

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of Ohio
Edison Company, The Cleveland Electric
Illuminating Company and The Toledo
Edison Company for Approval of Rider
FUEL and Related Accounting Authority.**

**Case Nos. 09-21-EL-ATA
09-22-EL-AEM
09-23-EL-AAM**

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON COMPANY'S MEMORANDUM
CONTRA OHIO ENERGY GROUP'S APPLICATION FOR REHEARING**

I. INTRODUCTION

In its application for rehearing, the Ohio Energy Group ("OEG") calls for two things: (1) adding Rate Stabilization Charges ("RSCs") into the Shopping Credit available to shopping customers; and (2) including in Rider FUEL charges spot market prices paid by Ohio Edison Company, The Cleveland Illuminating Company and The Toledo Edison Company (collectively, the "Companies") between January 1, 2009 and March 31, 2009. OEG's proposals are wrong and unnecessary. Because the calculation of Shopping Credits under the Companies' tariffs in effect as of July 31, 2008, and December 31, 2008, could not have included RSCs for new shopping customers, those charges are not properly included in Shopping Credits now in 2009 for new shopping customers. As for the Companies' spot market purchases, the costs associated with those purchases will be included as part of the reconciliation process that the Commission has already ordered. Therefore, there is no need to adjust Rider FUEL for such costs now.

II. ARGUMENT

A. Shopping Credits Should Not Include Rate Stabilization Charges.

The calculation of Shopping Credits is unambiguously set forth in the Companies' tariffs that have been in effect since January 1, 2006. Some of the relevant tariffs are attached to OEG's application for rehearing. For example, Large General Service Rate "PV-45" states that the Shopping Credit will be calculated based on the Shopping Credit Rider. That rider provides that customers were eligible for credits that would include a certain percentage of the RSC (up to 100%) if service was provided by a Competitive Retail Electric Service ("CRES") provider under contract with an aggregator or an industrial or commercial customer at certain periods of time and if the Companies received notice by a date certain. (*E.g.*, Rider 24 – SHOPPING CREDIT RIDER, CEI Orig. Sheet No. 101, P.U.C.O. No. 13, p. 1.) Currently, virtually no customers take service from a CRES provider and the time for providing any notice has long expired (latest date for notice was December 31, 2006). (*Id.*) Thus, under the tariffs that have been in effect for all relevant periods through 2008, no customer has been eligible to have a Shopping Credit that would include any portion of the RSC unless notice was provided to the Companies by December 31, 2006.

OEG does not deny that this is true. Instead, it claims that the tariff provisions relating to Shopping Credits should be revised for two reasons. First, OEG asserts that adding RSCs into the Shopping Credit will not adversely affect the Companies. (OEG Reh'g App., p. 4.) Second, OEG contends that "there is no good policy reason to maintain the RSC as a non-bypassable charge, and many good policy reasons to terminate it." (*Id.*) OEG ignores the Commission's interpretation and application of R.C. 4928.143(C)(2)(b) in Case No. 08-935-EL-SSO, the effect of which is that the calculation of Shopping Credits remains unchanged. OEG is also wrong that there would be no adverse impact from shopping on the Companies.

In the Companies' ESP Application Case, the Commission determined that once the Companies withdrew their application, R.C. 4928.143(C)(2)(b) applied. (Finding & Order, Case No. 08-935-EL-SSO, pp. 4–5 (Jan. 7, 2009).) That statute requires the Commission “to issue such order as is necessary to continue the provisions, terms and conditions of the utility’s most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer.” The Commission further determined that the most recent standard service offer was the Companies’ Rate Certainty Plan (“RCP”). (*Id.*, p. 8.)

