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**Via E-FILE**

May 12, 2016

Public Utilities Commission of Ohio  
PUCO Docketing  
180 E. Broad Street, 10th Floor  
Columbus, Ohio 43215

**In re: Case No. 14-1297-EL-SSO**

Dear Sir/Madam:

Please find attached the MEMORANDUM CONTRA OF THE OHIO ENERGY GROUP e-filed today in the above-referenced matters.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



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MLKkew

Encl.

Cc: Certificate of Service

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter Of The Application Of The Ohio Edison :  
Company, The Cleveland Electric Illuminating :  
Company, And The Toledo Edison Company For : **Case No. 14-1297-EL-SSO**  
Authority To Establish A Standard Service Offer :  
Pursuant To R.C. § 4928.143 In The Form Of An :  
Electric Security Plan :

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**MEMORANDUM CONTRA OF THE  
THE OHIO ENERGY GROUP**

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Pursuant to Ohio Adm. Code 4901-1-35(B), the Ohio Energy Group (“OEG”) submits this Memorandum Contra the Applications for Rehearing filed by several parties on May 2, 2016 claiming that the Retail Rate Stability Rider (“Rider RRS”) is not authorized by state law.<sup>1</sup> As discussed below, the Public Utilities Commission of Ohio (“Commission”) should reject those claims. Both the Commission-approved Rider RRS and the newly revised version of Rider RRS proposed in the Application for Rehearing filed by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy”) on May 2, 2016 are rate stability mechanisms that can be lawfully authorized by the Commission pursuant to R.C. 4928.143(B)(2)(d).

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<sup>1</sup> Application for Rehearing by the Office of the Ohio Consumers’ Counsel and Northwest Ohio Aggregation Coalition (“OCC/NOAC Rehearing”) at 28-40; Northeast Ohio Public Energy Council’s Application for Rehearing (“NOPEC Rehearing”); Application for Rehearing of the Ohio Manufacturers’ Association Energy Group (“OMAEG Rehearing”) at 19-32; Application for Rehearing of the Cleveland Municipal School District at 1-21; Application for Rehearing of Ohio Schools Council, Ohio School Boards Association, Buckeye Association of School Administrators, and Ohio Association of School Business Officials dba Power4Schools (“Schools Rehearing”) at 2-10; Application for Rehearing of the Retail Energy Supply Association (“RESA Rehearing”) at 14-30; Joint Application for Rehearing of the PJM Power Providers Group and the Electric Power Supply Association (“P3/EPSCA Rehearing”) at 10-25. OEG’s decision not to respond to other arguments raised in the Applications for Rehearing in these proceedings should not be construed as implicit agreement with those arguments.

**I. Because Rider RRS Will Not Collect Transition Revenues Or The Equivalent Of Transition Revenues, Rider RRS Is Not Barred By R.C. 4928.38.**

Opponents of Rider RRS argue that approval of the Rider would allow FirstEnergy to collect “*transition revenues*” or “*the equivalent of transition revenues*” in violation of R.C. 4928.38, citing a recent decision by the Supreme Court of Ohio to strike down the portion of AEP Ohio’s Retail Stability Rider (“RSR”) collecting “*financial integrity*” costs.<sup>2</sup> But the net costs or credits to be passed through Rider RRS are materially different than the “*financial integrity*” costs collected by AEP Ohio and fall squarely within the types of costs authorized under R.C. 4928.143(B)(2)(d).

