BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Toledo Edison Company for Authority to Amend and Increase Certain of its Rates and Charges for Electric Service	)	Case No. 95-299-EL-AIR
In the Matter of the Application of The Cleveland Electric Illuminating Company for Authority to Amend and Increase Certain of its Rates and Charges for Electric Service	)	Case No. 95-300-EL-AIR
In the Matter of the Complaint of Benedictine High School, et al.,	)	Case No. 94-1964-EL-CSS
In the Matter of the Commission's Investigation into the Financial Condition, Rates, and Practices of The Cleveland Electric Illuminating Company	)	Case No. 95-1139-EL-COI
In the Matter of the Commission's Investigation into the Financial Condition, Rates, and Practices of The Toledo Edison Company	)	Case No. 95-1140-EL-COI

APPLICANTS' MEMORANDUM CONTRA TO APPLICATIONS FOR REHEARING

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I. Introduction

The applications for rehearing filed by the intervening parties mirror the arguments those parties made throughout the extensive litigation of the rate cases. In large part, many of the parties incorporate by reference the application for rehearing of the Ohio Office of Consumers' Counsel ("OCC"). In summary, the OCC's primary arguments are that the Commission erred by not ordering a write down or revaluations of assets; by not ordering the Companies to further reduce or to eliminate the dividend; by not ordering a reduction or the elimination or the rate increase; and by failing to fix a return on equity. While the intervening parties were occupied with rehashing the same arguments made in their respective initial and reply briefs, the parties neglected to identify any substantive legal shortcomings with the Commission's April 11, 1996 Opinion & Order ("Order"). Not having shown that any provision in the Commission's Order is either unreasonable or unlawful, the Commission should deny the intervening parties' applications for rehearing in their entirety and reaffirm its unanimous Order.

For purposes of brevity and readability, the Companies have organized this Memorandum Contra by the categories most commonly found in the applications for rehearing. Consistent with the Companies' goal of limiting the scope of these proceedings to only those issues which have a material impact, the Companies do not herein respond to each and every argument made in the applications for rehearing.

The Companies' silence on any particular argument made by an intervenor should not be understood as the Companies' acquiescence, but rather that the particular issue argued by the intervenor will have no practical and material impact or that the particular issue has been thoroughly addressed in the Applicant's prior briefs in these dockets, which briefs are adopted herein by reference.

II. Common Assignments of Errors

A. The Commission Properly Determined That It Should Only Recommend An Asset Revaluation; That it Should Not Order a Cut to the Dividend; And That the Rate Increase Is Lawful and Appropriate

The Office of the Ohio Consumers' Counsel ("OCC"), the City of Cleveland ("Cleveland"), the Benedictine High School et al. ("Benedictine"), the Empowerment Center et al. ("Empowerment Center"), the Ohio Council of Retail Merchants, ("OCRM"), Lucas County Board of Commissioners, ("Lucas County"), and Congresswoman Kaptur[1] (Congresswoman Kaptur), all re-argue that the Commission acted unlawfully and abused its discretion by not ordering 1) a write-down or revaluation of uneconomic assets, 2) a reduction or elimination of the dividend, and 3) a reduction of the amount of any rate increase. While not adopting OCC's

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[1] While the Companies oppose the intervention of the Lucas County Commissioners and Congresswoman Kaptur's intervention and motion for leave to file an application for rehearing, the Companies will nonetheless address their arguments to show that their interests are already represented in these proceedings.

pleading, the City of Toledo ("Toledo"), also re-argues the same arguments it made on brief and reiterates that the Commission erred by not ordering an asset revaluation, by granting the full rate increase, and by not addressing the management of Centerior. The parties have made these arguments before. OCC made these same arguments in its initial brief (at page 10) and in its reply brief (at page 8). The OCRM spent three pages in its initial brief to address a write-down (OCRM Initial Brief at 26 - 28), while using two pages to address the issue in the Reply brief. OCRM Reply Brief at 15 - 16. The City of Cleveland argued for a write-down of assets, elimination of the dividend and a rate decrease in its initial brief but did not cite any case law to support its position because none exists. Initial Brief at 11 - 16. This list of cites continues indefinitely. Virtually every argument made by the parties for rehearing is nothing more than a repackaged version of its briefs.

