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December 12, 2008

Ms. Betty McCauley, Docketing Chief
Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street, 13th Floor
Columbus, OH 43215

RE: Case No. 08-~~835~~935-EL-SSO

To Whom It May Concern:

Please find enclosed an original and twenty copies of the *Reply Brief of Citizen Power and Ohio Partners for Affordable Energy* in the above-referenced docket. We do not require a stamped copy.

If you have any questions regarding this document, please feel free to contact me.

Sincerely,

David C. Rinebolt
Counsel

Encl – 21

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 Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan.	)))))))	Case No. 08-935-EL-SSO

REPLY BRIEF OF CITIZEN POWER AND OHIO PARTNERS FOR AFFORDABLE ENERGY

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Ohio's consumers and utilities now face a change in the regulatory framework regarding the provision of electric utility service. The Cleveland Electric Illuminating Company, The Ohio Edison Company, and The Toledo Edison Company (collectively "the Companies" or "FirstEnergy") offer an interpretation of the new statute, Am. Sub. SB 221 ("SB 221"), in line with that offered by other public utilities in Ohio, that the Standard Service Offer ("SSO") proposed in an Electric Security Plan ("ESP") need only be "more favorable in the aggregate" than a Market Rate Option ("MRO") as both are defined by the statute. R.C. §§4928.142 and 4928.143. The Companies are in error.

In SB 221, the General Assembly maintains the requirement that an SSO represent an appropriate balance between the interests of the utility and its customers.[1] The statute requires reasonable rates, protection for at-risk populations, and an alignment of customer and utility interests in providing reliable service, among other policy goals. R.C. §4928.02. The FirstEnergy

[1] Staff Brief at 1.

proposal fails to acknowledge the importance of state policy goals, the need for balance, and reasonable rates. Given the dearth of shopping opportunities for customers, particularly small customers, the SSO will be the rate that the vast majority of customers will pay. This rate should represent an appropriate balance between the interests of the parties.

The utilities collectively chose to file their proposals on the effective date of the statute, July 31, 2008. They chose not to wait for guidance from the Public Utilities Commission of Ohio ("PUCO" or "the Commission") on the necessary content of the plans. The effect of this rush to impose substantial rate increases on customers based on the utilities' collective interpretation of the law has had the logical effect. FirstEnergy has already seen its MRO application rejected. Duke, on the other hand, was able to achieve a negotiated settlement once it pared down its proposal to comply with the statutory limits.

The Application has numerous flaws. The proposed deferrals of large portions of the rate increases do not produce price stability. Rather, it imposes significant financial burdens on customers over a much longer term than the ESP will be in effect. The statute is clear that the Commission cannot evaluate the impact of the MRO by simply pushing hundreds of millions of dollars in IOUs from customers to the Companies under the rug and ignore them when comparing the ESP and MRO. R.C. §4928.143(C)(1).

In addition, the Application attempts to embrace issues considered separately in a fully litigated distribution rate case. Fortunately, the Attorney Examiners ruled that distribution rate case issues be severed from this case. As

a result, it is obvious the Commission will modify this plan despite the Companies' insistence that basic distribution issues remain included in the case.

The Application establishes an unreasonable strawman, a market-based comparison rate that is effectively the same as its proposed MRO, already rejected. Both the Ohio Energy Group ("OEG") and the Office of the Ohio Consumers' Counsel ("OCC") presented testimony providing projections of future market prices and it is the "expected" prices that are the test between the ESP and the RTO. R.C. §4928.143(C)(1). These projections show that the ESP is not more advantageous from a pricing standpoint than an MRO could be. That alone is adequate grounds for rejecting the application.

An ESP should have a long-term focus, as should any plan proposed under SB 221. The statute establishes long-range goals for energy efficiency, demand reduction, and renewable generation. R.C. §§4928.64 and 4928.66. These goals cannot be reached in three year slices; they must be met by a long-term plan that will stimulate the investments necessary to achieve these important state policy goals. The Commission should order the Companies to immediately convene a collaborative to design programs to achieve these goals, and should required the continued funding of existing low-income programs, already proven cost-effective, to kick start the effort to comply with statutory requirements.

Development of an integrated portfolio of demand and supply side technologies is required to meet the goals of the statute. OPAE has provided testimony on the appropriate mechanism for conducting planning and

procurement.[2] Several states, including Illinois, Maryland, and Delaware, have all adopted this approach after the flaws in 'slice of system' auctions became apparent. Ohio should learn from the experiences of these states and, consistent with Ohio law, adopt a similar approach.

An integrated portfolio approach applied to an MRO would produce much lower prices than those resulting from the approach championed by the Companies because it would focus on the lowest price options available to provide SSO service. A properly designed portfolio would be able to capture the changes in wholesale prices. This, in turn, would require an acceptable ESP to also use a portfolio approach in order to meet the statutory requirements to be "more favorable in the aggregate."

The funding level for distribution system improvements proposed in the Application was apparently established by 'management judgment' and is not based on a plan.[3] Depending on the management judgment of companies that already fail to meet modest reliability targets is not warranted. The same lack of detail characterizes the Companies' Advanced Metering Infrastructure (AMI) initiative. There is only a minimal 'plan' and no cost-effectiveness analysis. The only reference to cost regarding this portion of the Application is the interest of the Companies in charging higher costs via time-of-use rates. The extensive record provides no support, from any party, for the assertion that time-of-use rates will produce a demand response more cost-effectively than conventional, low-cost, radio-controlled switching or other proven techniques. And there is

[2] *Direct Testimony of Barbara R. Alexander.*
[3] FirstEnergy Brief at 56.

nothing in the record that proves that AMI will reduce prices for the average residential consumer that will bear the cost.

The Attorney Examiner ruling has already altered the ESP by severing the distribution issues already litigated. Additional alterations must be made in order to comply with the statute. These changes will, under the terms of the statute, permit FirstEnergy to withdraw this initial proposal should it find the modifications unpalatable. The Companies should withdraw this application and refile a proposal that complies with the statute.

Respectfully submitted,

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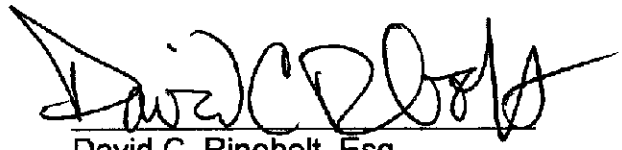
CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Reply Brief* were served electronically upon the parties of record identified below on this 12th day of December, 2008.



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