE customers. Order at 3, ¶(10) (“we direct FirstEnergy to file tariffs,” where FirstEnergy is defined in the Order to include all three distribution utilities, Order at 1, ¶1).

<sup>10</sup> Id.

<sup>11</sup> OCC’s Motions at 7.

provisions. That is the apparent purpose of the date, and it does not appear to be used to define the residential customers who are considered eligible for rate relief.

To the extent that the Order was intended to recognize the state of “grandfathering” non-standard accounts as of a particular date, the Commission’s treatment of residential rates structures should recognize that FirstEnergy has removed from the roll of those eligible to receive separate rate treatment the customers located at residences where the separate rates applied but the customer account changed for some reason.<sup>12</sup> The burden of rates relates to the equipment installed at the residential customer’s location (e.g. electric space and water heating systems as well as metering equipment), not simply to instances where no change in the customer account has occurred.

The Commission should, for example, provide rate relief to any customer purchasing an electric home that was formerly subject to the non-standard rates. This result would be non-discriminatory, and would positively impact the ability of all-electric homeowners to sell their homes.<sup>13</sup> In other instances a change in the person responsible for the bill may have changed without any substantive change in living arrangements. The rate changes should address the added burden that has been placed on customers having equipment that previously made them eligible for separate rate treatment (i.e. in addition to those that have not experienced a customer account change at their location).

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<sup>12</sup> See OE Tariff No. 11 (“Applicable to any customer . . . who on January 22, 2009 took service from the Company under one of the following rates schedules”); CEI Tariff No. 13 (“April 30, 2009”); TE Tariff No. 11 (“January 22, 2009”). Generation credits for customers are based upon eligibility for the distribution credits. See, e.g., OE, CEI, and TE Tariff No. 11, 13, and 8, respectively, Original Sheet 116 (“Rider EDR”). The tariffs are available at: <http://www.puco.ohio.gov/apps/directory/lister/docketingfiles.cfm?path=Electric%5C&filearea=2>

<sup>13</sup> See, e.g., OCC’s Motions at 5-6 (discussion of consumer complaint regarding selling a home).



**B) The Order Is Unclear, Or The Commission Erred, When Providing For Bill Impacts Without Specifying That New Tariffs Should Restore The Relationship Between The Standard Residential Rates And Each Non-Standard Residential Rate That Existed Prior To Elimination Of The Non-Standard Rates, On Both A Distribution And Generation Basis.**

The Order states that tariffs should “provide bill impacts commensurate with FirstEnergy’s December 31, 2008 charges . . . .”<sup>14</sup> The Order is not entirely clear, but appears to be consistent with the OCC’s statement that tariffs should restore the relationship between the standard residential rates and each non-standard residential that existed prior to elimination of the non-standard rates.<sup>15</sup> This fundamental treatment of rates should be approved in this case to serve residential customers until such time as new rates are approved by the Commission as a result of the investigation ordered by the Commission.<sup>16</sup>

The Order is not specific regarding the adjustment of distribution and generation rates, but appears to state that both should be adjusted as recommended in the OCC’s Motions.<sup>17</sup> The adjustment of both distribution and generation rates is necessary to restore non-standard rates for residential customers. The date selected by the Commission to judge the level of the discounts, December 31, 2008, pre-dates the first rate changes that eliminated non-standard distribution rates in January 2009. Therefore, distribution rates as well as generation rates appear to be the subject of the rate relief in

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<sup>14</sup> Order at 3, ¶(10).

<sup>15</sup> OCC’s Motions at 7.

<sup>16</sup> Order at 3-4.

<sup>17</sup> OCC’s Motions at 7.

the Order (which is the appropriate). This treatment of both distribution and generation charges is required to address the added burden placed on residential customers who were previously subject to the non-standard rates.

The relationship between standard and non-standard residential rates should be restored concerning customer, kilowatt-hour, and demand charges in distribution and generation rates.<sup>18</sup> Thus, every residential customer would be responsible for unchanged additional charges or riders. With this clarification, the relationship between standard and non-standard residential distribution and generation rates should be restored.

**C) The Order Is Unclear, Or The Commission Erred, When Providing For PUCO Staff Investigation Without Specifying That The Staff Should Investigate Any FirstEnergy Promises And Inducements That Caused (Directly Or Indirectly) Customers To Commit To Equipment In Reliance Upon Such Promises And Inducements That Were Not Kept By The Companies And Without Providing For Appropriate Methods To Properly Inform The Commission As Part Of The Investigation.**

- 1. An investigation should be conducted regarding the Companies' commitments, including promises and inducements to the residential sector.**

The Order directs the PUCO Staff "to investigate and file a report in this proceeding regarding the appropriate long-term rates that should be provided to all-electric residential customers of FirstEnergy."<sup>19</sup> The investigation and reporting is desirable, but it is unclear from the Order whether the PUCO Staff has been directed to include in its investigation the issue of FirstEnergy responsibility for allegedly marketing major electricity-consuming equipment (such as for space and water heating) using

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<sup>18</sup> Id.

