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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Ohio Edison)
Company, The Cleveland Electric Illuminating)
Company and The Toledo Edison Company)
for Approval of Ohio Site Deployment of the)
Smart Grid Modernization Initiative and Timely)
Recovery of Associated Costs.)

Case No. 09-1820-EL-ATA
Case No. 09-1821-EL-GRD
Case No. 09-1822-EL-EEC
Case No. 09-1823-EL-AAM

PUCO

INDUSTRIAL ENERGY USERS-OHIO
MEMORANDUM CONTRA THE
APPLICATION FOR REHEARING
OF THE OHIO CONSUMERS' COUNSEL

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August 9, 2010

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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 Edison Company for Approval of Ohio Site Deployment of the Smart Grid Modernization Initiative and Timely Recovery of Associated Costs.)	Case No. 09-1820-EL-ATA
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**INDUSTRIAL ENERGY USERS-OHIO
MEMORANDUM CONTRA THE
APPLICATION FOR REHEARING
OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

On November 18, 2009, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, "FirstEnergy") filed an Application for approval of several components of FirstEnergy's proposed Smart Grid Modernization Initiative. The Public Utilities Commission of Ohio ("Commission") received initial and reply comments on FirstEnergy's Application in January 2010. Among other comments, Commission Staff ("Staff"), Industrial Energy Users-Ohio ("IEU-Ohio") and The Kroger Company ("Kroger") all recommended the Commission require FirstEnergy to modify its proposed Rider Advanced Metering Infrastructure ("Rider AMI") to recover its Smart Grid costs through a fixed customer charge rather than on a volumetric basis.¹ The Ohio Consumers' Counsel ("OCC") as well as Citizen

¹ Comments of the Staff of the Public Utilities Commission of Ohio at 21, 23 (January 13, 2010); Motion to Intervene, Memorandum in Support, and Comments of IEU-Ohio at 4-6 (December 30, 2009); Comments of The Kroger Co. at 2-4 (January 13, 2010). Of note, Staff also recommended a per customer charge for the recovery of Smart Grid costs by Dayton Power and Light Company. See *In the Matter of the Dayton Power and Light Company for Approval of its Electric Security Plan*, PUCO Case Nos. 08-1094-EL-SSO, et al., Comments of the Staff of the Public Utilities Commission of Ohio at 1-2 (December 15, 2009).

Power and Ohio Partners for Affordable Energy ("OPAE") filed reply comments recommending that Rider AMI recover costs based upon a usage-based or volumetric rate.

FirstEnergy filed a letter on June 15, 2010 responding to Staff's suggestions and specifically accepted Staff's recommendation (as supported by IEU-Ohio and Kroger) that Rider AMI should be designed to recover costs through a fixed monthly charge rather than a usage sensitive charge.² The Commission issued its Finding and Order on June 30, 2010 and adopted a fixed monthly charge to recover costs through Rider AMI. On July 30, 2010, OCC filed an Application for Rehearing challenging the adoption of a fixed monthly charge for Rider AMI. IEU-Ohio hereby files its Memorandum Contra OCC's Application for Rehearing.

II. ARGUMENT

The Commission should deny OCC's Application for Rehearing. As an initial matter, OCC's Application for Rehearing raises no new substantive arguments for the Commission's consideration. As OCC admits in its Application for Rehearing, the same issue was brought forth by OCC and others in their respective reply comments in this case.³ For this reason alone, OCC's Application for Rehearing should be denied.

Further, notwithstanding that OCC has raised no new issues for the Commission's consideration, the Commission should once again reject OCC's misguided arguments that would impose a rate design for Rider AMI that ignores traditional principles of cost causation and the Commission's precedent.

² See Letter from William R. Ridmann to Commission Staff Member Greg Scheck at 3 (June 15, 2010).

³ OCC Application for Rehearing at 2, FN 2 (July 30, 2010).

First, the Commission properly recognized in its Finding and Order that the costs related to Smart Grid deployment will not vary according to the energy usage of individual customers and therefore a fixed customer charge is consistent with cost causation principles. OCC's Application for Rehearing makes no effort (because it cannot) to refute this reality. As FirstEnergy indicated in its filing, the key components of its Smart Grid Modernization Initiative are distribution automation, voltage control, substation relay-based protective strategies, alternate pricing programs/AMI, and communications and data infrastructure installation. These components reflect capital investments to be made by FirstEnergy in the distribution system. These fixed investments are costs that do not vary depending on a customer's energy usage and the Commission correctly recognized that recovery of Smart Grid deployment costs through a per kilowatt hour ("kWh") charge would disproportionately and unfairly allocate these fixed costs to customers that consume large amounts of electricity.⁴

OCC also makes no attempt to distinguish this case from Commission precedent that adopted non-usage-based charges to recover fixed capital investments in Smart Grid costs. For example, and as cited by the Commission in its Finding and Order,⁵ a fixed charge per customer methodology was approved by the Commission to recover Smart Grid costs incurred by Duke Energy Ohio ("DE-Ohio").⁶ Additionally, Columbus Southern Power Company ("CSP") recovers the Smart Grid costs approved in its ESP

⁴ Finding and Order at 9 (June 30, 2010). See also Motion to Intervene, Memorandum in Support, and Comments of Industrial Energy Users-Ohio at 6, FN 5 (December 30, 2009).

⁵ Finding and Order at 9 (June 30, 2010).

