

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
Buckeye Energy Brokers, Inc.,)	
)	
Complainant,)	
)	
v.)	Case No. 06-835-EL-CSS
)	
Cleveland Electric Illuminating Company,)	
Ohio Edison Company, and FirstEnergy)	
Corp.,)	
)	
Respondent.)	

ENTRY ON REHEARING

The Commission finds:

- (1) On February 7, 2007, the Commission issued its Entry (Entry) in this proceeding. Based on a review of the pleadings filed in this proceeding, the Commission granted the Companies' motion to dismiss.
- (2) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.
- (3) On March 7, 2007, Buckeye filed an application for rehearing. Buckeye raises two general assignments of error, as follows:
 - (A) The Commission erred in finding that Buckeye cannot prove a set of facts that entitle it to relief; and by considering Exhibit A to the Companies motion to dismiss (the NOPEC agreement), thereby improperly converting the motion to dismiss to a motion for summary judgment.
 - (B) The Commission's decision is contrary to Ohio Civil Rule 8 insofar as Buckeye has set forth a claim for relief and Buckeye's pleadings have not been construed to do substantial justice.

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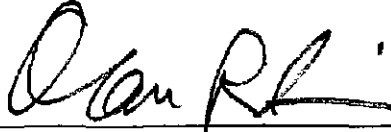
- (4) On March 16, 2007, the Companies filed a memorandum contra Buckeye's application for rehearing. The Companies respond that Buckeye's complaint contains unsupported allegations that CEI and OE, under the terms of the NOPEC Agreement, are providing unlawful discounts to customers in NOPEC communities. The Companies assert that it provided the NOPEC Agreement in response to those allegations, and that this agreement clearly indicates that the utilities receive 100 percent of their tariff rates. The Companies further contend that Buckeye's entire case is predicated on the terms and conditions of the NOPEC Agreement, and that a reading of the Agreement is dispositive of Buckeye's claims; therefore, it was properly considered by the Commission. As to Buckeye's arguments regarding motions to dismiss under the Ohio Civil Rules, the Companies respond that the Commission's proceedings are governed by the Rules of Practice set forth in Chapter 4901-1, O.A.C., not the Ohio Rules of Civil Procedure.
- (5) The Commission grants Buckeye's application for rehearing. We believe that sufficient reason has been set forth by Buckeye to warrant further consideration of the matters specified in the application for rehearing.

It is, therefore,

ORDERED, That Buckeye's application for rehearing is granted for further consideration of the matters specified in the application for rehearing. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties in this proceeding.

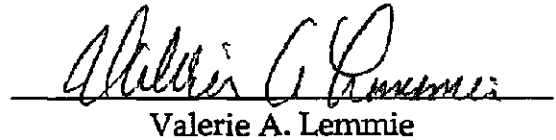
THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



Ronda Hartman Fergus



Valerie A. Lemmie



Donald L. Mason

JKS:ct

Entered in the Journal

APR 04 2007



Renee J. Jenkins
Secretary