

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Conjunctive Electric Service )  
Guidelines Proposed by Participants of the ) Case No. 96-406-EL-COI  
Commission Roundtable on Competition )  
in the Electric Industry )

In the Matter of the Application of The )  
Cleveland Electric Illuminating Company ) Case No. 97-358-EL-ATA  
for Authority to Amend Its Tariffs to )  
Include Conjunctive Electric Service )

In the Matter of the Application of )  
Toledo Edison Company ) Case No. 97-359-EL-ATA  
for Authority to Amend Its Tariffs to )  
Include Conjunctive Electric Service )

In the Matter of the Investigation of The )  
Cleveland Electric Illuminating Company ) Case No. 97-1146-EL-COI  
Regarding the Adequacy of the Service it )  
Provides )

In the Matter of the Investigation of The )  
Toledo Edison Company Regarding the ) Case No. 97-1147-EL-COI  
Adequacy of the Service it Provides )

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 ) Case No. 96-1211-EL-UNC  
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 )

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**PHASE II POST-HEARING REPLY BRIEF  
OF  
GREATER CLEVELAND GROWTH ASSOCIATION  
AND  
VOLUNTEER ENERGY SERVICES, INC.**

In accordance with the Attorney Examiner's procedural schedule established at the "Phase II" hearings held on October 8 and 9, 1998, Greater Cleveland Growth Association ("GCGA") and Volunteer Energy Services, Inc. ("Volunteer"), intervenors in this case, hereby submit their Phase II Post-Hearing Reply Brief. GCGA's and Volunteer's initial briefs filed in Phase I of this case on July 21 and July 28, 1998, and initial Phase II Post-Hearing Brief filed on October 20, 1998, are hereby incorporated by reference herein.

**I. INTRODUCTION**

Unfortunately, the Phase Two Initial Brief of Ohio Edison Company, The Cleveland Electric Illuminating Company and Toledo Edison Company (the "Companies") is replete with factually incorrect, legally wrong and materially misleading statements, from its introduction to the conclusion. These misstatements must be corrected to avoid any further confusion in the record of a proceeding already noteworthy for its unusual procedural history. Nothing in the Companies' Brief changes GCGA's and Volunteer's position or should change the Commission's ultimate decision in this case.

**II. DISCUSSION**

A. Only the May 11, 1998 "Stipulation" Tariffs and the September 30, 1998 "Compliance" Tariffs are Before the Commission in this Case.

The Companies state that in Phase Two of this proceeding "three tariffs are before the Commission: the tariffs attached to the Stipulation and Recommendation filed on May 11, 1998

(the "Intervenor Stipulated tariffs"); the tariffs contained in the Supplemental Testimony of David M. Blank filed June 19, 1998 (the "June 19 tariffs"); and the tariffs filed by the Companies on September 30, 1998 (the "September 30 tariffs")." Companies' Brief at pp.1-2.

This statement is completely incorrect. The June 19 tariffs are not before the Commission in this case. Unlike the Stipulation tariffs and the September 30, 1998 compliance tariffs, they constitute testimony only, not a tariff filing made with this Commission for approval. At best, they represent, at the time Mr. Blank filed his June 19, 1998 testimony in response to the Stipulation tariffs, a unilateral offer of the Companies to the intervenors and Staff. Yet, the Companies incredibly claim that "no parties objected to the issues [in the language suggested by Mr. Blank] or any of the other issues raised by Mr. Blank in his June 19 Supplemental Testimony". Companies Brief at p. 10. GCGA and Volunteer clearly and unambiguously already stated their position in the two briefs filed in Phase I of its proceeding -- that the Stipulation tariff should be adopted by the Commission in this case in its entirety. There is, obviously, no need to restate our continuing objection to the Companies' never-ending and ever-changing proposals to modify the Stipulation and to dictate the terms under which they might agree to provide CES service.

However, let's look at the substance of Mr. Blank's unilateral proposed changes. The meter credit provision in the Stipulation tariff is important and correctly stated, except for the correction noted in GCGA's and Volunteer's Phase II Post-Hearing Brief (at p. 5) and in the initial briefs of many of the other intervenors and Staff. Mr. Blank tries to unilaterally "change the deal" so that instead of paying the incremental difference between the cost of a new meter selected by the customer and the installed cost of a new FirstEnergy meter, the customer would be forced to pay the difference between the cost of the new meter selected by the customer less

the salvage value of the old meter plus the unrecovered cost of the old meter. The Companies' unilateral change would have the effect of further discouraging participation by customers in an already watered-down CES program, as a large part of the customer interest in CES involves the potential to install more technologically advanced metering. This proposal also could result in an over-recovery for the Companies.

Second, the Stipulation tariff language requiring the Companies to finance the cost of the new meters over 24 months at a carrying cost of eight percent (8%) or less is an essential element of the Stipulation, particularly for the Ohio Consumers' Counsel and residential customers. The Companies' suggested deal change must be rejected. Third, the true-up provision in the tariffs is adequate and does not require modification, particularly when the CES contract itself will be specifically negotiated in a manner presumably satisfactory to the Companies in any event. Fourth, the Companies' proposed change to prohibit customers from withdrawing or changing groups until after one year, as opposed to thirty days prior notice, may well inhibit the participation of small business commercial customers members of GCGA if they do not believe they can exit a program or group with which they no longer wish to be associated.

