

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

REPLY BRIEF OF OHIO HOME BUILDERS ASSOCIATION

RECEIVED-DOCKETING DIV
2008 APR 18 PM 3:56
PUCO

Thomas L. Froehle, Trial Attorney
MCNEES, WALLACE & NURICK
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
tfroehle@mwncmh.com

April 18, 2008

**Attorneys for Ohio Home Builders
Association**

{C25433:3}

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician js Date Processed 4-21-08

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

REPLY BRIEF OF OHIO HOME BUILDERS ASSOCIATION

I. INTRODUCTION

In accordance with the schedule established by Attorney Examiners Price and Bojko, as amended by Entry dated April 9, 2008, the Ohio Home Builders Association ("OHBA") submits its Reply Brief for consideration by the Public Utilities Commission of Ohio ("Commission").

II. ARGUMENT

The OHBA's issue in this proceeding is simple: OHBA objects to the upfront payment concept for line extensions that was requested for approval in the above captioned case by Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI") and The Toledo Edison Company ("TE"), collectively "FirstEnergy," "FirstEnergy Companies" or "Companies". As stated by OHBA throughout this proceeding, the current line extension policy was meant to provide electric distribution utilities, including the Companies, with the ability to recover the incremental and other

associated costs¹ of line extensions during the Companies' distribution rate freeze. OHBA Initial Brief at 3. See also, Staff Exhibits 1, 2, and 3 at 20. Upon a Commission Order in this case, the Companies' distribution rates will no longer be frozen. Accordingly, line extension costs should be recovered pursuant to a distribution rate case.

The Companies argue that while the monthly surcharge had a definite and specified end date prescribed under the terms of the Stipulation, the upfront payments were intended to continue after the distribution freeze ended. Companies' Initial Brief at 99. The Companies' position is spurious at best. Indeed, it would not make logical sense for one portion of the total package of line extension cost recovery components to fall off while other charges continue.² The Companies' argument would lead to a piecemeal approach to cost recovery that could otherwise be handled in one proceeding—a distribution rate case. In fact, the Companies admit that if they are unable to recover their costs through the upfront charges, such costs would be recovered through base rates determined through a distribution rate case proceeding.

¹ "Incremental cost" is defined as "the net, incurred cost of installing the line extension. That is, the incremental cost of a line extension would be the portion of fully allocated cost that remains after netting out the value of line extension services and/or materials provided by the customer. The value of such services and / or materials provided by the customer would be equal to the utility's cost of providing such services and materials." *In the Matter of the Commission's Investigation into the Policies and Procedures of Ohio Power Company, Columbus Southern Power Company, The Cleveland Electric Illuminating Company, Ohio Edison Company, The Toledo Edison Company and Monongahela Power Company Regarding the Installation of New Line Extensions*, Case Nos. 01-2708-EL-COI et al., (hereinafter, "Line Extension Proceedings") Opinion and Order at 37-38 (November 7, 2002).

² Staff also appears to believe that the upfront cost recovery mechanism approved in the Line Extension Proceedings expires at the end of the distribution rate freeze as it states at page 40 of its Initial Brief:

The issue of cost recovery for line extensions was a significant issue, once before, in the companies' electric transition plans. This issue was resolved back then by a series of Commission-approved stipulations in Case No. 01-2708-EL-COI. But these stipulations, which allowed FE a cost recovery mechanism during the time its distribution rates were frozen, expire at the end of this year.

Company Exhibit 16-B at 2; Tr. Vol. II at 45 line 24 – p. 46, lines 1-5 (January 30, 2008); and Companies' Initial Brief at 96. As Company Witness Ouellette stated during the evidentiary hearing, there is no reason to believe that the Companies would not be able to recover those costs in such a proceeding. *Id.* at 46 lines 1-5.