In both their Post Hearing Brief and their Reply Brief, the Applicants already address these arguments and argued that a Commission ordered write-down or revaluation of assets would be illegal (Post Hearing Brief at 10 - 13; Reply Brief at 6 - 11); that the Companies' Board of Directors maintains authority over the dividend policy (Post Hearing Brief at 13 - 16; Reply Brief at 11 - 12); and that the statutory requirements dictate that the Companies be granted a rate increase when a revenue deficiency has been determined as it was in this case (Post Hearing Brief at 16 - 25; Reply Brief at 45 - 52). These issues are nothing new for the Commission's

consideration. The Commission considered each of the above issues in great detail in its Order. The parties seeking rehearing must show that the Commission's Order is unlawful or unreasonable, and the intervening parties have not done so with their repetition of the same arguments that the Commission has already once considered and has already once rejected.

The parties applying for rehearing bring to the Commission no new substantive arguments nor do they cite any new case law supporting their position. For example, the OCC once again argues that the Commission has taken aggressive action in the past and it must do so in this case as well. In support of this argument, OCC relies solely upon *Columbia Gas of Ohio,* Case No. 83-135-GA-COI et al. Order (October 8, 1985). OCC Application for Rehearing at 27. This argument fails because the OCC ignores the important fact that the *Columbia* case was settled and was not appealed to the Supreme Court and accordingly it does not define the Commission's authority. See Entries of January 7, 1986 and February 11, 1986. The OCC further ignores (as was noted in the Companies' Reply Brief at 29) that the facts of *Columbia* and these rate cases differ substantially. The Ohio Supreme Court has never recognized that the Commission has the authority to take the actions that the OCC recommends it should take here. Therefore, as the OCC admits, before the Commission departs from its own precedent, the Commission must "justify sufficiently why its precedent is not controlling" in these cases. OCC Application for

Rehearing at 28. The record of these cases contains no such justification for varying from the statutory formula, and therefore the Commission must not depart from its precedent.

The OCC then argues that the Commission noted that "the Companies had agreed to nontraditional treatment of these cases in the 1992 CRG Agreement" (OCC Application for Rehearing at 17). OCC jumps to the conclusion that the Commission should have therefore ordered the "relief" proposed by the OCC. The OCC fails however, to explain how the Companies, through the 1992 CRG Agreement, could have waived the Commission's statutorily imposed obligation to set rates based upon the traditional ratemaking formula. As the Companies' briefs show, once the Commission has determined that a revenue deficiency exists, it is obligated to fix rates to provide the proper revenue. Companies' Post Hearing Brief at 2,3. Nothing in the CRG Agreement suggests that the statutory formula was to be ignored.

The Commission recognized that it could not stray from its statutory duties and granted the rate increase (pursuant to its obligations under §4909.15 Ohio Rev. Code) and at the same time, it *recommended* changes to the Companies' management practices (pursuant to §4909.154 Ohio Rev. Code). Therefore, all assertions that the Commission did not consider the Companies' management in its Order are flatly incorrect. While the Companies may not agree with the particular changes to its

management practices recommended by the Commission, the Companies cannot disagree that the Commission has the authority to make the recommendation.

B. The Commission Properly Fixed the Companies' Return on Equity

The OCC, Cleveland, Benedictine, the Empowerment Center, GCSC, OCRM and Toledo claim that the Commission acted unlawfully by failing to fix the return on equity as required by Section 4909.15 of the Revised Code. This assignment of error by the various intervenors is simply not an issue in the instant case. Ratemaking in Ohio is governed by Ohio Rev. Code §4909.15 which dictates that the Commission make a series of determinations before setting a utility's rates. If the Commission is of the opinion that the existing rates are insufficient to yield reasonable compensation for the service rendered, the Commission shall fix a fair and reasonable rate of return. The facts presented in this instant case prove that the Commission followed its statutory obligation and set a fair and reasonable rate of return of 10.06%. Order at 98.

