

RECEIVED-BOOKING DIV  
98 JAN 29 PM 5:14  
PUCO

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In The Matter Of The Application  
of Ohio Edison Company  
For Approval of an Arrangement  
With an Existing Customer  
(McDonalds Corporation)

Case No. 98-43-EL-AEC

\* \* \*

In the Matter of Conjunctive Electric Service  
Guidelines Proposed by Participants of the  
Commission Roundtable on Competition  
in the Electric Industry.

Case No. 96-406-EL-COI

In the Matter of the Application of The  
Cleveland Electric Illuminating Company for  
Authority to Amend its Tariffs to Include  
Conjunctive Electric Service.

Case No. 97-358-EL-ATA

In the Matter of the Application of The  
Toledo Edison Company for Authority to  
Amend its Tariffs to Include Conjunctive  
Electric Service.

Case No. 97-359-EL-ATA

In the Matter of the Investigation of The  
Cleveland Electric Illuminating Company  
Regarding the Adequacy of Service It Provides.

Case No. 97-1146-EL-COI

In the Matter of the Investigation of The  
Toledo Edison Company Regarding the  
Adequacy of Service It Provides.

Case No. 97-1147-EL-COI

In the Matter of the Application of  
FirstEnergy Corp. on Behalf of Ohio Edison  
Company, The Cleveland Electric Illuminating  
Company, and The Toledo Edison Company  
for Authority to Continue and Modify Certain  
Regulatory Accounting Practices and  
Procedures, to Transfer Jurisdictional Assets,  
to Establish Fuel Efficiency Procedures, to  
Freeze and Reduce Electric Rates and to File  
and Implement Tariffs not for an Increase in  
Rates, All in Connection with and Subject to  
the Merger of Ohio Edison Company and  
Centerior Energy Corporation.

Case No. 96-1211-EL-UNC

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  
Date Processed Jan 30, 1998

**MOTION FOR INTERVENTION BY  
ENRON ENERGY SERVICES**

**COMMENTS ON THE PROPOSED SPECIAL CONTRACT BETWEEN OHIO  
EDISON COMPANY AND McDONALDS**

**AND**

**MOTION FOR CONSOLIDATION  
IN THE CONJUNCTIVE ELECTRIC SERVICE CASES  
DOCKET 96-406-EL-COI et. al.**

---

**MOTIONS**

For the reasons listed in the following Comments and Memorandum In Support, Enron Energy Services, a division of Enron Capital & Trade Resources Corp. (Enron), hereby requests leave to intervene in Case No. 98-43-EL-AEC.

Enron also requests the Commission to set for hearing the issue of whether the exclusive power sale provision of the McDonalds Special Contract violates Ohio Revised Code sections 4905.22 and 4905.33. Finally, Enron requests that, for reasons of judicial economy, the hearing on the McDonalds special contract be consolidated as part of the proceeding in Case No. 96-406-EL-COI, the omnibus FirstEnergy Corp. conjunctive electric service docket.

**COMMENTS AND MEMORANDUM IN SUPPORT OF MOTION**

**A. THE ISSUE**

The special contract being offered the McDonalds Corporation by Ohio Edison Company in the application in Case No. 98-43-EL-AEC would allow McDonalds to aggregate its many stores, implement conservation measures, and be billed on a special rate. Thus unlike the typical economic development

or load retention special contract, whose goal is raising employment, the McDonalds Special Contract has conservation and efficiency goals which mirror the conjunctive electric service guidelines.

The similarity between the McDonalds Special Contract and conjunctive electric service raises three important issues the Commission should consider before ruling on the contract. First, is Ohio Edison using special contracts to selectively offer a form of conjunctive electric service as opposed to the guidelines which call for making the service generally available? Second, if Ohio Edison is making conjunctive electric service only selectively available, what is the selection criteria? Finally, is the selection criteria unduly discriminatory or anti-competitive in violation of Ohio Revised Code Sections 4905.22 and 4905.33?