<sup>19</sup> Order at 3, ¶(12).

promises of continued, discounted electric rates. Such an investigation is absolutely necessary in order for the PUCO Staff to prepare a report that appropriately considers the assignment of financial responsibility to FirstEnergy.

Complaints regarding the elimination of all-electric, winter rates are easily noticed in reports by the press, in this docket and related dockets at the Commission, and elsewhere since the onset of the 2009-2010 winter heating season. The House of Representative's Consumer Affairs and Economic Protection Committee held a hearing regarding the elimination of all-electric rates on February 17, 2010. On March 3, 2010, Congressman Dennis Kucinich commenced a Congressional investigation that requested information from FirstEnergy.<sup>20</sup> Senate Bill 236 was recently introduced on the subject of restoring discontinued residential discounts for electricity. Members of the General Assembly also helped organize public meetings to provide interested individuals the opportunity to voice their opposition to the elimination of all-electric rates. Some complaints state that the Companies have promoted all-electric service using promises of guaranteed, separate (i.e. favorable) treatment of non-standard electric customers.<sup>21</sup> The Commission should specifically provide, in its entry on rehearing, that these matters will be investigated and reported upon by the PUCO Staff.

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<sup>20</sup> John Funk, *PUCO orders FirstEnergy to restore deep discounts for all electric homes*, The Plain Dealer (March 3, 2010), Cleveland Ohio Business News, available at: [http://www.cleveland.com/business/index.ssf/2010/03/kucinich\\_opens\\_massive\\_investi.html](http://www.cleveland.com/business/index.ssf/2010/03/kucinich_opens_massive_investi.html)

<sup>21</sup> See, e.g., OCC's Motions at 10-11 (citing reports taken at public meetings).

**2. Methods should be selected so that the Commission is properly informed as part of its investigation.**

The Order states that upon the filing of Staff's report, "a period for the filing of comments by interested persons" will be set in a future entry.<sup>22</sup> Interested persons should be assisted in their collecting information in preparation for these comments. The Commission should require expedited discovery, local public hearings, and the solicitation of comments by customers to properly inform its investigation.

The OCC's Motions set forth the legal basis for expedited discovery<sup>23</sup> -- Ohio Adm. Code 4901-1-19(A) which allows for the PUCO to shorten response times for interrogatories and Ohio Adm. Code 4901-1-20(C) that applied to the production of documents -- and requested that discovery be conducted with ten-day turn-around by means of electronic service. The PUCO has altered the manner of service for discovery in many previous cases,<sup>24</sup> and should do so again in these cases where the PUCO Staff is required to file a report in only ninety days.

As argued in the OCC's Motions, the Commission should also conduct local public hearings and solicit comments by interested persons (residential customers and others) to properly inform its investigation.<sup>25</sup> The public has responded in the past to opportunities to share their experiences regarding contacts with the Companies'

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<sup>22</sup> Id. at 4, ¶(13).

<sup>23</sup> OCC's Motions at 13-14.

<sup>24</sup> See, e.g., *In re AEP's Proposed IGCC Generating Facility*, Case No. 05-376-EL-UNC, Entry at ¶(10) (May 10, 2005) and *In re Prudence Review of DP&L's Billing System Modification Costs*, Case No. 05-792-EL-ATA, Entry at 4-5 (October 4, 2005).

<sup>25</sup> OCC's Motions at 14-15.

personnel. Such information should be available as part of the record in the Commission's investigation.

Expedited discovery and the opportunity for the public to comment at local public hearings were not ordered by the Commission on March 3, 2010. On rehearing, the OCC's Motions on these matters should be granted.

**D) The Commission Erred When It Failed To Grant The OCC's Motion To Intervene.**

The essence of R.C. 4903.221 is the determination that the person seeking to intervene has a stake in the proceeding before the Commission. The OCC's Motion to Intervene and Memorandum in Support was filed on February 23, 2010. That Motion to Intervene stated the OCC's intent to represent the interests of all residential customers of FirstEnergy, pursuant to the authority stated in R.C. Chapter 4911, and residential customers have a substantial stake in this proceeding.<sup>26</sup>

Uncertainty existed regarding the rate treatment that would be afforded to residential customers at the time the OCC's Motion to Intervene was submitted. That uncertainty continues after the Order was issued, as partly demonstrated in this pleading regarding the need for clarity and/or change in the Order. Furthermore, the Order states that this case will include consideration of "appropriate long-term [residential] rates"<sup>27</sup> as well as "the recovery of the revenue shortfall as the result of the discounts."<sup>28</sup> Upon

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<sup>26</sup> OCC's Motion to Intervene (February 23, 2010). The Motion to Intervene noted that the Supreme Court of Ohio found that the PUCO abused its discretion in an earlier case when it denied the OCC's intervention. Id. at 4, citing *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20 (2006).

<sup>27</sup> Order at 3, ¶(12).

<sup>28</sup> Id. at 4, ¶(12).

rehearing, the OCC's Motion to Intervene should be granted so that the OCC is able to represent residential interests in the procedure stated in the Order<sup>29</sup> as well as in all subsequent developments in this case.

