

**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 Authority to Provide) Case No. 14-1297-EL-SSO
for a Standard Service Offer Pursuant to)
R.C. 4928.143 in the Form of an Electric)
Security Plan.)

**INDUSTRIAL ENERGY USERS-OHIO'S
MEMORANDUM CONTRA TO JOINT INTERLOCUTORY APPEAL,
REQUEST FOR CERTIFICATION TO FULL COMMISSION
AND APPLICATION FOR REVIEW BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,
NORTHWEST OHIO AGGREGATION COALITION, AND
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

Frank P. Darr (Reg. No. 0025469)
(Counsel of Record)
Matthew R. Pritchard (Reg. No. 0088070)
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
fdarr@mwncmh.com
mpritchard@mwncmh.com

JUNE 10, 2016

ATTORNEYS FOR INDUSTRIAL ENERGY USERS-OHIO

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I. INTRODUCTION

On June 3, 2016, an Attorney Examiner of the Public Utilities Commission of Ohio ("Commission") issued an Entry establishing a discovery and hearing schedule in this matter. Entry at 4-5 (June 3, 2016) ("June 3 Entry"). The scope of the hearing will be limited to the provisions of and alternatives to a proposal by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("FirstEnergy") to modify the proposed Retail Rate Stability Rider ("RRS"). *Id.* at 3.

On June 8, 2016, the Office of the Ohio Consumers' Counsel, Northwest Ohio Aggregation Coalition, and the Ohio Manufacturers' Association Energy Group ("Appellants") filed a Joint Interlocutory Appeal, Request for Certification to Full Commission, and Application for Review of the June 3 Entry ("Interlocutory Appeal"). In the Interlocutory Appeal, the Appellants assert that the Attorney Examiners should certify

the appeal for consideration by the Commission because the June 3 Entry presents a novel question of law and departs from past precedent. Interlocutory Appeal at 2.¹ If the Commission grants the appeal, the Appellants request the Commission to reverse the June 3 Entry and direct FirstEnergy to withdraw its current application, thereby terminating it, and file a new standard service offer (“SSO”). *Id.*

The termination of the current electric security plan (“ESP”) sought by the Appellants is unlawful under the facts presented here and would injure customers that reasonably relied on the Commission’s order modifying and approving the ESP. Accordingly, the Commission should reject the Appellants’ request that the Commission direct FirstEnergy to withdraw its current application.

II. **ARGUMENT**

Under R.C. 4928.143(C)(1), the Commission may approve, modify and approve, or disapprove an application. If the Commission modifies and approves an application, the electric distribution utility (“EDU”) may withdraw its application, thereby terminating it. R.C. 4928.143(C)(2)(a). If the EDU terminates an application or the Commission disapproves the application, the Commission “shall issue such order as is necessary to continue the ... utility’s most recent standard service offer.” R.C. 4928.143(C)(2)(b).

In its March 31, 2016 Opinion and Order, the Commission modified and approved the application. Since then, FirstEnergy has not withdrawn its application, directly or constructively. Instead, it has filed tariffs that the Commission determined comply with the Commission’s Opinion and Order. Finding and Order at 3 (May 25, 2016). Additionally, FirstEnergy filed an Application for Rehearing to address modifications to

¹ Industrial Energy Users-Ohio (“IEU-Ohio”) takes no position regarding the allegations supporting the Appellants’ arguments in support of the Interlocutory Appeal.

the RRS among other things. Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Application for Rehearing ("FirstEnergy Application for Rehearing") (May 2, 2016). Because the Commission did not disapprove the application and FirstEnergy has not withdrawn its application, there is no lawful basis for the Commission to order the utility to file tariffs to continue the most recent SSO.

Moreover, requiring FirstEnergy to withdraw its application and file tariffs implementing the prior ESP would have consequences for customers that have relied on the Commission's approval of the ESP.² The ESP that became effective on June 1, 2016 contains provisions expanding the interruptible program and a transmission pilot that will offer the opportunity for some customers to reduce their total energy bills by managing their demand levels. Customers have already entered into contracts in reliance on these provisions. An order terminating the ESP would disrupt this reliance without lawful basis.