⁶ See *In The Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan*, PUCO Case Nos. 08-920-EL-SSO, *et al.*, Stipulation and Recommendation at 13-14 (October 27, 2008). The Commission approved a Stipulation and Recommendation ("Stipulation") in DE-Ohio's Smart Grid case that recovers costs through a monthly charge of \$0.49 for residential customers and \$0.72 for non-residential customers. *In the Matter of the Application of Duke Energy Ohio to Adjust and Set Its Gas and Electric Recovery Rate for SmartGrid Deployment Under Riders AU and DR-IM*, PUCO Case Nos. 09-543-GE-UNC, *et al.*, Opinion and Order at 5-6 (May 13, 2010).

case through a charge that is applied as a percentage of base distribution charges.⁷ OCC offers no reason, legal or otherwise, to deviate from the Commission's precedent in other Smart Grid cost recovery cases.

Additionally, OCC's Application for Rehearing runs contrary to the Commission's precedent regarding the inappropriateness (generally speaking) of recovering fixed costs through a usage-based rate.⁸ The most recent example can be found in the energy efficiency and peak demand reduction ("EE/PDR") portfolio plan case for CSP and Ohio Power Company ("OP") (collectively, American Electric Power–Ohio or "AEP-Ohio"). In AEP-Ohio's EE/PDR portfolio plan case, the Commission approved a revenue decoupling mechanism to recover lost distribution revenue associated with the implementation of the EE/PDR portfolio plan. The Commission observed as follows:

The need for a revenue decoupling mechanism arises from traditional rate designs that recover fixed distribution costs through volumetric charges. These designs leave utilities at risk of not collecting enough revenue to cover their fixed distribution costs when sales fall, and may provide an

⁷ See Columbus Southern Power Company, P.U.C.O. No. 7, Original Sheet No. 84-1, gridSMART Rider (effective Cycle 1 April 2009). Ohio Power Company does not have a rider to recover Smart Grid costs inasmuch as the pilot program authorized in American Electric Power-Ohio's ESP was only implemented in CSP's territory.

⁸ See *In the Matter of the Complaint and Appeal of Columbia Gas of Ohio, Inc., from Ordinance No. 1192-76, of Columbus, Ohio, on July 19, 1976, to continue the Presently Established Schedules of Rates Being charged by Columbia Gas of Ohio, Inc., for Gas Service in the City of Columbus, Ohio, until August 1, 1978*, Case No. 76-704-GA-CMR, Opinion and Order at 7 (June 29, 1977); *In the Matter of the Application of Columbus Southern Power Company to Adjust its Power Acquisition Rider Pursuant to its Post-Market Development Period Rate Stabilization Plan*, Case No. 07-333-EL-UNC, Application for Rehearing by the Office of the Ohio Consumers' Counsel and Ohio Partners for Affordable Energy at 7-8, 10, 17-18 (July 27, 2007); *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Market Rate Offer*, Case No 08-936-EL-SSO, Opinion and Order at 22-24 (November 25, 2008); *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 Section 4928.143, Revised Code in the Form of an Electric Security Plan*, Case No 08-935-EL-SSO, Opinion and Order at 19-23 (December 19, 2008). See also *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates*, PUCO Case Nos. 07-589-GA-AIR, et al., Opinion and Order at 19 (May 28, 2008); *In the Matter of the Application of The East Ohio Gas Company d / b / a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service*, PUCO Case Nos. 07-829-GA-AIR, et al., Opinion and Order at 24 (October 15, 2008); *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters*, PUCO Case Nos. 07-1080-GA-AIR, et al., Opinion and Order at 13-14 (January 7, 2009);

opportunity for utilities to collect revenue in excess of expenses if sales increase. The Commission believes that it is important to break or weaken the link between sales volume and the recovery of fixed distribution costs.⁹

OCC's rehearing request provides no reason for the Commission to backtrack from its recent as well as its historical precedent and runs directly contrary to the Commission's stated goal of weakening or breaking the link between sales volume and the recovery of fixed distribution costs. Granting OCC's rehearing request would only send inconsistent and unhelpful price signals to customers about the recovery of fixed distribution costs such as Smart Grid costs. OCC's Application for Rehearing should be denied for these reasons as well.

Finally, OCC argues that the fixed customer charge is an "anathema" to the goals of customers responding to price signals through the smart meters that Rider AMI will fund.¹⁰ Even with the fixed charge rate design for Smart Grid costs, the deployment of smart metering is expected to provide customers an opportunity to respond to generation pricing signals and reduce the great majority of their monthly bills by lowering their consumption and thereby reducing the portion of their bills for generation service. And, unlike some generation costs, the fixed distribution costs involved in providing smart meters and other distribution infrastructure will not change regardless of the smart meter's ultimate effectiveness in changing consumer behavior. Therefore, the recovery of fixed investments in Smart Grid costs through fixed customer charges sends the truly proper signals to customers and appropriately allocates the recovery of these costs.

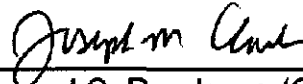
⁹ *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, PUCO Case Nos. 09-1089-EL-POR, *et al.*, Opinion and Order at 26 (May 13, 2010).

¹⁰ OCC Application for Rehearing at 3 (July 30, 2010).

III. CONCLUSION

IEU-Ohio respectfully requests the Commission deny OCC's Application for Rehearing for the reasons described above.

Respectfully submitted,



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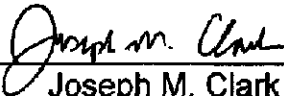
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio Memorandum Contra the Application for Rehearing of the Ohio Consumers' Counsel* was served upon the following parties of record this 9th day of August 2010, via first class mail, postage prepaid.



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