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August 9, 2010

Ms. Renee J. Jenkins
Director, Administration Department
Secretary to the Commission
Docketing Division
The Public Utilities Commission of Ohio
180 Broad Street
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Dear Ms. Jenkins:

Re: *In the Matter of the Investigation into the Development of the
Significantly Excessive Earnings Test Pursuant to S.B. 221 for Electric
Utilities*
Case No. 09-786-EL-UNC

Enclosed for filing, please find the original and seventeen (17) copies of the *Memorandum Contra Application for Rehearing* regarding the above-referenced case. Please file the enclosed *Memorandum Contra Application for Rehearing*, time-stamping the two extras and returning them to the undersigned in the enclosed envelope.

Thank you for your assistance in this matter. Please contact me if you have any questions concerning this matter.

Very truly yours,

Arthur E. Korkosz

Arthur E. Korkosz

per authorization
by R.L. Brabaker

AEK/sbs
Enclosures
cc: Parties of Record

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Investigation into
the Development of the Significantly
Excessive Earnings Test Pursuant to S.B. Case No. 09-786-EL-UNC
221 for Electric Utilities**

Memorandum Contra Application for Rehearing

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies") file this Memorandum Contra to the Application for Rehearing filed July 30, 2010 by the Office of the Ohio Consumers' Counsel, the Ohio Energy Group, the Ohio Hospital Association, the Ohio Manufacturers' Association, and Citizen Power, Inc., collectively referring to themselves as the "Customer Parties". The Application for Rehearing is directed to the Commission's Finding and Order ("Order") of June 30, 2010 and asserts two grounds of error.

The first error alleged by the Customer Parties is with respect to the Commission's decision to address issues related to the treatment of off system generation sales revenues on a case by case basis in its review of significantly excessive earnings test ("SEET") filings arising under Ohio Revised Code Section 4928.143(F). The Companies take no position on this first assignment of error, although we do not necessarily accept or agree with some of the Customer Parties' assertions as to proper interpretation of S.B. 221 made in the course of the argument.

The second issue raised by the Customer Parties, and the one to which this Memorandum Contra is directed, is the claim that "the Commission erred when it failed to issue guidelines regarding interest on potential refunds of significantly excessive earnings." In its several pages

of hyperbole, Consumer Parties advocate imposition of a mandatory, universally applied "guideline" imposing interest on SEET refunds.¹

The Customer Parties have gotten ahead of themselves. As pointed out in the Companies' own Application for Rehearing, there is no reason to consider any issue of return in any SEET review proceeding until there has been a determination that significantly excessive earnings exist. Moreover, even if such a determination is made, the statute speaks of a "return" to customers, not a "refund". The process of a refund is only one of the options potentially available to the Commission in effecting a "return". (See Companies' Application for Rehearing, filed July 30, 2010, p. 2; Order, pp. 31-32) Although the Customer Parties cite to a few instances in which interest has been applied in the context of a refund, they admit "[t]here is no provision in the law mandating interest on SEET prospective adjustments. . . ." (Memorandum in Support, p. 12) Given that the Commission has considerable discretion in crafting an appropriate mechanism for a "return", why should it impose upon itself a constraint applicable only in the limited context of a refund when use of the process of refund itself is discretionary? In fact, rather than adopt a general requirement which imposes payment of interest in the event of a refund, the Commission should approach the question of interest with restraint since, by its very nature, the addition of interest to a SEET refund exacerbates the problem of asymmetry in the application of the SEET. (See Companies' Application for Rehearing, filed July 30, 2010, p. 6)

¹ Apparently not content with the extent of the public profile of their position on this issue of interest on refunds as raised in the instant Application for Rehearing, the Customer Parties chose again to repeat their argument in the Application for Rehearing filed August 4, 2010 which addressed the Commission's Entry of July 14, 2010 which granted an extension of time requested by Duke Energy with respect to the SEET filing. Rather than to further burden the Commission with repetition, the Companies ask the Commission to treat their argument here as if made in opposition to the Customer Parties' August 4 Application for Rehearing as well.

For the foregoing reasons, the Commission should deny the Customer Parties' Application for Rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra Application for Rehearing filed by Ohio Edison, The Cleveland Electric Illuminating Company, and The Toledo Edison Company was served by United States Mail, prepaid, to the following persons, this 9th day of August 2010:

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