Moreover, the damage caused by an order terminating the ESP would not be limited to customers that relied on the ESP. Because these programs approved as a part of the ESP may reduce system demand during peak periods, they have the potential to benefit all customers, including those represented by Appellants. For example, the benefits of the interruptible program include increased system reliability and stability, the prevention of load shedding (*i.e.*, rolling blackouts) during emergency events, and job retention. See citations to transcript in the Post-Hearing Brief of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company at 108 and n. 521-23 (Feb. 16, 2016) ("FirstEnergy Initial Brief"); Post-Hearing Brief of the Ohio Energy Group at 24-25 (Feb. 16, 2016) ("OEG Initial Brief"); and Initial Brief in Support of

² IEU-Ohio and Ohio Energy Group have raised these concerns previously. See, for example, Industrial Energy Users-Ohio's Memorandum Contra the Application for Rehearing of the Office of the Ohio Consumers' Counsel and Northwest Ohio Aggregation Coalition at 7-8 (June 9, 2016).

ESP IV Stipulation by Nucor Steel Marion, Inc. at 12-15 (“Nucor Initial Brief”). By providing eligible customers a means of reducing their electric generation expenses, continuation of a modified interruptible program also furthers Ohio industrial companies’ effectiveness in the global economy. FirstEnergy Initial Brief at 148. As the record demonstrates, an interruptible rate program advances “numerous benefits, including the promotion of economic development and the retention of manufacturing jobs.” *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan, Case Nos. 13-2385-EL-SSO, et al.*, Opinion and Order at 40 (Feb. 25, 2015). Thus, directing FirstEnergy to withdraw its application and file tariffs implementing the prior ESP will harm not only large energy users, but all customers of FirstEnergy.

III. **CONCLUSION**

A Commission order terminating the ESP would be unlawful and would injure all customers. The Commission, therefore, should reject the Appellants’ request for an order directing FirstEnergy to withdraw its current application.

Respectfully submitted,

/s/ Frank P. Darr

Frank P. Darr (Reg. No. 0025469)
Matthew R. Pritchard (Reg. No. 0088070)
McNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
fdarr@mwncmh.com
mpritchard@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

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 upon the following parties." In addition, I hereby certify that a service copy of the foregoing *Industrial Energy Users-Ohio's Memorandum Contra to Joint Interlocutory Appeal, Request For Certification To Full Commission and Application For Review By the Office Of The Ohio Consumers' Counsel, Northwest Ohio Aggregation Coalition, and Ohio Manufacturers' Association Energy Group* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio, to the following parties of record this 10th day of June 2016, via electronic transmission.

/s/ Frank P. Darr

Frank P. Darr

James W. Burk
(Counsel of Record)
Carrie M. Dunn
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, Ohio 44308
burkj@firstenergycorp.com
cdunn@firstenergycorp.com

James F. Lang
N. Trevor Alexander
CALFEE, HALTER & GRISWOLD LLP
The Calfee Building
1405 East Sixth Street
Cleveland, Ohio 44114
jlang@calfee.com
talAlexander@calfee.com

David A. Kutik
JONES DAY
901 Lakeside Avenue
Cleveland, Ohio 44114
dakutik@jonesday.com

**COUNSEL FOR OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY
THE TOLEDO EDISON COMPANY**

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com

COUNSEL FOR THE OHIO ENERGY GROUP

Steven T. Nourse
Matthew J. Satterwhite
Yazen Alami
American Electric Power Service Corporation
1 Riverside Plaza 29th Floor
Columbus, Ohio 43215
stnourse@aep.com
mjsatterwhite@aep.com
yalami@aep.com

COUNSEL FOR OHIO POWER COMPANY

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

Larry S. Sauer
(Counsel of Record)
Maureen R. Willis
Kevin F. Moore
Ajay K. Kumar
William J. Michael
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street – Suite 1800
Columbus, Ohio 43215
Larry.sauer@occ.ohio.gov
maureen.willis@occ.ohio.gov
William.Michael@occ.ohio.gov
Kevin.moore@occ.ohio.gov
Ajay.kumar@occ.ohio.gov