As explained in its Order, the Commission was provided with two alternative ranges for consideration from which to find its return on equity since only the Staff and the OCC sponsored and supported specific rate of return analyses and recommendations (the Company accepted the Staff's calculation). Order at 21. The Commission conducted a comprehensive review of the positions of both parties as evidenced by its discussion in the Rate of Return section of the Opinion and Order.

Order at 21 - 23.

After its extensive review, the Commission decided that the Staff's analysis "more appropriately recognizes the factors driving Centerior's cost of capital." Order at 22. The Commission then selected the low end of the return on equity recommended by the Staff because of dissatisfaction with the Companies financial situation. The return on equity recommendation embodied the risks of an asset revaluation as was recommended by the Commission. The argument by the OCC and other intervenors that the return on equity is "contingent" and therefore illegal should be rejected by the Commission. There is nothing "contingent" about the 10.06% result.

Further, this entire issue is moot. The $208 million revenue requirement found by the Commission using the low end of the Staff's range is far in excess of the $119 million requested by the Company even before considering the Companies' objections (Order at 12). The intervenors arguments are even more meaningless when one considers that even at the OCC's proposed rate of return range of 9.67% to 9.85% (Order at 22), the Companies revenue requirements are still far in excess of the $119 million rate increase requested.

As an alternative, the OCC even suggests that the Commission consider using a "corrected capital structure" which totally ignores the Centerior-specific cost of capital in favor of some OCC-invented industry target. The most obvious fallacy in

the OCC-invented rate of return is that it uses "average" costs of debt, preferred and common stock, not the Companies' actual costs. OCC Ex. 4 at 25. To the Companies' knowledge, this Commission has never used anything other than the utility's actual cost. Further as discussed at length in the Applicants' Brief, even the OCC witness recognized this suggestion contradicts the principles of rate of return regulation. Companies Brief at 99 - 101 OCC's contention that the Commission did not set the rate of return should be rejected.

According to the Staff, the "risk" of asset revaluation was contained within the Staff's recommended Return on equity. Order at 21-22. In the first point, this risk would be mostly reflected in the upper end of Staff's recommended range which the Commission did not choose (it chose the low end). Secondly, although the Commission properly chose not to order an asset revaluation, but rather recommended it, the risk of asset revaluation still exists as perceived by the financial markets because of the Commission's recommendation, and therefore it is appropriate for the Commission to include it in the Company specific return on equity.

Since the Commission adopted a rate of return specific to Company specific risks, the Commission should deny the request for a rehearing on this issue.

C. The Customer Charge is Supported by the Evidence

The OCC, the City of Cleveland and the Empowerment Center argue that the

Commission erred by adopting the $4.75 customer charge for residential service for CEI because they claim that it does not comport with the principles of gradualism and the Commission relied on factors outside the record to support the charge. The OCC claims that the Commission erred because the customer charge is a "radical" change in CEI's residential rate design. Cleveland suggests that the Commission order a "potential" customer charge, instead of approving the current one, and the Empowerment Center argues without support that the customer charge is "certainly much more than is now collected by the Applicant in its initial block of the residential tariffs."

None of the intervenors arguing against the customer charge cite to any empirical evidence to support their arguments. Instead, the OCC argues that the Commission pretends not to understand the difference between per kWh and fixed charges. OCC Application for Rehearing at 37. The Commission in its Order did not pretend that there is no difference between energy charges and fixed customer charges, the Commission specifically based its approval of the customer charge on the Staff's finding these costs occur as a result of customers being connected to a utility's system, regardless of usage (Order at 64), and that the Staff's methodology was established 16 years ago and has been accepted by the Commission in numerous prior proceedings. Contrary to what the OCC argues, the Commission explicitly recognized the difference between energy charges and fixed customer charges and

chose to approve the charge *because* of that difference.

