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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of) Case No. 99-1212-EL-ETP
FirstEnergy Corp. on Behalf of Ohio)
Edison Company, The Cleveland)
Electric Illuminating Company and)
The Toledo Edison Company for)
Approval of Their Transition Plans)
and for Authorization to Collect)
Transition Revenues)

In the Matter of the Application of) Case No. 99-1213-EL-ATA
FirstEnergy Corp. on Behalf of Ohio)
Edison Company, The Cleveland)
Electric Illuminating Company and)
The Toledo Edison Company for)
Tariff Approval)

In the Matter of the Application of) Case No. 99-1214-EL-AAM
FirstEnergy Corp. on Behalf of Ohio)
Edison Company, The Cleveland)
Electric Illuminating Company and)
The Toledo Edison Company for)
Certain Accounting Authority)

**MOTION OF FIRSTENERGY CORP.
TO STRIKE THE APPLICATIONS FOR REHEARING OF
UTILITY WORKERS UNION OF AMERICA, AFL-CIO,
AND UWUA LOCAL NOS. 118, 126, 270, 350, 351, AND 457
AND CITIZEN POWER**

FirstEnergy Corp., on behalf of Ohio Edison Company, The Cleveland Electric Company, and The Toledo Edison Company, files this motion to strike the applications for rehearing of the Utility Workers Union of America, AFL-CIO, and UWUA Local Nos. 118, 126, 270, 350, 351, and 457 and of Citizen Power as untimely. The arguments in support of this motion are fully set forth in the accompanying Memorandum in Support.

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 Anna K. Hill Date Processed Aug 29, 2003

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FirstEnergy Corp. on Behalf of Ohio)	
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**MEMORANDUM IN SUPPORT OF THE
MOTION OF FIRSTENERGY CORP.
TO STRIKE THE APPLICATIONS FOR REHEARING OF
UTILITY WORKERS UNION OF AMERICA, AFL-CIO,
AND UWUA LOCAL NOS. 118, 126, 270, 350, 351, AND 457
AND CITIZEN POWER**

I. Introduction

The August 18, 2000 cover letter to the Application for Rehearing of the Utility Workers Union of America, AFL-CIO, and UWUA Local Nos. 118, 126, 270, 350, 351, and 457 (collectively, the "UWUA") states that an "advance copy" of the application was being "served" on the Commission by facsimile on that date, "with hard copy service to follow by overnight

mail."¹ The hard copy was not docketed with the Commission until August 21, 2000. Similarly, the August 18, 2000 cover letter to Citizen Power's application for rehearing refers to the facsimile version of the application sent that day and to hard copies that were being sent by Federal Express for delivery on August 21. Because the applications of the UWUA and Citizen Power were filed after the thirty-day period specified by statute and Commission rule for the filing of applications for rehearing, the Commission should strike both applications for rehearing.

II. Argument

Under Section 4903.10 of the Ohio Revised Code, an application for rehearing "shall be filed within thirty days after the entry of the order upon the journal of the commission." Rule 4901-1-35 of the Ohio Administrative Code ("OAC"), which deals with applications for rehearing, echoes that requirement. The Commission's Opinion and Order was journalized on July 19, 2000. Thus, applications for rehearing had to be filed with the Commission by August 18.

Rule 4901-1-02, OAC provides for the filing by facsimile ("fax") of certain kinds of documents. Paragraph (B)(10) of that rule, however, clearly prohibits the filing of applications for rehearing by fax. The rule states that "[a]n application for rehearing which may be filed under section 4903.10 of the Revised Code may not be delivered to the commission for filing via facsimile." As a consequence, the filing of Citizen Power's and the UWUA's applications for rehearing was not effective until August 21, 2000, three days after the statutory deadline for the filing of applications for rehearing.²

¹ We don't know what an "advance copy" is. This appears to be a term used by the UWUA to attempt to obfuscate the problems discussed in this memorandum.

² Even if the UWUA's application was overnighted for Saturday delivery, the fact that the Commission is not open on Saturdays means that the application was not filed on August 19, but rather on August 21. That is irrelevant, however, because in either case, the
(continued...)

In other cases, the Commission has rejected applications for rehearing that parties have attempted to file by facsimile. *See, e.g., Williams v. Ameritech Ohio*, Case No. 98-1362-TP-CSS (Entry on Rehearing, April 13, 2000); *Application of AT&T Communications of Ohio, Inc.*, Case No. 96-190-TP-ACE (Entry on Rehearing, October 17, 1996). In both cases, the Commission found that where an application for rehearing was faxed to the Commission, there was no effective filing of the application on the date it was faxed. Because the effective filing of both the UWUA's and Citizen Power's applications for rehearing was not until August 21, after the expiration of the thirty-day period, they were filed out of time.

The Commission may not waive the requirement that the application be filed within thirty days. That requirement is jurisdictional; the Commission does not have the authority to consider an application for rehearing after the expiration of the thirty-day period. *Greer v. Pub. Util. Comm.*, 172 Ohio St. 361 (1961).

III. Conclusion

Because the applications for rehearing of the UWUA and Citizen Power were not timely filed, the Commission should strike the applications and should not consider the arguments made in those applications.

² (...continued)
application for rehearing was received by the Commission after the expiration of the thirty-day period.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of FirstEnergy Corp. to Strike the Applications for Rehearing of Utility Workers Union of America, AFL-CIO, and UWUA Local Nos. 118, 126, 270, 350, 351, and 457 and Citizen Power, was served upon the following via electronic mail this 28th day of August, 2000:

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