

**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**

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**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY'S MEMORANDUM  
CONTRA THE KROGER CO.'S APPLICATION FOR REHEARING**

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The Kroger Co. ("Kroger") contends that the Commission erred in three ways. Two of these alleged errors have been raised by others. Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, the "Companies") have previously demonstrated that these arguments are without merit.

First, referring and citing to the Application for Rehearing by the Ohio Consumer and Environmental Advocates ("OCEA"), Kroger contends that the Commission should not allow the Companies to recover their purchased power costs. These arguments have been refuted by the Companies' Memorandum Contra OCEA's Application for Rehearing, which is incorporated here by reference.<sup>1</sup> In short, recovery of purchased power costs not only is contemplated by the use of the term "fuel costs" in R.C. 4928.143(C)(2)(b) – a term widely understood to include purchased power costs<sup>2</sup> – but also is mandated by the filed rate doctrine.<sup>3</sup>

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<sup>1</sup> See Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company's Memorandum Contra to the Application for Rehearing Filed By Ohio Consumer and Environmental Advocates at pp. 3-5

<sup>2</sup> . See, e.g., *Office of Consumers' Counsel v. Pub. Util. Comm.* (1978), 56 Ohio St. 2d 319, 322-24 (affirming a Commission order which authorized recovery of purchased power costs as fuel costs); *Office of*

Second, Kroger refers and cites to the Application for Rehearing filed by Nucor Marion Steel, Inc. (“Nucor”) to contend that the Commission erred by not having Rider FUEL charges reflect the discounts otherwise enjoyed by large customers like Kroger. In the Companies’ Memorandum Contra Nucor’s Application for Rehearing, the Companies demonstrated why this argument lacks merit. Accordingly, the Companies incorporate that Memorandum by reference here.<sup>4</sup> In summary, because the Companies’ purchased power costs do not vary by size or load characteristics of the customer served, there is no reason for Rider FUEL charges to be discounted for large customers. Further, Kroger, like Nucor, overlooks that Rider FUEL charges are only a portion of the total charges for generation and that the rest of the generation charges continue to reflect the discounts that Kroger seeks.

Lastly, Kroger contends that there is a need for a hearing, but is vague on both the reasons for and subject of such a proceeding. Moreover, Kroger offers no explanation or support of its assertion that an “after the fact ‘prudence review’ of FirstEnergy’s energy purchases is not sufficient. . . .” (Kroger App. for Reh’g., p. 6)

Kroger implies that there is some additional subject for the hearing, but the specifics are unclear. It appears that Kroger has some concerns about FirstEnergy Solutions (“FES”) and the conduct of the RFP process that led to the purchase of most of the Companies’ power needs through March 31. As demonstrated in the Companies’ Application in this case as well as the informational filing made on February 2, 2009, the RFP satisfied the standards established by the

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(continued...)

*Consumers’ Counsel v. Pub. Util. Comm.* (1979), 57 Ohio St. 2d 78, 80, 84-85 (affirming Commission order authorizing recovery of demand costs associated with purchased power as fuel costs).

<sup>3</sup> *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354, 372 (1988); *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 963 (1986).

<sup>4</sup> See Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company’s Memorandum Contra to Nucor Steel Marion Inc.’s Application for Rehearing at pp. 2-5.

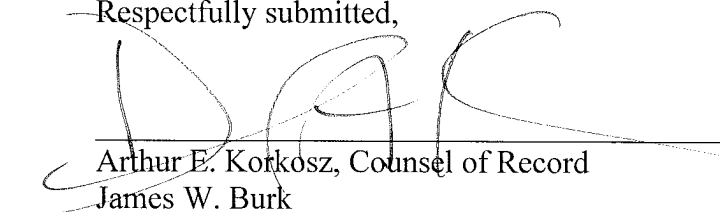
Federal Energy Regulatory Commission in *Allegheny Energy Supply Co.*, 108 FERC ¶ 61,082, at P 22 (2004). *See* Application ¶ 15 & Appendix D. In *Allegheny*, the FERC provided guidance as to the factors the Commission will consider in determining whether a competitive solicitation process such meets the criteria initially set forth in *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 at 62,167 (1991). *See, e.g., Connectiv Energy Supply*, 115 FERC ¶ 61,199 (2006). As the FERC stated, the underlying principle when evaluating a competitive solicitation process under the *Edgar* criteria is that no affiliate should receive undue preference during any stage of the process. *Id.*

Kroger has not alleged (much less shown) that there is any reason to believe that the RFP process did not fully comply with the *Allegheny* and *Edgar* standards and, thus, that there is any basis to claim that FES had an advantage over any other power supplier. Accordingly, Kroger's request for a hearing is unfounded and should be rejected.

### CONCLUSION

For the foregoing reasons and for the reasons stated in the Companies Memoranda Contra OCEA's and Nucor's Applications for Rehearing, Kroger's Application for Rehearing should be denied.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

A copy of the foregoing was served upon the following via regular U.S. Mail, this 17<sup>th</sup> day of February, 2009. a copy was also served via electronic mail on those parties with email addresses listed below.

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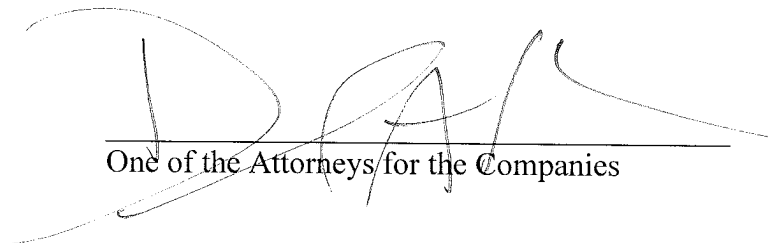
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Summary: Memorandum Contra the Kroger Co.'s Application for Rehearing electronically filed by Mr. David A Kutik on behalf of Cleveland Electric Illuminating Company and Toledo Edison Company and Ohio Edison Company