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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	Case Nos. 07-551-EL-AIR
Edison Company, The Cleveland Electric)	07-552-EL-ATA
Illuminating Company and The Toledo)	07-553-EL-AAM
Edison Company for Authority to)	07-554-EL-UNC
Increase Rates for Distribution Service,)	
Modify Certain Accounting Practices and)	
For Tariff Approvals)	

**OBJECTIONS TO THE STAFF REPORT
OF INVESTIGATION SUBMITTED ON BEHALF OF
CONSTELLATION NEWENERGY, INC.**

Pursuant to Section 4909.19, Revised Code, Rule 4901-1-28 of the Ohio Administrative Code, and the December 21, 2007 Entry, Constellation New Energy, Inc. ("Constellation" or "CNE") hereby respectfully submits its Objections to the December 4, 2007 Staff Report of Investigation ("Staff Report") in these matters. Constellation, which filed and served its Motion to Intervene on August 31, 2007, notes the following:

1. As part of the Rate Certainty Program, Ohio Edison, Cleveland Electric Illuminating, and Toledo Edison deferred fuel costs for subsequent collection as distribution charges. While these deferrals were authorized by the Commission in Case No. 05-704-EL-ATA and 05-1125-EL-ATA, the Ohio Supreme Court in *Elyria Foundry v. Public Utilities Commission* 114 Ohio St. 3d 305 (2007), 2007 - Ohio 4164 found the practice of collecting fuel expenses in distribution charges to be a violation of Revised Code Section 4928.02(G). In light of the above referenced Supreme Court decision, no fuel deferral may be included either as a component of Rate Base or as a separate collection rider. The Staff Report appropriately applies this decision. See the

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“Other Rate Base Items” section at Staff Report (for all three operating companies), p. 8. The Staff Report however should have clarified that, consistent with the *Elyria* decision, no fuel or purchased power costs may be included in or as a rate component of any of the distribution rates.

2. In order to comply with Section 4928.02(G), Revised Code the Residential Distribution Credit and the Business Distribution Credit must be administered in a competitively neutral fashion as between customers who purchase energy under the Standard Service Offer from the utility and those who purchase energy from a competitive retail electric service provider. This subject is not addressed in the Staff Report. Provisions should be made for those customers who qualify for the Residential Distribution Credit and the Business Distribution Credit to obtain the per kWh credits if they purchase power under the Standard Service Offer or from a Competitive Retail Electric Supplier.

3. Customers who are put on a disadvantageous distribution tariff rate schedule on the advice of FirstEnergy should receive the full difference between the rates they paid and the rates they should have paid if the correct rate was selected in accordance with the Commission’s decision in *White Plastics v. Columbus Southern*, Case No. 85-0650, Opinion and Order, June 18, 1985. CNE supports the position taken by the Staff Report on this issue. See Staff Report (for all three operating companies), p. 20.

4. The Application deleted all the rate sections in their entirety and then presented new distribution tariff provisions. The Staff Report should have found the application text and the proposed tariffs insufficient in that both the application and the proposed tariffs for all three operating companies did not express the right of all retail

customers to purchase energy from competitive retail electric suppliers and to receive billing which clearly identified what utility services the customer received and the cost of such service. The Staff Report should have required a definitive statement in both the application and the tariffs that all customers who purchase energy from competitive retail electric suppliers shall not be charged for generation or generation related expenses by the utility. Further, the Staff Report should have required that the invoices retail customers receive inform the customers of the exact utility services that were received and the cost of each such service. For customers who purchase under the Standard Service Offer pursuant to Section 4928.14 (A), Revised Code, the billing should present a list of the complete non regulated services being provided and the cost of such services.

5. In the event the Staff changes its position on any issue in the Staff Report, Constellation reserves the right to file testimony, cross-examine witnesses and address such issues.

In accordance with the Attorney Examiner's Entry of December 21, 2007, Constellation NewEnergy, Inc. respectfully submits its Objections to the Staff Report as set forth above and designates paragraphs 1 and 2 as its major issues.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Objections to the Staff Report of Investigation was served upon the following persons by electronic mail, where indicated, and by first class mail, postage prepaid, this 3rd day of January, 2008:



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