**COUNSEL FOR THE OFFICE OF THE OHIO
CONSUMERS' COUNSEL**

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
barthroyer@aol.com

Adrian Thompson
Taft Stettinius & Hollister LLP
200 Public Square, Suite 3500
Cleveland, Ohio 44114
athompson@taftlaw.com

**COUNSEL FOR CLEVELAND MUNICIPAL
SCHOOL DISTRICT**

Marilyn L. Widman
Widman & Franklin, LLC
405 Madison Ave., Suite 1550
Toledo, Ohio 43604
Marilyn@wflawfirm.com

COUNSEL FOR IBEW LOCAL 245

Richard C. Sahli (0007360)
Richard Sahli Law Office, LLC
981 Pinewood Lane
Columbus, OH 43230-3662
rsahli@columbus.rr.com

Michael Soules
Earthjustice
1625 Massachusetts Ave. NW,
Suite #702
Washington, DC 20036
msoules@earthjustice.org

Shannon Fisk
(Counsel of Record)
Earthjustice
1617 John F. Kennedy Blvd.,
Suite #1675
Philadelphia, PA 19103
sfisk@earthjustice.org

Tony G. Mendoza
Kristin Henry
Sierra Club
85 Second Street, Second Floor
San Francisco, CA 94105-3459
tony.mendoza@sierraclub.org
kristin.henry@sierraclub.org

COUNSEL FOR THE SIERRA CLUB

Jennifer L. Spinosi (0089162)
(Counsel of Record)
Direct Energy
21 East State Street, 19th Floor
Columbus, Ohio 43215
jennifer.spinosi@directenergy.com

Scott R. Dismukes, Esq.
Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
sdismukes@eckertseamans.com

Daniel Clearfield, Esq.
Sarah Stoner, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
sstoner@eckertseamans.com

**COUNSEL FOR DIRECT ENERGY SERVICES,
LLC, DIRECT ENERGY BUSINESS, LLC AND
DIRECT ENERGY BUSINESS MARKETING,
LLC**

Colleen L. Mooney
(Counsel of Record)
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45839-1793
cmooney@ohiopartners.org

**COUNSEL FOR OHIO PARTNERS FOR
AFFORDABLE ENERGY**

Joseph E. Oliker
(Counsel of Record)
IGS Energy
6100 Emerald Parkway
Dublin, Ohio 43016
joliker@igsenergy.com

COUNSEL FOR IGS ENERGY

Celia M. Kilgard
Devin D. Parram
Taft Stettinius & Hollister LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215
ckilgard@taftlaw.com
dparram@taftlaw.com

COUNSEL FOR THE KROGER CO.

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 15th
Columbus, Ohio 43215
ricks@ohanet.org

Matthew W. Warnock
Bricker & Eckler LLP
100 S. Third Street
Columbus, OH 43215
mwarnock@bricker.com

COUNSEL FOR THE OHIO HOSPITAL ASSOCIATION

Michael K. Lavanga
Garrett A. Stone
Stone Mattheis Xenopoulos & Brew, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, D.C. 20007-5201
mkl@smxblaw.com
gas@smxblaw.com

COUNSEL FOR NUCOR STEEL MARION, INC.

Barbara A. Langhenry
Harold A. Madorsky
Kate E. Ryan (Counsel of Record)
City of Cleveland
601 Lakeside Avenue – Room 106
Cleveland, Ohio 44114
blanghenry@city.cleveland.oh.us
hmadorsky@city.cleveland.oh.us
kryan@city.cleveland.oh.us

COUNSEL FOR THE CITY OF CLEVELAND

Kimberly W. Bojko
Danielle M. Ghiloni
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Bojko@carpenterlipps.com
ghiloni@carpenterlipps.com