### **III. CONCLUSION**

The rate changes announced in the Commission's Order are not clearly stated regarding either those eligible for the rate reductions or the rates that should appear in the Companies' tariffs. The rate reductions should apply to those customers who would be eligible for the previously existing non-standard rates.

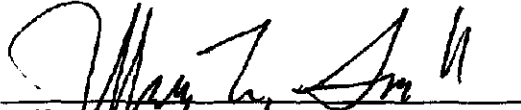
The representations by OE, CEI, and TE personnel (as well as by personnel of any affiliated organization) to residential customers or those connected with the development of residential housing should be examined as part of the PUCO Staff's investigation. Also, the Commission's entry on rehearing should provide for expedited discovery and for public hearings to assist interested parties to present their views regarding the discontinuation of non-standard residential rates.

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<sup>29</sup> Id. at 4, ¶(13) ("filing of comments by interested parties").

Respectfully submitted,

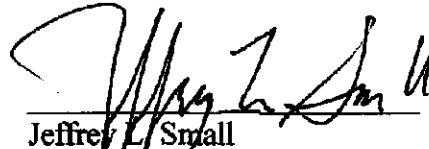
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's Request for Clarification was served upon the persons listed below via first class U.S. Mail, postage prepaid, this 8<sup>th</sup> day of March 2010.

  
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**RIDER RDC**  
**Residential Distribution Credit**

**APPLICABILITY:**

Applicable to any customer taking service under Rate Schedule RS who on January 22, 2009 took service from the Company under one of the following rate schedules and has not had a change of service address subsequent to January 22, 2009 and continues to comply with the requirements of the previously applicable rate schedule set forth below:

Residential Rate "R-02" (Add-On Heat Pump)	Original Sheet No. 11
Residential Rate "R-06" (Space Heating and Water Heating)	Original Sheet No. 13
Residential Rate "R-06a" (Space Heating and Water Heating)	Original Sheet No. 14
Residential Rate "R-04" (Water Heating)	Original Sheet No. 15
Residential Rate "R-04a" (Water Heating)	Original Sheet No. 16
Residential Rate "R-07" (Space Heating)	Original Sheet No. 17
Residential Rate "R-07a" (Space Heating)	Original Sheet No. 18
Residential Rate "R-09" (Apartment Rate)	Original Sheet No. 19
Residential Rate "R-09a" (Apartment Rate)	Original Sheet No. 20

**RATE:**

A customer's distribution charges as set forth in Rate Schedule RS shall be reduced by 1.76¢ per kWh for all kWh in excess of 500 which are consumed by the customer during winter billing periods, as defined in the Electric Service Regulations, Tariff Sheet 4, Section VI.I.1., Seasonal Price Changes.

**RIDER RDC**  
**Residential Distribution Credit**

**APPLICABILITY:**

Applicable to any customer taking service under Rate Schedule RS who on January 22, 2009 took service from the Company under one of the following rate schedules and has not had a change of service address subsequent to January 22, 2009 and continues to comply with the requirements of the previously applicable rate schedule set forth below:

Residential Space Heating Rate	Original Sheet No. 11
Residential Optional Time-of-Day	Original Sheet No. 12
Residential Optional Controlled Service Rider	Original Sheet No. 14
Residential Load Management Rate	Original Sheet No. 17
Residential Water Heating Service	Original Sheet No. 18
Residential Optional Electrically Heated Apartment Rate	Original Sheet No. 19

In addition to those rate schedules listed above, customers served solely under the "Special Provisions" section specified in the Residential Standard Rate Schedule, Original Sheet 10.

**RATE:**

A customer's distribution charges as set forth in Rate Schedule RS shall be reduced by 1.77¢ per kWh for all kWh in excess of 500 which are consumed by the customer during winter billing periods, as defined in the Electric Service Regulations, Tariff Sheet 4, Section VI.I.1., Seasonal Price Changes.

**RIDER RDC**  
**Residential Distribution Credit Rider**

**APPLICABILITY:**

Applicable to any customer taking service under Rate Schedule RS who on April 30, 2009 took service from the Company under one of the following rate schedules and has not had a change of service address subsequent to April 30, 2009 and continues to comply with the requirements of the previously applicable rate schedule set forth below:

Residential Add-On Heat Pump	Original Sheet No. 11
Residential Water Heating	Original Sheet No. 12
Residential Space Heating	Original Sheet No. 13
Residential Water Heating and Space Heating	Original Sheet No. 14
Optional Electrically Heated Residential Apartment Schedule	Original Sheet No. 15

In addition to those rate schedules listed above, customers served solely under the "Optional Load Management Rate" section specified in the Residential Schedule, Original Sheet 10.

**RATE:**

A customer's distribution charges as set forth in Rate Schedule RS shall be reduced by 1.70¢ per kWh for all kWh in excess of 500 which are consumed by the customer during winter billing periods, as defined in the Electric Service Regulations, Tariff Sheet 4, Section VI.I.1., Seasonal Price Changes.