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

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

OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY MEMORANDUM CONTRA ENRON'S MOTION TO INTERVENE AND MOTION TO CONSOLIDATE

COME NOW Ohio Edison Company, The Cleveland Illuminating Company, and The Toledo Edison Company ("Companies"), by and through counsel, and, pursuant to O.A.C.

4901-1-12, file this Memorandum Contra Enron's motion to intervene and motion for consolidation filed with the Commission on January 29, 1998, respectfully urging the Commission to deny both of Enron's motions, as they are without merit. The Companies arguments supporting this request are set forth below.

I. INTRODUCTION

Enron's motivation in declaring the Ohio Edison/McDonalds contract ("Contract") illegal is clear: to achieve through manipulation of the regulatory process what it was unable to accomplish in the competitive arena, i.e., to prevent McDonalds and Ohio Edison from entering into a long-term mutually beneficial business relationship. Enron's motions and "comments"[1] are insulting to McDonalds' business acumen and its sophistication in energy matters. McDonalds' conservation efforts are legitimate and part of its corporate strategy, not simply an argument being proffered in a regulatory proceeding, and the Commission should not allow Enron to undermine those efforts simply to enhance Enron's competitive position.

II. ENRON'S CHARACTERIZATION OF THE OHIO EDISON/McDONALDS CONTRACT IS FUNDAMENTALLY FLAWED

Enron's conclusion that the Ohio Edison/McDonalds contract is conjunctive electric service ("CES") was truly stunning. The intervenors, including Enron, in the CES proceeding, Case No. 96-406-EL-COI, have generally alleged that a proper CES service should contain at least

[1] Enron styled its filing, in part, as Comments on the Proposed Special Contract Between Ohio Edison and McDonalds and the bulk of Enron's filing appears to fall in this category. Of course, the Commission's rules do not provide for such Comments, and Enron's filing should be stricken or disregarded in that regard.

the following three major components: 1) consolidated billing; 2) customer-owned metering, and 3) the ability to aggregate the loads of multiple customers and reflect load shifting cost savings through negotiated rates. The Contract between Ohio Edison and McDonalds contains none of these. A review of the Contract reveals no discussion of consolidated billing, exclusive metering facilities or aggregating load to achieve an earned cost savings from load shifting or for billing. Under the Contract, each McDonalds restaurant will be billed individually under Rate 21 or 23, the billing for any given restaurant will be based upon the electrical usage of that particular restaurant, and the funds in the Efficiency Fund are accounted for and distributed on an individual restaurant basis. Moreover, the Contract is long term in nature, representing a value to the Company. Certainly, there was no discussion of "cost savings resulting from a more homogenous load factor," "increased and retained load due to management of aggregated consumption," or that part of the discount, other than the Efficiency Fund, is directly equated with "conservation and demand shifting to off peak hours." Enron Motions at 4.

Enron's new definition of CES, which is at odds with its own prefiled testimony in the CES case, now appears to consist of anything that encourages conservation, economic efficiency, or off-peak usage. Consolidated billing, usage information, and load shifting are apparently no longer necessary components per Enron. If Enron is correct, then the Commission should also include all demand side management efforts in the CES case as well. This, like Enron's position, is ridiculous. Ohio Edison was providing incentives to customers to conserve, shift load to off-peak periods, and use energy in an efficient manner long before anyone ever uttered the phrase conjunctive electric service.

By use of the Efficiency Fund approach, McDonalds is incented to expand its

facilities utilizing highly efficient electrotechnologies and equipment. With the addition of these electric facilities, Ohio Edison and its customers are benefited because the base of kilowatt hours is larger over which to spread the fixed costs of Ohio Edison's system, whether in setting rates pursuant to restructuring legislation or otherwise.

III. ENRON PROVIDED NO REASONABLE BASIS TO CONSOLIDATE THE CONTRACT WITH THE PENDING CES PROCEEDING

Based upon the foregoing, there is no reason to consolidate the Contract proceeding with the CES proceeding, except to slow or prevent the approval of the Contract and thereby punishing McDonalds and enhancing Enron's competitive position. With its motions, Enron has sent a message to Ohio Edison's customers, i.e., if you contract with Ohio Edison, we will intervene and use our political muscle to slow or prevent the Commission's consideration of the contract application. McDonalds was not intimidated by Enron's veiled threat, but other customers may be. Of course, the long-term contracts Enron is reportedly signing with the Companies' customers for electric service commencing after the legalization of retail wheeling are not filed with the Commission, but are kept secret under the cloak of a confidentiality imposed on the customers. If the Commission investigates the long-term nature of the Contract, then all contracts entered into by Enron, as well as other parties, must receive equal scrutiny.