COUNSEL FOR OMAEG

Lisa M. Hawrot
Spilman Thomas & Battle, PLLC
Century Centre Building
1233 Main Street, Suite 4000
Wheeling, West Virginia 26003
lhawrot@spilmanlaw.com

Derrick Price Williamson
Spilman Thomas & Battle, PLLC
1100 Bent Creek Blvd., Suite 101
Mechanicsburg, Pennsylvania 17050
dwilliamson@spilmanlaw.com

Carrie M. Harris
Spilman Thomas & Battle, PLLC
310 First Street, Suite 1100
Roanoke, Virginia 24002-0090
charris@spilmanlaw.com

COUNSEL FOR WAL-MART STORES EAST, LP AND SAM'S EAST, INC.

Joseph P. Meissner
Attorney at Law
1223 W. 6th Street – 4th Floor
Cleveland, Ohio 44113
meissnerjoseph@yahoo.com

COUNSEL FOR CITIZENS COALITION, CONSUMER PROTECTION ASSOCIATION, CLEVELAND HOUSING NETWORK, AND THE COUNCIL FOR ECONOMIC OPPORTUNITIES IN GREATER CLEVELAND

Thomas R. Hays
8355 Island Lane
Maineville, Ohio 45039
trhayslaw@gmail.com

COUNSEL FOR LUCAS COUNTY BOARD OF COMMISSIONERS

Leslie Kovacik
Counsel for the City of Toledo
420 Madison Avenue
Toledo, Ohio 43604
lesliekovacik@toledo.oh.gov

COUNSEL FOR THE CITY OF TOLEDO

Glenn S. Krassen
(Counsel of Record)
Bricker & Eckler LLP
1001 Lakeside Ave., Suite 1350
Cleveland, Ohio 44114
gkrassen@bricker.com

Dane Stinson
Dylan Borchers
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
dstinson@bricker.com
dborchers@bricker.com

**COUNSEL FOR NORTHEAST OHIO PUBLIC
ENERGY COUNCIL; OHIO SCHOOLS
COUNCIL; AND, POWER4SCHOOLS**

Michael J. Settineri (0073369)
Gretchen L. Petrucci (0046608)
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, Ohio 43215
mjsettineri@vorys.com
glpetrucci@vorys.com

COUNSEL FOR DYNEGY INC.

Matthew R. Cox
Matthew Cox Law, Ltd.
88 East Broad Street, Suite 1560
Columbus, Ohio 43215
matt@matthewcoxlaw.com

**COUNSEL FOR THE COUNCIL OF SMALLER
ENTERPRISES**

Madeline Fleisher
Staff Attorney
Environmental Law & Policy Center
21 W. Broad St., Suite 500
Columbus, OH 43215
mfleisher@elpc.org

**COUNSEL FOR THE ENVIRONMENTAL LAW
& POLICY CENTER**

Trent Dougherty
1145 Chesapeake Avenue, Suite I
Columbus, OH 43212
tdougherty@theOEC.org

John Finnigan
128 Winding Brook Lane
Terrace Park, Ohio 45174
jfinnigan@edf.org

**COUNSEL FOR THE OHIO ENVIRONMENTAL
COUNCIL AND ENVIRONMENTAL DEFENSE
FUND**

Michael J. Settineri
Gretchen L. Petrucci
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43216-1008
mjsettineri@vorys.com
glpetrucci@vorys.com

Cynthia Brady
Exelon Business Services
4300 Winfield Rd.
Warrenville, Illinois 60555
Cynthia.brady@exeloncorp.com

David I. Fein
Exelon Corporation
10 South Dearborn Street – 47th Fl.
Chicago, Illinois 60603
David.fein@exeloncorp.com

Lael E. Campbell
Constellation NewEnergy, Inc. and Exelon
Corporation
101 Constitution Ave., NW
Washington, DC 20001
Lael.campbell@exeloncorp.com

**COUNSEL FOR EXELON GENERATION
COMPANY, LLC AND CONSTELLATION
NEWENERGY, INC.; PJM POWER
PROVIDERS GROUP; THE ELECTRIC
POWER SUPPLY ASSOCIATION; AND,
RETAIL ENERGY SUPPLY ASSOCIATION**

