

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
THE CLEVELAND ELECTRIC ILLUMINATING)
COMPANY for Authority to Enter Into)
and Perform Sale and Leaseback)
Financing Transactions Relating to the) Case No. 87-1149-EL-AIS
Bruce Mansfield Generating Plant and)
to Issue Unconditional Joint and Several)
Obligations in Connection Therewith.)

FINDING AND ORDER

The Commission finds:

- (1) Applicant is an Ohio Corporation and a public utility as defined in Section 4905.02, Revised Code, subject to the jurisdiction of the Commission.
- (2) The Application, as supplemented, is filed under and complies with the provisions of Sections 4905.40 and 4905.41, Revised Code.
- (3) Applicant has requested the consent and authority of the Commission to enter into and perform sale and leaseback financing transactions in an amount not to exceed \$700 million relating to the Applicant's undivided ownership interests in the Bruce Mansfield Generating Plant including its undivided ownership interests in certain of the common facilities at said Plant (the "Financing Transactions"). In a separate Application The Toledo Edison Company ("Toledo Edison") has requested the consent and authority of the Commission to engage in similar sale and leaseback financing transactions relating to its undivided ownership interests in said Plant. Applicant has also requested the consent and authority of the Commission to issue its unconditional joint and several obligations in connection with said Financing Transactions and Toledo Edison's sale and leaseback financing transactions (the "Obligations").
- (4) Applicant proposes to enter into and perform the Financing Transactions under which the Company will sell to Owner Trusts (hereinafter called the "lessors" or the "Owner Trust"), the beneficiaries of which will be equity investors in the transaction, the facilities as described in Exhibit 3 and in the Summary of Terms, Exhibit 5A to the Application as supplemented. Such investors will enter into one or more trust agreements with the Owner Trust which will take and hold title to the facilities sold by the Applicant. Funds to be used by the Owner Trust to purchase the facilities will be derived from the proceeds of (i) the sale of equity interests to the equity investors, and (ii) the issuance of debt made up initially of short-term bank loans as described in Exhibit 5B to the

Application as supplemented and ultimately from the sale of long-term debt by a funding corporation. Simultaneously with the sale of the facilities, the Owner Trust will lease the facilities back to the Applicant and Toledo Edison on a joint and several basis for a term of approximately 29 years for a stipulated rent and similarly, the facilities sold in the Toledo Edison sale and leaseback financing transactions will be leased to Applicant and Toledo Edison on a joint and several basis, all as described in Exhibit 3 to the Application as supplemented. The rent to be paid for the leasing back of all facilities sold will reflect the cost of equity and debt capital incurred in the sale and issuance of equity and debt. Rental payments could increase during the term of the lease by limited amounts upon the happening of certain contingencies. Under certain circumstances, the Applicant and Toledo Edison may elect or be required to terminate the lease, assume the obligations on the debt and/or repurchase the facilities at their fair market value or for a price based on other factors substantially as described in Exhibit 3 and in the Summary of Terms in the Application.

- (5) Applicant proposes to enter into and perform the Financing Transactions and to issue its Obligations in an amount not to exceed that stated in Exhibit 3A to the Application as supplemented plus an amount not to exceed that related to Toledo Edison's sale and leaseback financing transactions provided that the initial rent percentages and the aggregate fees paid by Applicant in connection with these transactions do not exceed the initial rent parameters and the aggregate of the fee parameters as set forth in said Exhibit 3A.
- (6) The parameters are based on current and historical financial market conditions, financial analysis as well as the professional judgment of the Applicant. They are intended as a gauge of market expectations that provide a reasonable allowance for potential changes in financial market conditions between the time of Commission authorization and the actual consummation of the transactions. The authorization to enter into and perform the Financing Transactions and to issue the Obligations consistent with the parameters does not relieve the Applicant of its responsibility to negotiate and obtain the best terms available.
- (7) Applicant states that, under the agreements which will govern the ownership and operation of the facilities, it and Toledo Edison will act with full power and authority with respect to the operation of the facilities, to the

exclusion of the Owner Trust and/or the equity investors, and will exercise all rights and perform all the duties and responsibilities under such agreements related to the operation of the Plant. The leases will confirm this authorization to the Applicant and Toledo Edison. The Owner Trust and the beneficiaries will be subject only to typical financing risks and not operational risks or responsibilities.