**B. THE McDONALDS SPECIAL CONTRACT IS SIMILAR TO CES**

Paragraph 3 of the Application states that the purpose of the McDonalds Special Contract is to "retain and increase off peak commercial use" as increased off peak use will then permit Ohio Edison to better utilize its facilities. This goal is strikingly similarly to the Commission's November 25, 1997 entry in the Ohio Edison conjunctive electric service docket 96-406-EL-COI paragraph 13, where the reason for the conjunctive electric service program was to "initiate programs that promote and encourage conservation of energy and promote economic efficiencies".

Not only are the goals the same for the McDonalds Special Contract and conjunctive electric service, but so are the mechanics. In the Commission's

conjunctive electric service guidelines,<sup>1</sup> rates can be negotiated to reflect the cost savings resulting from a more homogenous load factor or increased and retained load due management of aggregated consumption.

A review of the submitted contract between Ohio Edison and McDonalds indicates that consumption will be aggregated from scores of stores and the aggregated load offered a non-tariff, negotiated rate. Rates will be reduced by 10%, of which 5% will be set aside for conservation and demand shifting to off peak hours, and the remaining 5% to put in a fund to buy conservation technology including metering and monitoring devices.<sup>2</sup> McDonalds' will combine its power consumption from all its company-owned stores and at least 90% of its franchises<sup>3</sup>. The only limitation to entry is that the Aggregated Group must have a historic of 10 megawatts of demand and 500 million Kwh of power consumption.<sup>4</sup>

In sharp contrast to the McDonalds special contract which features conservation and management of an aggregated load, the purpose of the special contracts traditionally approved by this Commission have been to maintain or attract manufacturers or employers to Ohio, or to provide the necessary economic incentives for Ohio companies to expand. A review of the application in this matter reveals no such claim. There is no statement that

---

<sup>1</sup> November 25, 1996 Entry Order and Finding 3, 4.

<sup>2</sup> Paragraph 3.1.1 of the contract - Appendix A of the Application.

<sup>3</sup> Paragraph 4 of the Application.

<sup>4</sup> Paragraph 1 of the Contract - Appendix A of the Application.

without this discount McDonalds will not keep or expand its restaurants in Ohio Edison's service territory. Similarly, no claim has been made that the cost of electricity is so essential or so integral a part of the cost of the preparation of fast food that discounts are needed to keep the stores from closing.

In sum, the application made in 98-403-EL-AEC is not the typical economic development or load retention contract; rather, it is a conservation and aggregation discount plan. This raises serious questions as to the equity and availability of similar aggregation/discount contracts for other Ohio Edison customers. If the conservation in the McDonalds contract creates savings equal to its discounts, then the McDonalds contract should be offered to all. If it does not, then it is a subsidy and the Commission should find out the reason for the subsidy and determine if it is legally permissible.

**C. SPECIAL CONTRACTS - NOT A SUBSTITUTE FOR TARIFFED CONSERVATION PROGRAMS.**

Interestingly, on the day after the McDonalds Special Contract application was filed, Ohio Edison filed testimony indicating that because of limited resources it cannot offer conjunctive electric service to everyone. Specifically, Mr. Daugherty filed testimony that administrative, metering and billing resources are stretched so thin that the RTP conjunctive electric service tariff must be limited to just 300 customers.<sup>5</sup>

That testimony details the difficulties that Ohio Edison Company is going to have in developing billing systems and the vast amount of manpower

---

<sup>5</sup> Case No. 96-406-EL-COI Direct Testimony of C. John Daugherty p. 18-19.

necessary to negotiate the contracts that an aggregated approach to customer service would require. Interestingly, the same administrative resources needed for conjunctive electric service are those needed for the McDonalds special contract, namely the computer capacity to bill non-tariff rates and the personnel time and talent to negotiate the special arrangement.

If lack of time, available talent and computer limitations are the reasons that a McDonald style conservation contract cannot be offered by tariff, then the Commission must review the time, talent and computer resources going into Ohio Edison's special contracts. The sheer number of special contracts being offered by the FirstEnergy Companies in comparison to all the other jurisdictional electric utilities combined suggests the use of special contracts as part of an overall marketing strategy.

