

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Review of the)
Alternative Energy Rider Contained in the)
Tariffs of Ohio Edison Company, The) Case No. 11-5201-EL-RDR
Cleveland Electric Illuminating Company,)
and The Toledo Edison Company)
)**

**MEMORANDUM OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY
IN OPPOSITION TO THE APPLICATION FOR REHEARING
OF INTERSTATE GAS SUPPLY, INC.**

James W. Burk (0043808)
Counsel of Record
Carrie M. Dunn (0076952)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, Ohio 44308
Phone: (330) 384-5861
Facsimile: (330) 384-3875
E-mail: burkj@firstenergycorp.com
E-mail: cdunn@firstenergycorp.com

David A. Kutik (0006418)
Lydia M. Floyd (0088476)
JONES DAY
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
E-mail: dakutik@jonesday.com
E-mail: lfloyd@jonesday.com

ATTORNEYS FOR OHIO EDISON
COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY AND THE
TOLEDO EDISON COMPANY

The Application for Rehearing filed by Interstate Gas Supply, Inc. (“IGS”) seeks relief which is, to some degree, unlawful or unrealistic. For example, in its “final note,” IGS apparently wishes to have the Commission do away with generation service provided through electric distribution utilities (“EDUs”). (IGS Memo in Support at 8.) Yet, Ohio Revised Code Sections 4928.141 to 4928.143 mandate that EDUs provide for such service. The Commission is utterly without authority to grant IGS’ wish that EDUs get out of the “merchant function.”

The remainder of IGS’ Application deals with who gets the benefit of any refund that may be ordered by the Commission. As Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, the “Companies”) demonstrated at the hearing, in their post-hearing briefs and in their Application for Rehearing, the Commission was wrong to order that there should be any refund. Simply put, the Companies acted prudently in purchasing the renewable energy resources required by Ohio Revised Code Section 4928.64. Thus, to the extent that the manner of refunds is discussed by IGS, that issue should be moot.

In any event, and not conceding in any way that a refund is appropriate, IGS’ concerns about the method of refund are also unlawful or unreasonable. To begin, IGS is off target by complaining about the potential mismatch between customers who may have paid Rider AER rates from 2009 through the present and customers who may receive the benefit of a discount. Mismatches of this type are inherent in the statute and ratemaking generally. For example, as discussed by Company witness Eileen Mikkelsen, “the Companies’ rapid change in shopping levels created a disconnect – or mismatch – between the baseline used for compliance with the renewable mandates which is based upon three previous calendar years non-shopping load and the non-shopping sales used for rate recovery.” (Rebuttal Testimony of Eileen Mikkelsen at 12.)

Further, one of IGS' suggestions to "cure" any mismatch between those customers who paid Rider AER rates previously and those who might get a refund is fraught with problems. Specifically, IGS proposes that all distribution customers receive a part of any refund. But this runs afoul of Ohio Revised Code Section 4928.64(E). That section provides that the costs incurred by an EDU for complying with Section 4928.64 shall be paid by nonshopping customers. If the costs that get recovered under Rider AER are required to be paid by nonshopping customers, then refunds of monies collected to recover those costs should be received by the same type of customer. In addition, IGS' proposal to have any refund shared by all customers dilutes the amount of any refund that might be received by any customer – especially those customers who paid Rider AER rates previously and who are nonshopping customers now.

At bottom, while IGS' concerns related to competition may be valid, they are also premature. The Commission should first determine other issues, i.e., whether there should be any refund and, if so, how to calculate that refund properly. Given that the manner of how any refund would be distributed touches on a number of concerns of a variety of parties, the Commission should not feel compelled to resolve the refund distribution issue until a refund of a definite amount has been finally established. If that occurs, then the Commission should direct the Companies to prepare a proposed refund distribution plan that best accommodates the policies affected by such a refund, including the effect of the refund on competition, nonshopping customers and the Companies.

For the foregoing reasons, the Application for Rehearing filed by IGS should be denied.