Companies also argue that Sections 4928.35(C) and 4928.15(A), Revised Code, may afford them the opportunity to recover such incremental costs through upfront payment mechanisms. Companies' Initial Brief at 99. The Companies go as far as arguing that "the only reasonable explanation for the line extension language in RC 4928.15(A) and RC 4928.35(C) is that the General Assembly wanted to ensure that the Companies could recover their line extension costs so that they could continue to build distribution facilities and thus fulfill their obligation to provide adequate service." *Id.* at 98-99.³ While the law may permit upfront recovery, it certainly does not require it. As stated above, the purpose of continuing the concept of receiving upfront line extension charges set forth and approved in the Line Extension Proceedings no longer exists. Since the distribution rate freeze will end on January 1, 2009, when the Companies' new distribution rates are intended to be put into effect, the Companies will not face the same recovery issues as they had when the Line Extension Proceedings began. Because the Companies can recover the costs in base

³ As the Companies' point out in their Initial Brief, Sections 4928.35(C) and 4928.15(A), state in part:

The schedule also shall include an obligation to build distribution facilities when necessary to provide adequate distribution service, provided that a customer requesting that service may be required to pay all or part of the reasonable incremental cost of the new facilities, in accordance with rules, policy, precedents, or orders of the commission.

Sections 4928.35(C) and 4928.15(A) (emphasis added). As such, there is no requirement that the Companies receive their costs through upfront charges.

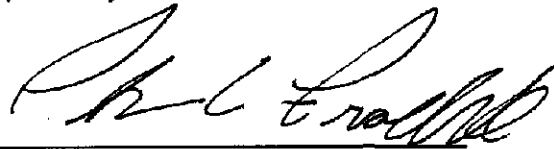
rates, the mechanisms put in place during the Line Extension Proceedings are no longer necessary. Consequently, the Commission should deny the Companies' request for upfront payments for line extensions,

Nonetheless, as stated at pages 4 and 5 of OHBA's Initial Brief, should the Commission accept the Companies' and Staff's position that upfront cost recovery for line extensions is necessary, OHBA urges the Commission to accept Staff's recommended line extension charges set forth in the Staff Reports for each of the Companies. Staff Exhibits 1, 2, and 3 at 20-21.

III. CONCLUSION

For the reasons described above, as well as in OHBA's Initial Brief, OHBA urges the Commission to reject the Companies' request for upfront cost recovery of line extensions. If, however, the Commission does approve any such charges, it should adopt Staff's recommendation in each of the Companies' Staff Reports and clearly identify when and to what projects any new charges shall apply.

Respectfully Submitted,

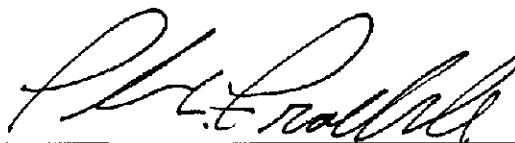


Thomas L. Froehle, Trial Attorney
MCNEES, WALLACE & NURICK
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
tfroehle@mwncmh.com

**Attorneys for Ohio Home Builders
Association**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply Brief of the Ohio Home Builders Association* was served upon the following parties of record this 18th day of April 2008, via electronic transmission.



Thomas L. Froehle

Stephen L. Feld, Counsel of Record
Associate General Counsel
James W. Burk, Senior Attorney
Kathy J. Kolich, Senior Attorney
Arthur E. Korkosz, Senior Attorney
Mark A. Hayden, Attorney
Ebony L. Miller, Attorney
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

Mark A. Whitt
Jones Day
325 John H. McConnell Blvd., Suite 600
PO Box 165017
Columbus, OH 43216-5017

**ATTORNEYS FOR THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY, OHIO
EDISON COMPANY
AND THE TOLEDO EDISON COMPANY**

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

**ATTORNEYS FOR OHIO ENERGY GROUP
AND THE KROGER CO.**

Janine L. Migden-Ostrander
Consumers' Counsel
Jeffrey L. Small, Counsel of Record
Richard C. Reese
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485

**ATTORNEYS FOR OFFICE OF THE
OHIO CONSUMERS' COUNSEL**

Samuel C. Randazzo
Lisa G. McAlister
Joseph M. Clark
Daniel J. Neilsen
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215