As the Court noted, the unlawful RSR charges collected by AEP Ohio were purportedly intended to “*to ensure that the company was not financially harmed during its transition to a fully competitive generation market over the three-year ESP period.*”<sup>3</sup> Hence, those charges were established primarily to protect AEP Ohio’s financial metrics. The Court took issue with this approach, explaining that the RSR charges were greater than the costs that AEP Ohio actually incurred in providing electric service.<sup>4</sup> Consequently, customers were paying substantial charges merely to protect AEP Ohio’s financial stability while receiving little to no value in exchange. Finding that the “*financial integrity*” portion of the RSR unlawfully “*overcompensated*” AEP Ohio, the Court reversed the Commission’s decision to approve recovery of that portion of the RSR.<sup>5</sup>

Unlike the unlawful costs collected by AEP Ohio, however, any net costs flowed through Rider RRS would not overcompensate the FirstEnergy for service. Customers paying Rider RRS costs would be receiving something of actual value – a cost-of-service hedge that bolsters rate stability – in exchange for their payments. This holds true even under the revised Rider RRS structure recently proposed by FirstEnergy, which simply makes the cost-of-service hedge a purely financial transaction. As OEG

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<sup>2</sup> OCC/NOAC Rehearing at 28-32; NOPEC Rehearing at 21-23; OMAEG Rehearing at 31-32; Schools Rehearing at 9-10; RESA Rehearing at 89-90; P3/EP SA Rehearing at 83-84.

<sup>3</sup> *In re Application of Columbus S. Power Co.*, Slip Opinion 2016-Ohio-1608 (April 21, 2016) at ¶23.

<sup>4</sup> *Id.* at ¶32-34.

<sup>5</sup> *Id.* at ¶34 and ¶38.

already explained in detail, the fact that customers would be paying for a product that they actually receive means that Rider RRS is not an anti-competitive “*subsidy*” as other parties allege.<sup>6</sup> By approving Rider RRS, the Commission would be establishing a blended rate for retail customers, part of which is cost-based and part of which is market-based, which would help insulate customers from the volatility of marginal cost pricing. Moreover, retail customers are projected to receive \$255.5 million in net benefits through Rider RRS over its eight-year term.<sup>7</sup> Any net credits flowed through Rider RRS to customers could not fairly be considered *negative “transition revenues.”* Accordingly, because costs collected from customers under Rider RRS are associated with an actual product (a cost-of-service rate hedge) from which customers will continue to receive value, not simply charges to insulate the utility from the competitive market, recovery of those costs is not barred by R.C. 4928.38.

**II. Rider RRS Is Authorized By R.C. 4928.143(B)(2)(d) And Is Therefore Exempt From The Prohibition Regarding Transition Revenues Set Forth in R.C. 4928.38.**

R.C. 4928.143(B) provides that “[n]otwithstanding any other provision” in R.C. Title 49 “to the contrary,” except the provisions in “[d]ivision (D) of this section, divisions (I), (J), and (K) of section 4928.20, division (E) of section 4928.64, and section 4928.69 of the Revised Code,” an ESP may provide or include, without limitation, several categories of costs associated with providing electric service.<sup>8</sup> As the Commission has already found, FirstEnergy’s proposed Rider RRS falls into one of those categories.<sup>9</sup> Specifically, the Commission held that Rider RRS is authorized under R.C. 4928.143(B)(2)(d) as a financial limitation on customer shopping that has the effect of stabilizing or providing certainty regarding retail service.<sup>10</sup> Consequently, even if Rider RRS costs could appropriately be considered “*transition revenues*” or the “*equivalent of transition revenues*,” R.C.

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<sup>6</sup> OEG Post-Hearing Brief at 10-14; OEG Reply Brief at 5-10.

<sup>7</sup> Opinion and Order, Case No. 14-1297-EL-SSO (March 31, 2016)(“ESP Order”) at 85.

<sup>8</sup> Id., Concurrence at 27-29 and fn 5 (emphasis added).

<sup>9</sup> ESP Order at 108-09.

<sup>10</sup> Id.

4928.143 provides an exception under which stability mechanisms such as Rider RRS could nevertheless be approved.

**CONCLUSION**

**WHEREFORE**, for the foregoing reasons, the Commission should find that both the Commission-approved Rider RRS and the newly proposed Rider RRS are authorized under Ohio law.

Respectfully submitted,



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May 12, 2016

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## CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 12<sup>th</sup> day of May, 2016 to the following:



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Summary: Memorandum Ohio Energy Group (OEG's) Memorandum Contra electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group