The Empowerment Center argues that the Commission has not listened to the public input concerning these charges; while the City of Cleveland argues that the Commission erred in approving it because of the effect such a charge is likely to have on the Company's poorest and oldest customers. Neither Empowerment Center's nor Cleveland's argument is supported by citation to the record nor to any legal precedent. The Commission, while it is bound to conduct the public hearings, is not bound by the comments of the public, and the Commission has the discretion (if not the obligation) as the trier of fact to determine the weight to place on all public testimony.

Further, without citation, Cleveland argues that low use customers who are poor will be the least able to pay this charge and many such poor low use customers are naturally the eldest customers in small households. Upon what Cleveland bases this argument is unknown. If Cleveland had wanted to make this argument during the case, it could have sponsored a witness to perform empirical studies of the supposed impact. Cleveland made no such argument, nor did it introduce any evidence to counter the Company's evidence. Thus, the only evidence in the case upon which the Commission must rely is that offered by the Company and the Staff, and this evidence supports the reasonableness of the Company's customer charge as a reasonable, cost-based charge. Staff Report at 63, 79.

III. Individual Party's Assignments of Errors

A. The Commission Has Not Shifted The Burden of Proving Confidentiality

OCC argues that the Commission erred by reaffirming its Entry of January 4, 1996 which improperly shifted the burden of proof of confidentiality away from the Companies and onto the intervenors. OCC Application for Rehearing at 6. OCC claims that the Commission misses the point of its difficulties with the Commission's January 4, 1996 Entry. However, OCC, fails to see the point of the Commission's Order. In the Order, the Commission very clearly states that this issue is moot. Order at 96. This issue has been firmly resolved by the playing out of the facts of this case. Parties were entitled to full discovery rights; the Companies ultimately waived confidentiality on nearly all of the documents in question; no party was harmed; and the Commission's January 4, 1996 Entry was limited only to the very narrow factual circumstances of the interlocutory appeal.

Beyond the mootness of this issue, the OCC's fundamental concern is just wrong. The Commission's January 4, 1996 Entry never shifted the burden of proving the Confidentiality away from the Companies. Under the language of the January 4, 1996 Entry, the Companies must still prove confidentiality, and the Party wanting to use the document in the proceeding must prove relevance. These are separate and individual requirements. Even if the issue were not moot, there are still

two separate issues and each party has a burden with regards to its issue.

B. The Average and Excess Demand Methodology Was Considered And Properly Rejected By The Commission

The OCC argues for rehearing on the grounds that the Commission ignored the evidence of record supporting OCC's classification of production, transmission, and distribution costs and the cost of service study utilizing these allocations. OCC Application for Rehearing at 39. This is simply wrong.

The Commission spent considerable time and resources evaluating OCC's version of the average and excess demand allocation of these costs. Order at 50 - 52. Nevertheless, the evidence only allows one to conclude that OCC's cost of service study was incorrect and inconsistent with NARUC and industry standards. Order at 58, Companies' Post Hearing Brief at 108 - 110. OCC's cost of service witness Sinclair stated that he believes the NARUC Cost Allocation Manual gives a good overview of the procedures that are valuable in preparing cost allocation studies, yet he admits that the average and excess demand methodology is flatly incorrect according to the manual, and that his allocation of an energy component in distribution is again flatly refuted by the manual. Tr. XXXII at 24-25. He then alleges that this Commission and every single utility in the State of Ohio allocates fixed and variable costs in a manner "inconsistent with sound rate-making goals and economic principles," Id. at 27.

The record in this case is replete with discussion on allocation methodologies

and the Commission considered all of the evidence, as shown in pages 57-60 of the Order in this case. The Commission did not ignore the evidence of record in regards to the OCC's cost classifications; it concluded after considerable fair evaluation that the OCC's methodology was not supported by the evidence in this case. The application for rehearing on these grounds should be denied.