- (8) Applicant states that the principal reasons for structuring the proposed lease agreements as joint and several leases are to achieve an overall enhancement of the credit supporting the lease obligations and to provide additional flexibility for capacity rationalization as between itself and Toledo Edison. The Commission considers the first reason as the basis for approval of this financing transaction. Approval of this transaction does not constitute a Commission determination as to the reasonableness of any reallocation of capacity nor is it a guarantee of recovery of any payment made pursuant to the Leases or Obligations which may result. Such a determination can only be made in a subsequent proceeding in which the effects of the reallocation can be evaluated.
- (9) The proposed Financing Transactions are subject to certain conditions precedent including, but not limited to, the approval by this Commission, in a form and substance satisfactory to all parties, of the entering into and performing of the Financing Transactions and the issuance of the Obligations.
- (10) The proposed Financing Transactions will reduce the net present value of capital costs to the Applicant by the transfer of tax benefits and the recapitalization of the facilities' financing with greater debt leverage. Additionally, the revenue requirements associated with the Applicant's capital investment in the facilities will be levelized over the life of the facilities.
- (11) Because the lessors in the proposed Financing Transactions will recapitalize the facilities with greater debt leverage, the Applicant's required lease payments should represent a lower cost of capital than would the Applicant's weighted cost of capital. The transaction is intended to result in the transfer of the benefits of tax depreciation to such lessors.

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- (12) Applicant, upon giving adequate notice to the lessors, which is expected to be at least eighteen months prior to the scheduled expiration of the lease term, will have the following options: (a) to renew the lease for a fixed renewal term, (b) to renew the lease for a fair market value renewal term, (c) to purchase the facilities, or, (d) to return the facilities to the lessors. Applicant shall obtain the Commission's approval prior to Applicant's selection as to which of these options is to be exercised by the Applicant, at the appropriate time prior to the scheduled expiration of the lease term.
- (13) Applicant is also requesting Commission authorization to use an accounting treatment which would recognize a portion of the book gain (net of deferred income taxes related to the portion of the book gain deferred), if any, from the Financing Transactions as a component of net income at the time of sale, with any nonrecognized amount being deferred. This accounting treatment will eliminate the effect of any increased income tax expense on revenue requirements or net income at the time of the transaction, with any resulting deferred gain amortized as a reduction to cost of service over a period not to exceed the basic lease term. Therefore, the Commission is satisfied that consent to and authority for this accounting treatment should be granted.
- (14) The entering into and performing of the Financing Transactions and the issuance of the Obligations do not appear to be unjust or unreasonable, and the terms thereof and the probable cost to Applicant, which are to be no less favorable than the terms described hereinabove, do not appear to be unjust or unreasonable.
- (15) Entering into the proposed Financing Transactions should have the effect of reducing internal and/or external funding requirements that Applicant would otherwise incur. The impact of the transactions on Applicant's revenue requirements will be considered in the determination of required revenues in rate proceedings in which all factors affecting rates will be taken into account according to law.
- (16) The net proceeds from the proposed Financing Transactions will be used to redeem outstanding First Mortgage Bonds of the Applicant at a cost currently expected to aggregate about \$500 million to \$550 million, to repay short-term debt incurred to finance its construction program and for general corporate purposes.

- (17) The Commission is satisfied that consent and authority for Applicant to enter into and perform the Financing Transactions, including entering into all necessary documentation, and to issue its Obligations should be granted.

It is, therefore,

ORDERED, That The Cleveland Electric Illuminating Company is authorized to enter into and perform sale and leaseback financing transactions, as described in its Application, as supplemented, in an amount not to exceed \$700 million as described therein, including entering into all necessary documentation, and to issue its unconditional joint and several obligations in connection therewith and in connection with similar sale and leaseback financing transactions by The Toledo Edison Company relating to its undivided ownership interests in the Bruce Mansfield Generating Plant, provided that the initial rent percentages and aggregate fees paid by Applicant in connection with these transactions do not exceed the initial rent parameters and the aggregate of the fee parameters set forth in Exhibit 3A to the Application as supplemented. It is, further,

ORDERED, That Applicant is authorized to use accounting treatment as set forth in Finding (13). Applicant shall provide the Commission with copies of the accounting entries showing the actual accounts to be debited and credited and the amounts involved relating to this accounting treatment. It is, further,

ORDERED, That Applicant shall file a written report with this Commission as promptly as practicable after the completion of the sale and leaseback financing transactions authorized by this Order containing a summary of actual costs and expenses associated with the parameters stated in Exhibit 3A to the Application as supplemented. It is, further,

ORDERED, That Applicant is authorized to apply the monies to be made available to Applicant from such transactions substantially as set forth hereinabove and otherwise pursuant to provisions of Section 4905.40, Revised Code. It is, further,

ORDERED, That Applicant shall obtain the Commission approval, at the appropriate time prior to the scheduled expiration of the lease term, as to which option (as referred to in Finding (12)) is to be exercised by the Applicant. It is, further,

ORDERED, That nothing contained in this Order shall be deemed to be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule or regulation of the Applicant. It is, further,

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ORDERED, That a copy of this Order be served upon all parties
of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

<u><i>Thomas V. Chema</i></u> Thomas V. Chema, Chairman	
<u><i>William H. Brooks</i></u> William H. Brooks	<u><i>Gloria L. Gaylord</i></u> Gloria L. Gaylord
<u><i>Ashley C. Brown</i></u> Ashley C. Brown	<u><i>Alan R. Schriber</i></u> Alan R. Schriber

RR:dsc

Entered in the Journal

27 AUG 1987
A True Copy

Nancy L. Wolpe
Nancy L. Wolpe
Secretary