Glen Thomas
1060 First Avenue, Suite 400
King of Prussia, Pennsylvania 19406
gthomas@gtpowergroup.com

Laura Chappelle
201 North Washington Square - #910
Lansing, Michigan 48933
laurac@chappeleconsulting.net

**ON BEHALF OF PJM POWER PROVIDERS
GROUP**

Christopher J. Allwein
Kegler Brown Hill and Ritter LPA
65 East State Street – 1800
Columbus, Ohio 43215
callwein@keglerbrown.com

**COUNSEL FOR HARDIN WIND LLC,
CHAMPAIGN WIND LLC AND BUCKEYE
WIND LLC**

Todd M. Williams
Shindler, Neff, Holmes, Worline & Muhler, LLP
300 Madison Avenue
1200 Edison Plaza
Toledo, Ohio 43604
twilliams@snhslaw.com

Jeffrey W. Mayes
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, Pennsylvania 19403
Jeffrey.mayes@monitoringanalytics.com

**COUNSEL FOR INDEPENDENT MARKET
MONITOR FOR PJM**

Sharon Theodore
Electric Power Supply Association
1401 New York Ave. NW 11th fl.
Washington, DC 20001
stheodore@epsa.org

**ON BEHALF OF THE ELECTRIC POWER
SUPPLY ASSOCIATION**

Kevin R. Schmidt
Energy Professionals of Ohio
88 East Broad Street, Suite 1770
Columbus, Ohio 43215
Schmidt@sppgrp.com

**COUNSEL FOR THE ENERGY
PROFESSIONALS OF OHIO**

Christopher L. Miller
Gregory H. Dunn
Jeremy M. Grayem
Ice Miller LLP
250 West Street
Columbus, Ohio 43215
Christopher.miller@icemiller.com
Gregory.dunn@icemiller.com
Jeremy.grayem@icemiller.com

**COUNSEL FOR THE ASSOCIATION OF
INDEPENDENT COLLEGES AND
UNIVERSITIES OF OHIO**

Craig I. Smith
Material Sciences Corporation
15700 Van Aken Blvd. – Suite 26
Shaker Heights, Ohio 44120
wtppmlc@aol.com

**COUNSEL FOR MATERIAL SCIENCES
CORPORATION**

Joel E. Sechler
Carpenter Lipps & Leland
280 N. High Street, Suite 1300
Columbus, Ohio 43215
sechler@carpenterlipps.com

Gregory J. Poulos
EnerNOC, Inc.
471 E. Broad Street – Suite 1520
Columbus, Ohio 43054
gpoulos@enernoc.com

COUNSEL FOR ENERNOC, INC.

David J. Folk
Assistant Director of Law
City of Akron
161 S. High Street - Suite 202
Akron, OH 44308
dfolk@Akronohio.Gov

COUNSEL FOR THE CITY OF AKRON

Daniel W. Wolff
Richard Lehfeldt
Crowell & Moring LLP
1001 Pennsylvania Ave., N.W.
Washington, DC 20004
d Wolff@crowell.com
rlehfeldt@crowell.com

COUNSEL FOR CPV SHORE, LLC

Thomas McNamee
Thomas Lindgren
Attorney General's Office
Public Utilities Commission of Ohio
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215-3793
thomas.mcnamee@ohioattorneygeneral.gov
thomas.lindgren@ohioattorneygeneral.gov

**COUNSEL FOR THE STAFF OF THE PUBLIC
UTILITIES COMMISSION OF OHIO**

Gregory Price
Mandy Willey Chiles
Attorney Examiner
Public Utilities Commission of Ohio
180 E. Broad Street
Columbus, Ohio 43215
Gregory.price@puc.state.oh.us
Mandy.chiles@puc.state.oh.us

ATTORNEY EXAMINERS

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/10/2016 1:49:57 PM

in

Case No(s). 14-1297-EL-SSO

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