C. The Commission Need Not Make a Determination Concerning the PIPP Discount Now

The City of Cleveland argues that the Commission erred because it did not find that any future application by the Companies to eliminate the PIPP discount after December 2, 1997 must be done as part of an application for an increase in rates. Cleveland Application for Rehearing at 10. The Commission is under no requirement to make the determination now of whether elimination of the PIPP discount must be in the form of an application for an increase in rates. Instead, if and when the Companies decide to make an application to the Commission to eliminate the PIPP discount, the Commission would - at that time - be required to determine if the Companies' application to eliminate the PIPP discount is an application for an increase in rates. Therefore, because the Commission is under no requirement to make this determination now, this issue is not yet ripe, and the Commission could not have acted unlawfully or unreasonably by not making the determination. The Commission should not grant rehearing on this issue because the Commission did not act unlawfully or unreasonably in not finding that the

Companies must make this application as part of a rate case.

D. The Commission Properly Decided Not to Force The Companies To Fund The CO-OP Program

The City argues that the Commission failed to order the continuation of the CO-OP and low-income weatherization program. Cleveland Application for Rehearing at 10. Cleveland believes that the Company cannot end these programs without asking for the Commission's approval just like the Company did with regards to DSM programs. Cleveland's argument is not supported by the evidence in this case. The Commission's Staff witness testified that these programs are not related to the cost of providing electric service and that the programs are "not DSM at all". Tr. XXIII at 11, 12, 14. The Staff also recommended that no adjustment be made to the Company's rate increase amount to recover these expenses (Tr. XXIII at 9, 10), thereby further evincing that these programs are not part of the Company's regulated provision of electric services. Finally, with regards to the CO-OP program, that program originated as part of a donation by the Company, through a stipulation in which the signatory parties understood it to be a donation. Companies' Ex. 22, Stipulation at Paragraph 17.

The Commission's Order specifically considered all the evidence in this case, *including* whether the Company must seek the Commission's approval before eliminating the programs, as well as the terms of prior stipulations, and the applicable law. Order at 94. Cleveland has not offered any evidence to counter the Staff's

testimony that these programs are not DSM and that they do not relate to the cost of providing electric service. Nor has Cleveland shown how forced-funding of these programs without proper recognition in rates would be lawful. Not having made these showings, Cleveland has failed to show how the Commission's decision is unreasonable or unlawful based upon the record in this case. The Commission should deny Cleveland's Application for Rehearing on this issue.

E. The Commission Properly Reviewed Electric Service Agreements, DSM Spending and Management Policies

The City of Cleveland argues that the Commission failed by not ordering a further investigation of special contracts, DSM spending in 1995, and various management policies. City of Cleveland Application for Rehearing at 7. The City of Cleveland requests a rehearing on the grounds that the Commission did not investigate whether a disproportionate number of the contracts involve the Companies' directors. Contrary to Cleveland's argument the Staff investigated these contracts, monitors them on a continual basis, and the Commission has determined that its anonymous review process ensures that no discriminations occurs. Order at 18. Cleveland is simply upset that Staff's investigation and the Commission's procedure has proven Cleveland to be wrong.

The City of Cleveland also argues that the Commission failed by not ordering a further investigation into DSM funds expended in 1995. The City argues that the Company shortchanged low income programs by not shutting down the commercial

DSM programs soon enough to allow $1 million to be allocated to the weatherization programs, health and safety measures, or energy efficiency measures in paragraph 26 of the Stipulation. Companies Exhibit Paragraph 14 on page 5 of the Stipulation states:

> *The Companies agree that the funds budgeted for these programs, as indicated in the "Total Expenses" column in section VI-73, Exhibit 12 of the 1994 LTFR will be reallocated to the weatherization programs, health and safety measures or energy efficiency measures discussed in paragraph 26. The reallocated funds shall be net of funds expended on these programs in 1995.*

The Companies did not commit to a minimum level of funds to reallocate to the weatherization, health and safety, or energy efficiency programs, and Cleveland knew that the Companies had not so committed. The record in this case is void of all evidence to the contrary.