**ATTORNEYS FOR INDUSTRIAL ENERGY
USERS-OHIO**

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
PO Box 1793
Findlay, OH 45839-1793

**ATTORNEYS FOR OHIO PARTNERS FOR
AFFORDABLE ENERGY**

Leslie A. Kovacic
Kerry Bruce
Counsel for Toledo
420 Madison Avenue, Suite 100
Toledo, OH 43604-1219

Lance M. Keiffer
Counsel for Lucas County
711 Adams Street, 2nd Floor
Toledo, OH 43624-1680

Sheilah H. McAdams, Law Director
Counsel for Maumee
Marsh & McAdams
204 West Wayne Street
Maumee, OH 43537

Brian J. Ballenger, Law Director
Counsel for Northwood
Ballenger & Moore
3401 Woodville Road, Suite C
Northwood, OH 43619

Paul S. Goldberg, Law Director
Counsel for Oregon
5330 Seaman Rd.
Oregon, OH 43616

James E. Moan, Law Director
Counsel for Sylvania
4930 Holland-Sylvania Road
Sylvania, OH 43560

Peter D. Gwyn, Law Director
Counsel for Perrysburg
201 West Indiana Avenue
Perrysburg, OH 43551

Paul Skaff, Asst. Village Solicitor
Counsel for Holland
353 Elm Street
Perryburg, OH 43551

Phil Dombey
Dombey & Hart
Village of Holland
110 West Second Street
Perrysburg, OH 43551

Thomas R. Hays, Solicitor
Counsel for Lake Township
3315 Centennial Road, Suite A-2
Sylvania, OH 43560

**ATTORNEYS FOR NORTHWEST OHIO
AGGREGATION COALITION ("NOAC")**

Robert J. Triozzi, Director of Law
Harold A. Madorsky, Asst. Director of Law
City of Cleveland
Cleveland City Hall
601 Lakeside Avenue, Room 106
Cleveland, OH 44114-1077

John W. Bentine, Trial Counsel
Mark S. Yurick
Chester, Willcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, OH 43215-4213

ATTORNEYS FOR THE CITY OF CLEVELAND

Glenn S. Krassen
Bricker & Eckler LLP
1375 East Ninth Street, Suite 1500
Cleveland, OH 44114

**ON BEHALF OF THE OHIO SCHOOLS
COUNCIL**

Sally W. Bloomfield
Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291

**ON BEHALF OF THE OHIO
MANUFACTURERS' ASSOCIATION**

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street
PO Box 1008
Columbus, OH 43216-1008

Terry S. Harvill
Vice President & Director, Retail Energy
Policy
Constellation Energy Resources
111 Market Place
Baltimore, MD 21202

David I. Fein
Vice President, Energy Policy-
Midwest/MISO
Constellation Energy Group, Inc.
550 West Washington Blvd., Suite 300
Chicago, IL 60661

Cynthia A. Fonner
Senior Counsel
Constellation Energy Group, Inc.
550 West Washington Blvd., Suite 300
Chicago, IL 60661

**ON BEHALF OF CONSTELLATION
NEWENERGY, INC.**

Garrett A. Stone
Counsel of Record
Michael K. Lavanga
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, NW
8th Floor, West Tower
Washington, DC 2007

**ATTORNEYS FOR NUCOR STEEL MARION,
INC.**

Joseph P. Meissner
The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, OH 44113

ATTORNEY FOR CITIZENS COALITION

John Jones
Thomas McNamee
William Wright
Assistant Attorneys General
Public Utilities Section
180 East Broad Street
Columbus, OH 43215

**ATTORNEYS FOR THE PUBLIC UTILITIES
COMMISSION OF OHIO**

Bobby Singh, Trial Counsel
Senior Attorney
Integrays Energy Services, Inc.
300 West Wilson Bridge Road, Suite
350
Worthington, OH 43085

**ATTORNEY FOR INTEGRYS ENERGY
SERVICES, INC.**

Kim Bojko
Greg Price
Attorney Examiners
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

ATTORNEY EXAMINERS