The calculation of the amount of the Shopping Credit is set forth in the Companies’ tariffs which were part of the Companies’ RCP. There is nothing in the RCP that called for a different calculation of Shopping Credits after January 1, 2009. Indeed, the Commission in its January 7, 2009 order in Case No. 08-935-EL-SSO expressly found that to be true: “since the provisions of the RCP do not provide for an end for the RSCs and the Shopping Credits and caps separate from the RCP, these provisions must likewise continue in accordance with the directives of the statute.” (*Id.*) Thus, the Commission should continue the terms and conditions applicable to the amount of Shopping Credits. OEG’s proposal to do otherwise is expressly contrary to the Commission’s interpretation and application of the statute.¹

Indeed, OEG implicitly admits as much. In attempting to justify its proposed change in the Shopping Credit calculation, OEG never cites any statute or claims that the RCP somehow requires a change in the calculation. As noted, OEG merely alleges that the Companies wouldn’t be adversely affected and it would be bad policy. First, OEG’s position wrongly assumes that all

¹ In their own Application for Rehearing in the ESP case, the Companies argued that R.C. 4928.141(A) applied to determine the proper charges, terms and conditions that apply after January 1, 2009 in the absence of a standard service offer established under R.C. 4928.142 (MRO) and 4928.143 (ESP). Applied here, R.C. 4928.141(A) also prohibits OEG’s Shopping Credit proposal. Under R.C. 4928.141(A), the Companies’ rate plan in effect as of December 31, 2008 continues. Thus, the terms and conditions applicable to calculating Shopping Credits would apply without change.

customers are paying a flat 6.98 cents/kWh charge for generation, which the Companies then simply pass on to the winning bidders. This ignores also the fact that the majority of this cost continues to be collected under the existing legacy generation rate structure. Rider FUEL collects only the fraction of the cost the Companies are incurring for wholesale power, which is over the amount customers currently pay for retail generation charges. Under the existing legacy rate structure, generation charges by rate schedule vary widely: some customers may pay as little as 4 cents or less; some may pay 10 cents or more. This variance in the level of charges results from historic rate designs and highly inconsistent results from the statutory unbundling process required by S.B. 3. As a result, some customers pay higher generation rates and some pay lower generation rates, even negative in certain circumstances. To blindly change the Companies' existing SSO and increase the Shopping Credit to at least 7 cents for all customers regardless of what customers pay for generation and without consideration of the continuing generation pricing relationships that underlie the Shopping Credit structure has no basis in law or fact.

Notwithstanding OEG's views on what is good or bad policy, the General Assembly has spoken about what the Commission must do — which is to continue the utilities' current rate plan including the existing Shopping Credits. Here, the Commission must reject OEG's ad hoc proposal to amend the calculation of Shopping Credits.

B. There Is No Need to Adjust Rider FUEL Charges Now for Spot Market Purchases.

In their application in this case, the Companies explained that a relatively small portion of their power had been and will be purchased on the spot market, and not through the Competitive Bid Process. (Application, pp. 10–11.) OEG suggests that the Companies' Rider

FUEL charges should be adjusted specifically to reflect these purchases. (OEG Reh’g App., pp. 5–6.)

OEG’s suggestion is premature. The Commission has already agreed to the Companies’ proposal in the application in this case to a reconciliation of the Companies’ purchased power costs and the revenues collected through Rider FUEL and other generation charges. (Finding & Order, Case No. 09-21-EL-ATA, p. 6 (Jan. 14, 2009).) Thus, to the extent that the Companies’ costs reflect purchases on the spot market, those costs will be considered through the upcoming reconciliation, along with all other reconciliation items.

There is no need to adjust Rider FUEL charges now. Nevertheless, OEG attempts to suggest that there is a large difference between spot market prices and the price received by the Companies through the Request for Proposal (“RFP”) process. Specifically, OEG displays a graph entitled, “Average ISO Market Price.” (OEG Reh’g App., p. 6.) OEG never says, however, what the price is for, *i.e.*, what product’s (or products’) price is shown. For example, are the prices for specific blocks of power or are they round the clock prices? It would be inappropriate to adjust the amount of the rider now based only on OEG’s unexplained and unsupported data when, in fact, Rider FUEL is fully reconcilable.