Finally, the Companies recommend amending the Stipulation tariffs "to include a provision specifying that a CES tariff would not go into effect until the later of the period for filing applications for rehearing or the Commission's issuance of a ruling on all applications for rehearing." Companies' Brief at p. 14. This provision is yet another tactic by the Companies to further delay offering CES service until well into 1999 or beyond and tie the Commission's hands by indirectly prohibiting the Commission, for example, from granting an application for

rehearing for purposes of further consideration. GCGA and Volunteer strongly oppose this additional unilateral change of the Companies, as it will serve only the monopoly's goal to delay the offering of CES service in FirstEnergy's high-cost service territory.

Moreover, the Companies' September 30, 1998 tariff filing does not refer to the "June 19th tariffs" at all nor indicate that Mr. Blank's proposed changes in his June 19th testimony are required for the Companies to offer CES service. Accordingly, the Commission should disregard Mr. Blank's June 19th tariff proposals in their entirety.

B. The Commission's Legal Authority to Order the Companies to Provide CES is Not Limited to Adequacy of Service Under O.R.C. § 4905.22.

The Companies claim in their Initial Phase Two Brief that in the absence of a record to support a Commission filing that service in the absence of CES is inadequate "the Commission had no authority to require the Companies to file CES tariffs." Companies' Brief at p. 16. The Companies then defiantly state that "[c]onsequently, the Commission cannot order the Companies to file a tariff that they find unacceptable." (Id at p. 16).

Conveniently, the Companies overlook the other legal bases, besides O.R.C. § 4905.22, that underpin the Commission's legal authority to require the Companies to offer CES service under acceptable tariffs approved by the Commission. As stated by other parties in their initial briefs (See, e.g., City of Toledo's Post-Hearing Brief at pp. 4-7), the Commission clearly can order CES without a specific finding of inadequate service in this case.

The Commission's imposition of the condition that The Cleveland Electric Illuminating Company and Toledo Edison Company submit acceptable CES tariffs in the Commission's January 30, 1997 order approving Centerior's rate plan serves as independent statutory authority, under O.R.C. § 4909.18, for acceptable CES tariffs and service to be offered by the Companies.

The Company neither applied for rehearing of the Commission's January 30, 1997 rate plan nor otherwise appealed it or its condition requiring acceptable CES tariff to be filed.

The Commission's exercise of its authority under O.R.C. § 4909.18 in its January 30, 1997 merger rate plan order, the Companies' waiver of the right to challenge the Commission's authority to order CES and the Commission's authority under R.C. § 4905.70, among other statutory authority, all constitute independent legal bases separate and apart from R.C. § 4905.22 for the Commission to order the Companies to offer CES service pursuant to tariffs the Commission finds acceptable.

Accordingly, the Companies arguments in this regard, even after considering them in a light most favorable to the Companies, are really quite misleading and disingenuous.

C. Other Untrue Statements of the Companies Need to be Corrected.

The Companies state (Companies Brief at p. 3) that "they filed CES tariffs on March 31, 1997, under protest". Assuming arguendo that the footnote in Ohio Edison's March 31, 1997 tariff filing which "expressly reserve[s] any and all legal rights to challenge the Commission's Order and Entry on Rehearing in this docket" (Ohio Edison March 31, 1997 Filing at p. 1, footnote 1) constitutes a "protest", there clearly was no protest, reservation of rights or any other complaint about the Commission's authority continued in the March 31, 1997 CES filings of The Cleveland Electric Illuminating Company and Toledo Edison Company. So, this statement of the Companies is completely untrue.

Similarly, the Companies' statement that "customers have not been asking for CES" (Companies Brief at p. 8) and that "there is no testimony in its case that even addresses the issue of, much less establishes that, the service of the Companies is inadequate in the absence of a CES tariff" (Companies' Brief at pp. 7-8) is not true. At the public hearings in this case held in

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Toledo on January 7, 1998 and, in particular, in Cleveland on January 9, 1998, dozens of customers and customer representatives testified and requested the Commission to order CES service as soon as possible, principally due to the continuing adverse effect of FirstEnergy's sky-high electric rates on businesses in northern Ohio. GCGA and its small business members want CES service now.

Finally, the Companies state that ... "although some of the intervenors that signed the Stipulation and Recommendation may still be supporting these tariffs, these tariffs are now moot." (Companies' Brief at p. 9). Let's make no mistake about this point. No signatory party to the May 11, 1998 Stipulation and Recommendation has withdrawn from the Stipulation. As such, the Stipulation tariffs are very much ripe and alive and before the Commission to consider in this case.

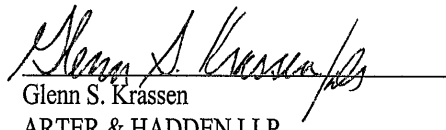
### **III. CONCLUSION**

For all of the reasons stated, GCGA and Volunteer respectfully request the Commission to:

1. Adopt the Stipulation and Recommendation filed on May 11, 1998 in its entirety, with the correction to the "metering" section of the tariff as explained on p. 5 of our Phase II Post-Hearing Brief;
2. Clarify the definition of "Aggregator" in the Companies' September 30, 1998 tariff filing as explained on page 6 of our Phase II Post-Hearing Brief;
3. Include in the final Order the language suggested at pages 7-8 of our Phase II Post-Hearing Brief;

4. Order the Companies to file the final PUCO approved CES tariffs in this case immediately upon issuance of the Commission's final order in this case and begin to offer CES service as promptly as practicable after customer notification; and
5. Reject all of the Companies' proposed changes to the Stipulation tariffs.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Phase II Post-Hearing Reply Brief of Greater Cleveland Growth Association and Volunteer Energy Services, Inc. was served by first class U.S. Mail or hand-delivered to all of the parties listed below this 27th day of October, 1998:

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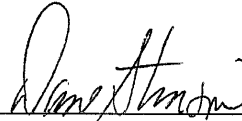
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