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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 Authority to Modify
Their Accounting Procedures

Case No. 04-1931-EL-AAM

MOTION OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY
TO STRIKE APPLICATION FOR REHEARING
OF OHIO PARTNERS FOR AFFORDABLE ENERGY

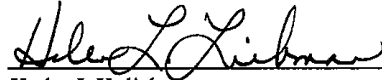
Pursuant to Rule 4901-1-12, Ohio Administrative Code ("O.A.C."), Ohio Edison
Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company
(collectively, the "Operating Companies") move to strike the application for rehearing filed by
Ohio Partners for Affordable Energy ("OPAE") because it was not timely filed. The arguments
in support of this motion are fully set out in the accompanying Memorandum in Support.

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COI-1314816v1

Respectfully submitted,



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

**BEFORE
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**MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE APPLICATION FOR REHEARING
OF OHIO PARTNERS FOR AFFORDABLE ENERGY**

R.C. 4903.10 provides that applications for rehearing of Commission orders "shall be filed within thirty days after the entry of the order upon the journal of the commission." Rule 4901-1-35, O.A.C. echoes that requirement. The Commission's Finding and Order was issued and journalized on May 18, 2005. Thus, applications for rehearing were due on June 17, 2005.

Rule 4901-1-02, O.A.C., 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: "An application for rehearing which may be filed under section 4903.10 may not be delivered to the commission for filing via facsimile." OP&E faxed a copy of its Application for Rehearing to the Commission on June 16, 2005, but, under Rule 4901-1-02, that filing was not effective. The hard copy of OP&E's application for rehearing was not docketed until June 20, 2005,¹ three days after the statutory deadline for the filing of applications for rehearing.

In similar circumstances, the Commission has found that "no effective filing was made with the 30-day time limit prescribed by Section 4903.10, Revised Code." *In the Matter of the*

Application of FirstEnergy Corp., Case No. 99-1212-EL-ETP (Entry on Rehearing, Sept. 13, 2000, p. 2). *See also In the Matter of the Application of AT&T Communications of Ohio, Inc.*, Case No. 96-190-TP-ACE (Entry on Rehearing, October 17, 1996, p. 4).

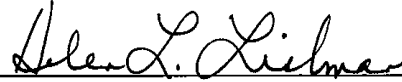
The Commission may not waive the requirement that the application for rehearing be filed within thirty days. That requirement is jurisdictional; the Commission does not have authority to consider an application for rehearing filed after the expiration of the thirty-day period. *Greer v. Pub. Util. Comm.*,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

Because OP&E's application for rehearing was not filed within the thirty days required by statute, the Operating Companies respectfully request that the Commission grant this motion and strike OP&E's application for rehearing.

(continued...)

¹ The application was date-stamped June 19, 2005, which was a Sunday, but that was crossed out, and a hand written correction was made show the filing date of "6/20/05." In addition, the application was date-stamped June 20, 2005.

Respectfully submitted,



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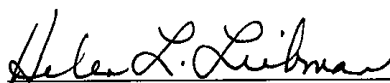
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Strike was delivered to the following via regular U.S. mail this 23rd day of June, 2005:

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