A review of all the AEC cases filed at the Commission for the past five years indicates that more than 90% of all the special contracts approved by this Commission each year were for FirstEnergy Companies. In fact, for the past five year period (1993 through 1997)<sup>6</sup> more than 752 special contracts were written by Ohio Edison, Toledo Edison and Cleveland Electric Illuminating versus 54 special contracts for Cincinnati Gas & Electric, Ohio Power, Columbus Southern Power, Dayton Power and Light and Monogahelia Power combined. The individual statistics by utility are shown on Attachment A. FirstEnergy's heavy use of special contracts should not become the resource

---

<sup>6</sup> 1997 data only covers ten months, as November and December 1997 were not available from the Commission as of this writing.

limiting factor to offering conjunctive electric service or other conservation programs by tariff. Further, the Commission should inquire as to whether Ohio Edison is using special contracts in place of tariff services to selectively limit public access.

**D. ENRON'S INTEREST - THE TYING PROVISION**

Enron's interest is that of an applicant Aggregator who desires to offer aggregation service, metering service and billing service. The concern is that the Special Contract, in addition to permitting McDonalds to aggregate load and practice conservation, has a tying arrangement which commits McDonalds to its franchised monopoly supplier for power for an extended period after other programs are opened. Such a restriction harms both new entrants to the energy market and the public.

Specifically, McDonalds has committed to buy power for the lesser of ten years, or three years past retail wheeling. There are no "fresh look" or re-opener provisions. If the discounts made to McDonalds are cost-based, then they stand on their own and there is no need to tie it to a decade of exclusive power sales. If the discounts are not based on savings, then they are subsidies designed to tie up the market and frustrate competition. If that is the case, the contract is not in the public's best interest and violates Revised Code Sections 4905.22 and 4905.33.

**F. CONCLUSION**

In conclusion, this Commission in its November 25, 1997 Order in docket

96-406-EI-COI suggested that conjunctive electric service be offered to all. On January 5, 1998 Ohio Edison offered a special contract that is striking similar to conjunctive electric service, but conditioned upon a tying arrangement which would prohibit competitive service from being offered to McDonalds for at least three years past retail wheeling and possibly a decade. These facts combined with the extensive use of special contracts by Ohio Edison raises questions concerning the discriminatory offering of service and anti-competitive behavior. Facts should be assembled in a hearing to see if the exclusive purchase provision of the McDonalds type contract is legal and in the public's interest, or if the same program should be offered by tariff preferably the conjunctive electric service tariff.

A hearing is scheduled for February 23, 1998 now for Ohio Edison's conjunctive electric service, and that hearing is an excellent forum for reviewing this matter. Further, it should be noted that testimony in that proceeding is not due until February 10, 1998, so that the Company, the Staff and the Intervenors could address the above described issues, as part of the 96-406 consolidated proceedings.

Finally, it should be noted that Ohio Edison, consistent with this Commission's entry in Suburban v. Columbia Gas of Ohio<sup>7</sup> could put the McDonalds conservation program in place now while this matter is pending. The issue raised by this pleading is not whether McDonalds should be able to

---

<sup>7</sup> Case No. 86-1747-GA-CSS



aggregate its stores or receive a discount for engaging in meaningful conservation. The issue is the tying of a long term, exclusive power purchase provision as a condition for receiving what is in essence conjunctive electric service. Simply put if the discount is based on conservation, the tying provision is not necessary.

WHEREFORE, for the reasons detailed above, Enron requests that it be granted intervention in case No. 98-43-EL-AEC, that the matter be set for hearing, and that the hearing be consolidated with the conjunctive electric service proceeding in 96-406-EL-COI.

Respectfully submitted,



---

M. Howard Petricoff  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street, P.O. Box 1008  
Columbus, Ohio 43216-1008  
(614) 464-5414

Janine Migden  
Director  
Enron Energy Services  
400 Metro Place North  
Dublin, Ohio 43017

Counsel for Enron Capital & Trade Resources  
Corp.

