

FILE

(11)

IN THE SUPREME COURT OF OHIO

Northeast Ohio Public Energy Council, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 The Public Utilities Commission of Ohio, )  
 )  
 Appellee. )

Case No. **13-0513**

Appeal from the Public Utilities Commission of Ohio Case No. 12-1230-EL-SSO

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NOTICE OF APPEAL  
 OF  
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 SUPREME COURT OF OHIO

## NOTICE OF APPEAL

Appellant, Northeast Ohio Public Energy Council, pursuant to Ohio Revised Code Sections (“R.C.”) 4903.11, 4903.13 and S. Ct. Prac. R. 10.02, hereby gives notice to the Supreme Court of Ohio and to the Public Utilities Commission of Ohio (“Appellee” or the “Commission”) of this appeal to the Supreme Court of Ohio from: 1) the Commission’s Opinion and Order entered in its Journal on July 18, 2012; and 2) the Commission’s Second Entry on Rehearing entered in the Commission’s Journal on January 30, 2013 in the above-captioned case.

On August 17, 2012, and pursuant to R.C. 4903.10, Appellant timely filed an Application for Rehearing from the Opinion and Order dated July 18, 2012. On September 12, 2012, the Appellant’s Application for Rehearing and all other intervenor applications for rehearing were granted by the Commission for further consideration. The Appellant’s Application for Rehearing ultimately was denied with respect to the issues being raised in this appeal by the Commission’s Second Entry on Rehearing entered in the Commission’s Journal on January 30, 2013.

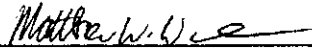
Appellant files this Notice of Appeal complaining and alleging that Appellee’s August 17, 2012 Opinion and Order, and Appellee’s January 30, 2013 Entry on Rehearing, are unlawful and unreasonable, and that the Appellee erred as a matter of law in the following respects, each of which were raised in the Appellant’s Application for Rehearing before the Commission:

1. The Stipulation and Recommendation approved by the Commission on August 17, 2012 in Case No. 12-1230-EL-SSO (the “ESP 3 Stipulation”) violates R.C. 4928.143(C)(1) because it is not “more favorable in the aggregate as compared to the expected results that otherwise apply under [an MRO].”
2. The Commission erred in considering qualitative factors to determine whether the ESP 3 Stipulation is “more favorable in the aggregate as compared to the expected results that otherwise apply under [an MRO].”
3. The Commission erred in approving the ESP 3 Stipulation because the ESP 3 Stipulation fails a quantitative analysis under R.C. 4928.143(C)(1).

4. The Commission erroneously concluded that, for purposes of calculating the benefits of the ESP 3 Stipulation as compared with the expected results of an MRO, FirstEnergy would be awarded a \$405 million distribution rate increase by the Commission in a hypothetical distribution rate case during the two-year period of the ESP 3 Stipulation.
5. The Commission erred in concluding that the ESP 3 Stipulation satisfies the Commission's three-part test for determining the reasonableness of a stipulation.
6. The Commission erred in concluding that the ESP 3 Stipulation is the product of serious bargaining because there was no genuine participation from residential consumers.
7. The Commission violated NOPEC's due process rights under the Ohio Constitution when it unlawfully took administrative notice of portions of the record from separate, already completed, proceedings, despite the fact that NOPEC and other non-signatory parties to the ESP 3 Stipulation did not have knowledge of and/or an opportunity to explain and rebut the facts administratively noticed.

WHEREFORE, Appellant respectfully submits that Appellee's July 18, 2012 Opinion and Order, and the Commission's January 30, 2013 Second Entry on Rehearing, are unreasonable and/or unlawful and should be reversed. This case should be remanded to the Commission with instructions to correct the errors complained of herein.

Respectfully submitted,



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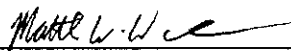
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**CERTIFICATE OF FILING**

I certify that a Notice of Appeal of Northeast Ohio Energy Council has been filed with the docketing division of the Public Utilities Commission of Ohio in accordance with sections Ohio Administrative Code Rules 4901-1-02(A) and 4901-1-36.

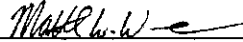


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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Notice of Appeal of Northeast Ohio Public Energy Council was served upon Chairman of the Public Utilities Commission of Ohio by leaving a copy at the office of the Chairman at 180 East Broad Street, Columbus, Ohio 43215, and upon the parties of record listed below by regular U.S. Mail, this 29<sup>th</sup> day of March 2013.



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