Dated: September 9, 2013

Respectfully submitted,

/s/ David A. Kutik

James W. Burk, Counsel of Record
Carrie M. Dunn
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, Ohio 44308
Phone: (330) 384-5861
Facsimile: (330) 384-3875
E-mail: burkj@firstenergycorp.com
E-mail: cdunn@firstenergycorp.com

David A. Kutik
Lydia M. Floyd
JONES DAY
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
Phone: (216) 586-3939
Facsimile: (216) 579-0212
E-mail: dakutik@jonesday.com
E-mail: lfloyd@jonesday.com

ATTORNEYS FOR OHIO EDISON
COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY
AND THE TOLEDO EDISON COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered to the following persons by e-mail this 9th day of September, 2013:

Terrence O'Donnell
Dickinson Wright PLLC
150 East Gay Street, Suite 2400
Columbus, OH 43215
Telephone: (614) 744-2583
Facsimile: (248) 433-7274
E-mail: todonnell@dickinsonwright.com

Attorneys for Mid-Atlantic Renewable Energy Coalition

William Wright
Chief, Public Utilities Section
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, OH 43215
E-mail: William.wright@puc.state.oh.us

Attorneys for the Staff of the Public Utilities Commission of Ohio

Christopher J. Allwein
Williams, Allwein & Moser, LLC
1373 Grandview Ave., Suite 212
Columbus, OH 43212
Telephone: (614) 429-3092
Facsimile: (614) 670-8896
E-mail: callwein@wamenergylaw.com

Attorney for the Sierra Club

Bruce J. Weston
Melissa Yost
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Telephone: (614) 466-9565
Facsimile: (614) 466-9475
E-mail: yost@occ.state.oh.us

Attorneys for Office of the Ohio Consumers' Counsel

David F. Boehm
Michael L. Kurtz
Jody Kyler Cohn
Boehm Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
Telephone: (513) 421-2255
Facsimile: (513) 421-2764
E-mail: dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkyler@BKLawfirm.com

Attorneys for The Ohio Energy Group

Michael K. Lavanga
Brickfield, Burchette, Ritts & Stone PC
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, DC 20007
Telephone: (202) 342-0800
Facsimile: (202) 342-0807
E-mail: mlavanga@bbrslaw.com

Attorney for Nucor Steel Marion, Inc.

Cathryn Loucas
Trent A. Dougherty
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
Telephone: (614) 487-7506
Facsimile: (614) 487-7510
E-mail: cathy@theoec.org
trent@theoec.org

Attorneys for the OEC

Matthew W. Warnock
Maria J. Armstrong
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-mail: mwarnock@bricker.com
marmstrong@bricker.com

Attorneys for The OMA Energy Group

Nicholas McDaniel
ENVIRONMENTAL LAW &
POLICY CENTER
1207 Grandview Ave., Suite 201
Columbus, OH 43212
Telephone: (614) 488-3301
Facsimile: (614) 487-7510
E-mail: NMCDaniel@elpc.org

Attorney for ELPC

Theodore S. Robinson
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
Telephone: (412) 421-7029
Facsimile: (412) 421-6162
E-mail: robinson@citizenpower.com

Attorney for Citizen Power

M. Howard Petricoff
Michael J. Settineri
Lija Kaleps-Clark
VORYS, SATER, SEYMOUR AND PEASE
LLP
52 East Gay Street
Columbus, OH 43215
Telephone: (614) 464-6400
Facsimile: (614) 464-6350
E-mail: mhpetricoff@vorys.com
mjsettineri@vorys.com
lkalepsclark@vorys.com

Attorneys for Interstate Gas Supply, Inc.

/s/ David A. Kutik

*An Attorney For Ohio Edison Company, The
Cleveland Electric Illuminating Company and
The Toledo Edison Company*

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/9/2013 4:13:06 PM

in

Case No(s). 11-5201-EL-RDR

Summary: Memorandum in Opposition to the Application for Rehearing of Interstate Gas Supply, Inc. electronically filed by MR. DAVID A KUTIK on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company