**NUMBER OF ELECTRIC SPECIAL CONTRACT CASES WITH CUSTOMERS FILED  
BY ELECTRIC UTILITIES 1/93 THRU 12/96**

<b><u>COMPANY</u></b>	<b><u>1993</u></b>	<b><u>1994</u></b>	<b><u>1995</u></b>	<b><u>1996</u></b>	<b><u>1997*</u></b>
CEI	105	63	63	74	43
Ohio Edison	42	87	77	56	38
Toledo Edison	26	22	28	16	12
<b>FIRST ENERGY CORPORATION'S SUB-TOTAL</b>	<b>173</b>	<b>172</b>	<b>168</b>	<b>146</b>	<b>93</b>
CG&E	3	2	2	1	0
CSP	5	3	3	5	5
DP&L	1	0	1	3	1
Mon Power	0	0	0	0	0
Ohio Power	4	3	3	4	5
<b>NON-FIRST ENERGY CORPORATION'S SUB-TOTAL</b>	<b>13</b>	<b>8</b>	<b>9</b>	<b>13</b>	<b>11</b>
<b>TOTAL NUMBER OF SPECIAL CONTRACTS WITH CUSTOMERS</b>	<b>186</b>	<b>180</b>	<b>177</b>	<b>159</b>	<b>104</b>
<b>PERCENT OF CONTRACTS FILED BY FIRST ENERGY CORPORATION</b>	<b>93%</b>	<b>96%</b>	<b>95%</b>	<b>92%</b>	<b>90%</b>

**\*For 10 months only**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Enron Capital & Trade Resources Corp. Motion for Intervention and Comments on the Proposed Special Contract Between Ohio Edison and McDonalds and Motion for Consolidation was sent by messenger delivery, by facsimile, or by first class U.S. Mail to all of the parties listed below this 29th day of January, 1998.

**Facsimile**

Helen L. Liebman  
Jones, Day, Reavis & Pogue  
1900 Huntington Center  
41 South High Street  
Columbus, Ohio 43215

**U.S. Mail**

Jeffrey L. Small  
Chester, Willcox & Saxbe  
17 South High Street, Suite 900  
Columbus, Ohio 43215

**U.S. Mail**

Duane W. Luckey and Paul Colbert  
Chief, Public Utilities Section  
180 East Broad Street  
Columbus, Ohio 43215-3793

**U.S. Mail**

Elizabeth A. Martin  
Senior Counsel  
Cinergy Resources, Inc.  
139 E. Fourth Street  
25 ATII  
Cincinnati, Ohio 45202

**Facsimile**

Leila L. Vespoli/Mark Kempic/James Burk  
FirstEnergy Corp.  
76 South Main Street  
Akron, Ohio 44308

**U.S. Mail**

Samuel C. Randazzo  
Richard P. Rosenberry  
McNees, Wallace & Nurick  
Fifth Third Center  
21 East State Street, Suite 910  
Columbus, Ohio 43215

**U.S. Mail**

William R. Lyon  
Federated Department Stores, Inc.  
6801 Governors Lake Parkway  
Norcross, Georgia 30071

**U.S. Mail**

Glenn S. Krassen  
Arter & Hadden  
1100 Huntington Building  
925 Euclid Avenue  
Cleveland, Ohio 44115-1475

**U.S. Mail**

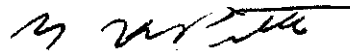
**Colleen L. Mooney  
Ohio Consumers' Counsel  
77 South High Street, 15th Floor  
Columbus, Ohio 43266-0550**

**U.S. Mail**

**Dane Stinson  
Arter & Hadden  
One Columbus  
10 West Broad Street, Suite 2100  
Columbus, Ohio 43215**

**U.S. Mail**

**Kerry Bruce  
Department of Public Utilities  
420 Madison Avenue, Suite 100  
Toledo, Ohio 43604-1219**



---

**M. Howard Petricoff**