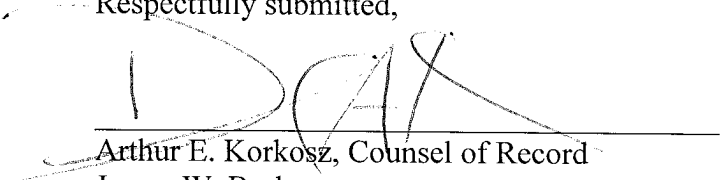
Further, OEG repeats a fundamental error that it and many other parties made in the Companies’ ESP Application case; namely, confusing wholesale market prices at a wholesale power hub (which appear to be shown in OEG’s graph) and retail electric prices for generation service (some of which will be recovered through Rider FUEL). Retail electric generation service contains a number of components in addition to the wholesale hub price for power. These other components include capacity and ancillary services, together with all transmission and transmission-related services, including network services, congestion costs, costs incurred to

match wholesale purchases with retail load shapes, and other costs incurred in delivering retail electric generation to the Companies' retail customers. (See Companies Ex. 6, Testimony of Frank C. Graves, p. 4, Case No. 08-935-EL-SSO.) Notably, retail electric generation prices attempt to reflect not only the costs of the components of the service, but also a margin that considers the risks posed in providing the service. (See *id.*, pp. 5-6, 8-14; Companies Ex. 7, Testimony of Scott T. Jones, Case No. 03-935-EL-SSO.) As the Companies' demonstrated in the ESP Application case, retail electric generation prices (as reflected in competitive bidding process in other states) did not decline with the reduction in wholesale power prices. (Hearing Transcript, Vol. VIII, pp. 80-82, Case No. 08-935-EL-SSO; *see also In the Matter of the Competitive Selection of Electricity Supplier/Standard Offer of Default Service*, Order No. 9056/9064 (Md. Pub. Srv. Comm'n, Oct. 24, 2008) .) This was likely a result of the fact that instability in the financial and liquidity markets have elevated the level of risk associated with providing retail electric service. (Hearing Transcript, Vol. III, pp. 85-88, 104-109, 136-137 & Vol. VIII, pp. 80-82, Case No. 08-935-EL-SSO.) Thus, OEG's attempt to make some correlation between the level of some wholesale hub power price and retail electric generation rates is an exercise in comparing apples and oranges. As it was in the ESP case, this is misguided and flat wrong.

III. CONCLUSION

For the foregoing reasons, OEG's application for rehearing should be denied.

Respectfully submitted,



Arthur E. Korkosz, Counsel of Record

James W. Burk

Mark A. Hayden

Ebony L. Miller

FIRSTENERGY SERVICE COMPANY

76 South Main Street

Akron, OH 44308

(330) 384-5849

(330) 384-3875 (fax)

korkosza@firstenergycorp.com

burkj@firstenergycorp.com

haydenm@firstenergycorp.com

elmiller@firstenergycorp.com

James F. Lang

CALFEE, HALTER & GRISWOLD LLP

1400 KeyBank Center

800 Superior Ave.

Cleveland, OH 44114

(216) 622-8200

(216) 241-0816 (fax)

jlang@calfee.com

David A. Kutik

JONES DAY

901 Lakeside Avenue

Cleveland, OH 44114

(216) 586-3939

(216) 579-0212 (fax)

dakutik@jonesday.com

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

CERTIFICATE OF SERVICE

A copy of the foregoing was served upon the following via regular U.S. Mail, this 5th day of February, 2009. a copy was also served via electronic mail on those parties with email addresses listed below.

