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**FILE**

November 14, 2007

Ms. Renee J. Jenkins  
Director, Administration Department  
Secretary to the Commission  
Docketing Division  
The Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

PUCO

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RECEIVED-DOCKETING DIV

RE: PUCO Case No. 07-1003-EL-ATA, Case No. 07-1004-EL-AAM  
In the Matter of the Application of Ohio Edison Company, The Cleveland Electric  
Illuminating Company, and The Toledo Edison Company for Authority to Modify  
Certain Accounting Practices and for Tariff Approvals  
Ohio Edison Company, The Cleveland Electric Illuminating Company, and The  
Toledo Edison Company Memorandum Contra Office of Ohio Consumers'  
Counsel Motion for Staff Investigation and Hearing

Dear Ms. Jenkins:

Enclosed for filing please find the original and twelve (12) copies of *Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company Memorandum Contra Office of Ohio Consumers' Counsel Motion for Staff Investigation and Hearing* regarding the above-referenced case which was fax-filed today. Please file the attached. File-stamp the two extra copies and return them to the undersigned in the enclosed envelope.

Thank you for your assistance in this matter. Please contact me if you have any questions concerning this matter.

Very truly yours,

*James W. Burk*  
James W. Burk

JWB:ls  
By Federal Express Priority Overnight  
Enclosures 12

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**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

|                                                 |   |                                |
|-------------------------------------------------|---|--------------------------------|
| <b>In the Matter of the Application of Ohio</b> | ) |                                |
| <b>Edison Company, The Cleveland Electric</b>   | ) |                                |
| <b>Illuminating Company, and The Toledo</b>     | ) |                                |
| <b>Edison Company for Authority to</b>          | ) | <b>Case No. 07-1003-EL-ATA</b> |
| <b>Modify Certain Accounting Practices</b>      | ) | <b>Case No. 07-1004-EL-AAM</b> |
| <b>and for Tariff Approvals</b>                 | ) |                                |

**Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo  
Edison Company Memorandum Contra Office of the Ohio Consumers' Counsel Motion for  
Staff Investigation and Hearing**

Now come Ohio Edison Company (hereinafter "OE"), The Cleveland Electric Illuminating Company (hereinafter "CEI"), and The Toledo Edison Company (hereinafter "TE", with OE, CEI and TE, collectively referred to as the "Companies") and hereby file their Memorandum Contra the Office of the Ohio Consumers' Counsel ("OCC") Motion for Staff Investigation and Hearing.

Unless the Commission determines that the Application filed in this matter may be unjust or unreasonable under R.C. 4909.18, no further hearing is required. The OCC is correct that it is within the Commission's discretion to set this matter for hearing under R.C. 4909.18 if they determine that the filing may be unjust or unreasonable. Setting the matter for hearing will also trigger the process under R.C. 4909.18 whereby the Commission must act on the filing within six months of the original filing date of September 10, 2007.

The OCC in its Motion laid out a partial history of the proceedings leading up to the filing of the Application in this matter. The portion of the Rate Stabilization Plan ("RSP") Entry

on Rehearing in Case No. 03-2144-EL-ATA et seq. quoted by OCC makes no reference to a requirement for a hearing before increases in generation costs could be implemented. In the plan itself, however, there was a provision that contemplated the filing of a new application and a hearing before the Companies could increase the tariffed generation charge or defer generation costs. It should also be pointed out that a hearing was held in the RSP proceeding.

The Companies fully complied with this provision of the RSP. The Companies filed a new application in Case No. 05-704-EL-ATA seeking recovery of fuel costs as contemplated in the RSP case. This proceeding was later consolidated with the Companies' Rate Certainty Plan ("RCP") application filed in Case No. 05-1125-EL-ATA et seq. In the consolidated matter, a hearing was held and the Commission authorized the Companies to implement a mechanism to recover a portion of the fuel costs and to defer the balance of the fuel costs. Therefore, any hearing requirement arising out of the RSP related to fuel costs has been met. There is no basis to conduct another hearing related to fuel costs due to a requirement in the RSP.

Under the RCP, there is no such specific provision as to whether a hearing is required related to including the deferred fuel amounts into retail rates. The Companies included recovery of the deferred fuel amounts in their distribution rate case. However, subsequent to the filing of the distribution rate case, the Supreme Court of Ohio ruled that deferred fuel costs could not be collected as part of distribution rates. *Elyria Foundry v. Pub. Util. Comm.*, 114 Ohio St.3d 305, 2007-Ohio-4164. Shortly after that Opinion was issued, the Companies filed the instant proceeding.<sup>1</sup>

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<sup>1</sup> As stated in their Application in this proceeding, the Companies have a pending Motion for Reconsideration before the Supreme Court of Ohio, which was filed on September 7, 2007. Should

In this proceeding, the Companies proposed a recovery mechanism that would permit recovery of the deferred fuel costs, as has been previously approved in the RSP and RCP proceedings before the Commission. The Companies did not propose, as stated by OCC, that the proposed recovery mechanism be approved "without review". OCC Motion at p. 10. The Companies proposed that such recovery be subject to a reconciliation mechanism to assure no over or under recovery of authorized fuel amounts. And the Companies proposed that all interested parties be permitted to submit comments and reply comments on the proposal.

OCC then wrongly suggests that the Companies have provided no information related to the fuel costs that have been deferred, the nature of the fuel costs, how the fuel costs were calculated, or any source documentation whatsoever. In the RCP case, the Companies were required to provide fuel deferral information to the Commission Staff. The Companies have fully complied with this requirement. Recovery of the fuel deferrals through distribution rates was originally part of the Companies distribution case in Case No. 07-551-EL-AIR. Therefore, the issue of fuel deferrals has been subject to significant discovery from the Staff, and from OCC in the distribution case. OCC has had the opportunity to review complete detailed source documentation and has received information in response to numerous data requests related to the fuel deferrals, to which responses have been provided. OCC has complete information related to the fuel deferrals, and its erroneous suggestion that no information has been provided cannot be used as a basis either for further Staff investigation or for further hearings on this issue.


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reconsideration be granted and the RCP affirmed in all respects, the Companies would withdraw the Application in this proceeding, as it would be rendered moot.

Neither the RSP nor the RCP required a Staff Report on fuel deferrals. Similar to holding a hearing in this matter, it is within the Commission's discretion as to the level of Staff involvement in any proceeding before the Commission. Certainly the RCP Order contemplated that the Staff would review the fuel deferrals and directed the Companies to provide fuel deferral related information to allow such review to occur. The Companies have fully complied with this requirement of the RCP Order. But neither the RSP Order nor the RCP Order contain a specific provision that directs the Staff to prepare a Staff Report in this proceeding.

In conclusion, whether further hearings under R.C. 4909.18 or further Staff reviews occur related to the Companies recovery of deferred fuel costs is a matter within the discretion of the Commission. The Companies do however, urge the Commission to act promptly in this matter. Commencing recovery of the deferred fuel costs as soon as possible will lower the nominal charge to customers and reduce carrying charges. With the proposed reconciliation mechanism in place, the Commission will be assured of accurate recovery of the authorized costs.

Respectfully submitted,



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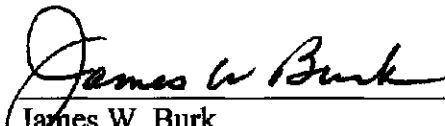
On behalf of Ohio Edison Company,

The Cleveland Electric Illuminating

Company and The Toledo Edison Company

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing Memorandum Contra was delivered via regular U.S. mail, postage prepaid, this 14<sup>th</sup> day of November 2007 to the parties of record in this proceeding.

  
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