F. The Commission Considered The Applicability Language of the Schools Tariffs

Benedictine argues that the Commission failed to make a decision as to the status of Ursuline College, a complainant in the original complaint case. Benedictine Application for Rehearing at 5. What Benedictine fails to argue is that the issue of the applicability language in the School's Tariff was specifically litigated in these cases and that Benedictine made no objection during that process. The Greater Cleveland Schools Council objected to the Company's proposed applicability language during the hearing process. Tr. VI at 50, 58. Additionally, the Greater Cleveland Schools Council briefed this issue and provided the Commission and the

Company with its suggested language. GCSC Post Hearing Brief at 19. The Company agreed to the language requested by the Greater Cleveland Schools Council and included it in its tariffs. CEI Tariff, 10th Revised Sheet No. 121.

Now, after the parties have agreed to the changes in the language and the Commission has approved the tariffs, Benedictine wants the Commission to rehear this issue. Benedictine's argument should be rejected by the Commission because of its untimeliness. Benedictine was on notice that the applicability language of the tariffs was at issue and if it had a concern with the language, it should have raised it at that time. Further, as the Company's witness testified, the purpose of the applicability language was to ensure that the customers being served on the rates are customers whose facilities are not utilized "year round". Tr. VI at 59. Primary and secondary schools fit this bill, whereas colleges, because of their business nature, are more likely to conduct summer classes and thereby use electricity year round. The Commission should deny rehearing on this issue.

G. The Commission Properly Decided Not to Order Changes to the Dividend Policy

The Empowerment Center's vitriolic application for rehearing is more a challenge to the Commission's dignity and the Companies' economic interests than it is a legal pleading. The Empowerment Center's arguments lack both factual as well as legal support. Its allegations that the Commission acted unreasonably when it failed to Order the Applicants to write down assets cites no law as support because

there is none. Likewise, its argument that the Commission should have ordered the Companies to make an additional cut to the dividend because "management on their own probably cannot cut the dividend" discards the evidence in this case that the Companies Board has already twice cut the dividend - on its own; and that the Commission-ordered witness, Mr. Hogan, testified that he did not think the Commission should step over the line into micro management. Tr. X at 134.

H. The Commission Properly Determined That No Excess Capacity Exists

The Empowerment Center asserts in its Error Number 2 that the Commission erred in its treatment of the Perry Nuclear Power plant. As stated in the Companies' Post Hearing Brief (Pg 124), the reserve margin calculated for the test year on which rates are set, is less that 20%. The argument of excess capacity in future years is moot because the test year reserve margin is less than 20% and as the Staff testified "future years are, by definition, not within the test year". Staff Exhibit 8 at 5. Furthermore, the Commission gave thoughtful consideration to the arguments raised over excess capacity and provided appropriate treatment in its decision. Order at 16 - 17. The Commission should deny the Empowerment Center's request for a rehearing on this issues because it has already considered these arguments and has ruled consistently with its past precedent.

I. The Commission Properly Determined Not to Force CO-OP Funding and Low Income Weatherization Funding

Next, the Empowerment Center argues that the Commission failed to adequately protect the CO-OP Program by not adopting a higher return on equity for increased CO-OP funding, and failed to adequately protect the low income weatherization program. Empowerment Center does not cite to any legal authority which would provide the Commission with the requisite power to grant a higher return on equity, and to order the Companies to commit to funding the CO-OP program, because there is none. Nor is there any evidence of these CO-OP programs being a necessary part of the provision of electric service. Similarly, the Empowerment Center has not shown that the Commission acted unreasonably or unlawfully by not forcing the Companies to continue funding the low income weatherization program. With regards to both the CO-OP funding and the low income weatherization funding, the Commission's Order correctly recognizes that the Commission is empowered to recommend management practices and policies such as these, but it may not order them. The Empowerment Center has not shown that the Commission acted unreasonably with regards to either of these two issues, therefore the Commission's Order must remain intact.