Duane Luckey
Assistant Attorney General
Public Utilities Section
180 E. Broad St., 12th Floor
Columbus, OH 43215
Duane.Luckey@puc.state.oh.us

Jeffrey L. Small
Jacqueline Lake Roberts
Terry L. Etter
OFFICE OF OHIO CONSUMERS' COUNSEL
10 W. Broad St., Suite 1800
Columbus, OH 43215-3485
small@occ.state.oh.us
roberts@occ.state.oh.us
etter@occ.state.oh.us

David F. Boehm
Michael L. Kurtz
BOEHM, KURTZ & LOWRY
36 E. Seventh St., Suite 1510
Cincinnati, OH 45202
dboehm@bkllawfirm.com
mkurtz@abkllawfirm.com

Theodore S. Robinson
CITIZENS POWER
2121 Murray Avenue
Pittsburgh, PA 15217
robinson@citizenpower.com

John W. Bentine
Mark S. Yurick
Matthew S. White
CHESTER, WILCOX & SAXBE LLP
65 E. State St., Suite 1000
Columbus, OH 43215-4213
jbentine@cwsllaw.com
myurick@cwsllaw.com
mwhite@cwsllaw.com

Samuel C. Randazzo
Lisa M. McAlister
Joseph M. Clark
MCNEES, WALLACE & NURICK
21 E. State St., 17th Floor
Columbus, OH 43215-4228
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com

Glenn Krassen
BRICKER & ECKLER, LLP
1375 E. Ninth Street, Suite 1500
Cleveland, OH 44114
gkrassen@bricker.com

Dane Stinson
BAILEY CAVALIERI LLC
10 West Broad Street, Suite 2100
Columbus, Ohio 43215
Dane.Stinson@BaileyCavalieri.com

E. Brett Breitschwerdt
BRICKER & ECKLER, LLP
100 S. Third Street
Columbus, OH 43215
bbreitschwerdt@bricker.com

Leslie A. Kovacik
CITY OF TOLEDO
420 Madison Ave., Suite 100
Toledo, OH 43604-1219
Leslie.kovacik@toledo.oh.gov

Lance M. Keiffer
Assistant Prosecuting Attorney
711 Adams Street, 2nd Floor
Toledo, OH 43624-1680
lkeiffer@co.lucas.oh.us

Joseph P. Meissner
THE LEGAL AID SOCIETY OF CLEVELAND
1223 W. 6th Street
Cleveland, OH 44113
jpmeissn@lasclev.org

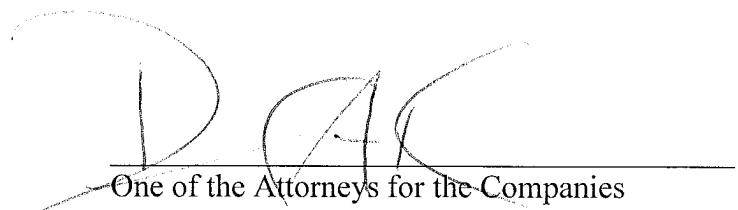
William Gruber
2714 Leighton Road
Shaker Heights, OH 44120
william.gruber@shakeronline.com

M. Howard Petricoff
Stephen Howard
VORYS, SATER, SEYMOUR & PEASE
52 E. Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
Mhpetricoff@vorys.com
smhoward@vorys.com

Cynthia A. Fonner
David I. Fein
CONSTELLATION ENERGY GROUP, INC.
550 W. Washington St., Suite 300
Chicago, IL 60661
Cynthia.a.fonner@constellation.com
David.fein@constellation.com

David Rinebolt
Colleen L. Mooney
231 W. Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
drinebolt@aol.com
cmooney2@aol.com

Gregory H. Dunn
Robert J. Triozzi
Steven Beeler
Christopher L. Miller
Andre T. Porter
SCHOTTENSTEIN, ZOX & DUNN CO., LPA
250 West Street
Columbus, OH 43215
gdunn@szd.com
cmiller@szd.com
aporter@szd.com



One of the Attorneys for the Companies

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Summary: Memorandum Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company's Memorandum Contra Ohio Energy Group's Application for Rehearing electronically filed by Mr. David A Kutik on behalf of FirstEnergy Corp. and Cleveland Electric Illuminating Company and Ohio Edison Company and Toledo Edison Company