The Commission has narrowed the issues in the CES proceeding to two: 1) whether the Companies' CES tariffs are just and reasonable; and 2) whether the offering of a CES tariffed service is required in order for a public utility to provide adequate service. The Contract is relevant to neither of these issues. Even if the Commission were to adopt Enron's position that

the Contract represents what CES should be, and ultimately issues an order reflecting that position, no legitimate purpose would be served by dragging the Contract, and McDonalds along with it, into the quagmire that is the CES proceeding. Further, if Enron wants to file testimony indicating that the Contract should serve as the template for CES, it may do so, without having to consolidate the Contract case with the CES case. The CES proceeding is already complex enough with nearly 10 parties, different burdens of proof being borne by different parties, and the fact that, generally, no further direct testimony may be filed after February 10th and the hearing commences on February 23rd. The Companies urge the Commission to deny Enron's motion to consolidate the Contract proceeding with the CES proceeding.

IV. ENRON HAS NO STANDING TO RAISE CONCERNS OF DISCRIMINATION OR EQUITY AMONG CUSTOMERS

Enron's has no standing to raise its paternalistic concerns about whether Ohio Edison may discriminate against customers or not treat customers fairly. Ohio Edison, as well as the Commission, understand the legal rights and obligations imposed by Title 49. The Commission was interpreting and applying those provisions long before Enron came on the scene. Enron is not a customer, and may not gain standing or be granted intervention in the Contract case as though it were. Every special contract filed by Ohio Edison is considered by the Commission within the context of Title 49, and the Contract will be no different.

V. ENRON HAS STATED NO REASONABLE BASIS TO BE GRANTED INTERVENTION IN THE CONTRACT CASE

Enron's only discernible allegation to support its request for intervention in the

Contract case is that the long-term nature of the Contract may be unlawful. This affords the Commission no reasonable basis to grant intervention for Enron. First, this is merely a legal issue that was resolved by the Commission long ago. The Commission has approved hundreds of special contracts with long-terms, almost all exceeding 5 years in length with some, including BP Oil, LTV Steel, and North Star, as long as 10 years. *See e.g., In Re BP Oil*, Case No. 96-399-EL AEC, June 6, 1996. All of Ohio Edison's recent special arrangements for economic development contracts have terms up to 9 years and represent the bulk of the Ohio Edison contracts referenced by Enron in its motion at page 6.[2] For Enron to seek intervention on the basis of a single legal issue that has already been resolved by the Commission is not reasonable. The Commission should deny Enron's intervention in the Contract case.

Finally, Enron misuses the "tying arrangement" concept. It tries to make the Contract appear evil by calling it a tying arrangement, while carefully avoiding the allegation of any violation of anti-trust law, federal or state. In fact, Enron cites no authority whatsoever in support of its claim. Surely if there were such support for its claim, Enron would have cited it in its motion and not waited to do so until its reply to this Memorandum Contra, when the Companies would be precluded from countering it. The Contract between McDonalds and Ohio Edison is an arms length agreement between two sophisticated parties that believe it to be mutually beneficial. The Contract does not represent the frustration of competition, it evidences the result of competition. It is Enron that is trying to frustrate competition by attempting to undermine or

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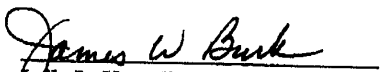
[2] Enron spends some time discussing the time spent to negotiate special contracts that are not part of a tariff. Individual contracts are time-consuming to negotiate, and Enron's discussion only serves to highlight the impossible nature of attempting to negotiate special contracts with potentially every customer on the Companies' systems, as is contemplated by the Commission's CES Guidelines.

delay the Commission's consideration of the Contract in contravention of O.A.C. 4901-1-11(B)(4). The Commission should not let itself be so manipulated.

WHEREFORE, the Companies respectfully request the Commission to deny Enron's motion to intervene in Case No. 98-43-EL-AEC and its motion to consolidate Case No. 98-43-EL-AEC into Case No. 96-406-EL-COI, as doing so would substantially prejudice Ohio Edison and unduly penalize McDonalds.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by hand-delivery, fax or by ordinary U.S. Mail upon the parties of record in this case on this 9th day of February, 1998.

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