J. The Commission Properly Allowed Recovery of DSM Expenditures

The Empowerment Center then argues for rehearing on the grounds that the Commission improperly allowed for full recovery of the Companies' DSM programs

because the Companies did not follow through on its evaluations and consequently, the Companies' estimates of lost revenues must be unsatisfactory. Empowerment Center Assignment of Error 4. As recognized by the Commission and stated on pages 18-19 of the Order in this case, cost recovery guidelines established by the Commission in Case No. 90-723-EL-COI do not require an independent evaluation of the costs and impacts of DSM programs as a prerequisite for recovery. Secondly, the Company did undertake evaluations of a number of programs and presented those results to the DSM Collaborative, to which the Empowerment Center belongs. Tr. XIV at 61, 62.

The Empowerment Center also argues that basing the lost revenue calculations on "engineering estimates" is inappropriate. The Empowerment Center never sponsored the argument during the case that "engineering estimates" are inappropriate. The Commission is only able to rule on the evidence presented in the case. Since there is no evidence to the contrary, the Commission ruled properly on this issue. The argument for rehearing on these grounds should be rejected.

K. The Commission Had No Lawful Basis Upon Which to Increase the PIPP Discount

The Empowerment Center argues that the Commission failed to increase the PIPP discount from 7% to 20%. Empowerment Center Assignment of Error 9. The only justification proffered by the Empowerment Center is that the Commission should have increased the PIPP discount because the full rate increase was granted by

the Commission. The record is devoid of any empirical evidence proving any beneficial results of the PIPP discount on the Company's overall customer base, and of any evidence that would lead one to the conclusion that the granting of the full rate increase would warrant increasing the PIPP discount. The only evidence in this record shows that continuing or increasing the PIPP discount would lead to overall increases in rates. Order at 73. The Commission did not err in refusing to increase the PIPP discount.

L. The Commission Properly Allocated the Revenue Increase

The Greater Cleveland Schools Council of Governments alleges that the Commission Erred by improperly allocating too much of the revenue increase to the schools. The Greater Cleveland Schools Council of Governments attempts to support no revenue increase by subtracting two thirds of the Cleveland Board of Education delta discount from the revenue increase allocated to the schools by the Company. This is a flawed and incorrect method of changing the rate increase to the schools. The Commission recognized that the revenue distribution of the rate increase is guided by each class' rate of return if one is to follow the precept that revenue responsibility should follow cost causation. Order at 57. Schools' Later Filed Exhibit 9 shows that by adding the Cleveland Board of Education delta discount to the Company's cost of service study, the resulting rate of return for the schools is 1/2 of a percent higher than the Large Commercial class. This result leads to the conclusion

that the schools should receive a somewhat smaller increase than the Large Commercial class, but *not* to a conclusion of no rate increase. The Commission, on page 62 of its Opinion and Order, recognizes this and applies sound judgment in its decision to allocate a small increase to the schools. This assignment of error should be denied.

M. Notice of the Rate Increase was Proper

The GCSC next argues that the Commission erred in failing to exclude "not noticed rates," and argues that the Order fails to address the legal issue raised by the Schools -- that ORC §4909.43(B) requires a public utility to notify the public. GCSC argues that it is unlawful to propose rates at the end of the proceeding without notice.

As discussed in detail in the Companies' Reply Brief, because the school tariffs were new service offerings and were not an application for an increase of existing rates, the Companies could have filed the tariffs outside of the context of a rate proceding. *Cleveland v. Pub. Util. Comm.* (1981), 67 Ohio St. 2d 446. In that case, the Ohio Supreme Court agreed with the Commission that no public notice was necessary for the Company to implement its new streetlighting service tariff because it was a new service. *Cleveland* at 450, 451. In making its decision, the Ohio Supreme Court weighed heavily the fact that the intent of the legislative scheme is to provide speedy implementation of rate reductions and new service offerings. *Id.* at

451. Schools have not shown that the Commission acted unreasonably or unlawfully. The Commission's Order must remain intact on this issue.

IV. Conclusion

For the foregoing reasons the Commission should deny the intervenors applications for rehearing.

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