

FILE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	Case No. 07-551-EL-AIR
Illuminating Company, and The Toledo Edison)	Case No. 07-552-EL-ATA
Company for Authority to Increase Rates)	Case No. 07-553-EL-AAM
For Distribution Service, Modify Certain)	Case No. 07-554-EL-UNC
Accounting Practices and for Tariff Approval)	

**MEMORANDUM CONTRA
MOTION TO STRIKE CERTAIN FIRSTENERGY OBJECTIONS
TO THE STAFF REPORTS BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of Ohio Consumers' Counsel ("OCC") has moved to strike three of the Objections to the Staff Reports filed by the Applicants (Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, collectively "Companies"). If OCC's motion is granted and the Companies' objections stricken, the Commission would deprive itself of the flexibility needed to address cost recovery of RCP fuel deferrals – costs that all parties recognize the Companies are entitled to recover. Accordingly, the Commission should overrule OCC's motion and sustain the Companies' objections.

The Companies in the RCP case were expressly authorized to defer certain increased fuel costs for recovery in the Companies' next distribution base rate case. The Supreme Court of Ohio rejected the recovery of these costs in distribution rates and remanded to the Commission. *Elyria Foundry v. Pub. Util. Comm.*, 114 Ohio St.3d 305, 2007-Ohio-4164. The issue to be resolved on remand is not *whether* the deferred fuel costs are recoverable; it is *how* these costs should be recovered.

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In response to the Court's Opinion issued in August 2007, the Companies filed the RCP Remand proceeding that proposed a recovery mechanism for the deferred fuel costs outside of the distribution rate case. On January 9, 2008, the Commission issued an Order that recognized a method for recovery of these costs through the RCP Remand proceeding, but denied the Companies' proposed recovery mechanism.¹ The Companies now have until February 8, 2008 to propose an alternative recovery mechanism for the deferred fuel costs in that proceeding.

Given that the Commission has yet to settle on a recovery mechanism for deferred fuel costs, it is important that all options for recovery be left open. Doing so will give the Commission the greatest flexibility to resolve this issue. The Companies have sought to preserve all potential mechanisms for the Commission to act, including by way of relief in these proceedings. Given the statutory dictates of R.C. 4909.19, however, which requires issues to be preserved by way of objections to Staff Reports, the objections at issue are both appropriate and necessary. If the Companies did not object, or if the Commission were to overrule the Companies' objections, the Companies *and the Commission* could be procedurally barred from considering the RCP fuel deferrals in this proceeding in any way. Certainly the RCP Remand proceeding *may* result in a satisfactory recovery approach, but it is also possible that it may not. The fact is, no one knows. Also unknown is when the RCP Remand proceeding will conclude in relation to this one. As a matter of regulatory flexibility, the current uncertainty calls for more alternatives rather than fewer.


¹ The portion of the PUCO's Order in Case No. 07-1003-EL-ATA cited by OCC on page 2 of its Motion to Strike was part of the discussion regarding the approval of the recovery mechanism for fuel costs incurred in 2008, not deferred fuel costs.

And although the Companies clearly cannot seek to recover the deferred fuel costs twice, surely it is appropriate for the Companies to preserve their right to recover them once.²

The Companies are not suggesting that the Commission take any action or authorize rates that are contrary to law or the rulings of the Supreme Court. The Commission, however, should maintain all options for the recovery of deferred fuel costs until the issue is resolved. See O.A.C. 4901-1-28(C).

For the foregoing reasons, OCC's motion to strike objections should be denied.

Respectfully submitted,


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² Recovery of the deferred fuel costs was included in the notice in Case No. 07-551-EL-AIR. OCC's passing mention of "specificity" as a basis for striking the objections is off the mark. Certainly OCC had no trouble divining the meaning of these objections, evidenced by the fact that OCC moved to strike them. Suffice it to say, the three objections in question are perfectly clear in setting out the matter at issue, i.e. the recovery of such deferred costs.

**Illuminating Company and The Toledo
Edison Company**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Memorandum Contra Motion to Strike Certain FirstEnergy Objections to the Staff Reports by the Office of the Ohio Consumers' Counsel was this 15th day of January, 2008 served by regular U.S. Mail on the parties of record reflected on the attached service list.


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