

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Elyria	)	
Foundry Company,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 05-796-EL-CSS
	)	
Ohio Edison Company,	)	
	)	
Respondent.	)	

OPINION AND ORDER

The Commission, considering the complaint, the evidence of record, the arguments of the parties, and the applicable law, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Craig I. Smith, 2824 Coventry Road, Cleveland, Ohio, 44120, on behalf of Elyria Foundry Company.

Kathy J. Kolich, FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308, and Jones Day, by Helen L. Liebman, 325 John H. McConnell Boulevard, Suite 600, Columbus, Ohio 43216, on behalf of Ohio Edison Company.

OPINION:

I. BACKGROUND AND HISTORY OF THE PROCEEDINGS

Elyria Foundry Company (Elyria Foundry) is an Ohio corporation that is a customer of Ohio Edison Company (Ohio Edison), using electricity to operate melt furnaces and to perform casting operations. Elyria Foundry is served under a contract with Ohio Edison, receiving both firm electric service under Ohio Edison's rate 23 and interruptible service under Rider 75 of Ohio Edison's tariff (Rider 75). (Elyria Foundry Ex. 1, at 2.)

Ohio Edison is an electric light company, as defined in Section 4905.03(A)(4), Revised Code, and is a public utility as defined by Section 4905.02, Revised Code.

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On June 20, 2005, Elyria Foundry filed a complaint against Ohio Edison, alleging, *inter alia*, that the number of economic interruptions of its service under rider 75, and the cost of those interruptions to Elyria Foundry, rose dramatically during 2005, as compared with prior years. Elyria Foundry urges the Commission to find that Ohio Edison's basis for determining when to call economic interruptions is unlawful, unjust, and/or unreasonable; that Ohio Edison's rider 75 unlawfully, unjustly, and/or unreasonably fails to provide for clear and transparent publicly available information for Elyria Foundry to verify replacement power costs; and that Ohio Edison's rider 75 unlawfully, unjustly, and/or unreasonably required a three-year cancellation notice for interruptible service. Elyria Foundry requests that the Commission order Ohio Edison to make a number of changes to rider 75 and to refund to Elyria Foundry the amounts that Elyria Foundry believes were overcharged during 2005, plus interest. On July 15, 2005, Ohio Edison filed an answer to the complaint, denying many of the allegations by Elyria Foundry and raising affirmative defenses.

On February 17, 2006, Elyria Foundry supplemented its complaint to allege, additionally, that Ohio Edison used its interruptible rider policy to exercise unjust, unreasonable, and unlawful discretion in calling economic interruptions; that Ohio Edison violated applicable statutory provisions by assigning lowest costs resources to retail firm and wholesale load obligations; and that Ohio Edison violated applicable statutory provisions by interrupting all interruptible customers at the same times and for the same hours regardless of their differing rate structures, thus charging Elyria Foundry unjust, unreasonable, and unlawful charges. On July 15, 2006, Ohio Edison filed its answer to the supplemental complaint.

Following unsuccessful efforts to settle the dispute, the case proceeded to hearing on June 28 and 29, 2006, with rebuttal testimony presented on August 16, 2006. Elyria Foundry presented the testimony of Samuel R. Knezevic and Anthony J. Yankel. Ohio Edison's witnesses were Steven E. Ouellette and Charles J. Idle. Briefs and reply briefs were filed by both parties on September 13 and September 26, 2006, respectively.

## II. APPLICABLE LAW

The complaint in this proceeding was filed pursuant to Section 4905.26, Revised Code, which provides, in relevant part, that the Commission will hear a case

[u]pon complaint in writing against any public utility . . . that any rate . . . charged . . . is in any respect unjust, unreasonable unjustly discriminatory, unjustly preferential, or in violation of law . . . or that any . . . practice . . . relating to any service furnished by the public utility . . . is . . . in any respect unreasonable, unjust, . . . unjustly discriminatory, or unjustly preferential.

Ohio Edison's tariff for electric service, PUCO No. 11, includes Rider 75 for incremental interruptible service. According to the language of Rider 75, interruptible service is available to certain large, full service customers, where the customer can demonstrate that it has an interruptible load of at least 1,000 kilowatts and that its load can be interrupted within 10 minutes of notice (PUCO No. 11, Sheet No. 75, Page 1 of 12). Once a customer is served under Rider 75, Ohio Edison has the right to interrupt service to that customer under two circumstances. First, it can interrupt service in an emergency, when it "determines that the operation of its system requires curtailment of a customer's interruptible service . . ." (PUCO No. 11, Sheet No. 75, Page 8 of 12). In that event, the customer has no choice but to curtail its usage. Second, Ohio Edison may interrupt for economic purposes. It is this type of interruption that gives rise to the complaint in this proceeding.

The Company reserves the right to interrupt service to the customer's interruptible load whenever the incremental revenue to be received from the customer is less than the anticipated incremental expense to supply the interruptible energy for the particular hour(s) of the interruption request.

(PUCO No. 11, Sheet No. 75, Page 6 of 12.) Once Ohio Edison has called an economic interruption, the customer may choose to curtail its usage or to forego the interruption, with replacement power coming from Ohio Edison or from a third-party supplier. With regard to the pricing of replacement power that may be supplied by Ohio Edison, when the customer notifies Ohio Edison, within 30 minutes, that it will purchase replacement power from Ohio Edison, the customer must pay the cost of energy obtained or generated by the Ohio Edison on a best efforts basis at the lowest cost after all other prior obligations are met. If, on the other hand, the customer does not specify a replacement source for buy-through power within 30 minutes, Ohio Edison will endeavor to obtain or generate power for that customer and the customer must pay the cost of the most expensive power used during the period of the interruption. (PUCO No. 11, Sheet No. 75, Pages 6-8 of 12.)

It should, finally, be noted that in complaint cases before the Commission, the complainant has the burden of proving its case. *Grossman v. Public Utilities Commission*, 5 Ohio St.2d 189, 190, 214 N.E.2d 666, 667 (1966). Thus, in order to prevail, Elyria Foundry must prove the allegations in its complaint, by a preponderance of the evidence.

### III. DISCUSSION AND CONCLUSIONS

#### A. Factual Background

The factual background of this proceeding is not disputed by the parties. Elyria Foundry's executive vice president, Samuel R. Knezevic, testified that, in addition to its firm service, Elyria Foundry began receiving interruptible power in 1995, through a contract with Ohio Edison that limited the number and duration of interruptions. He explained that

this contract was replaced by Rider 75 and that Elyria Foundry continued with the interruptible service program in order to compete successfully in the marketplace. (Elyria Foundry Ex. 1, at 3.)

As noted above, Ohio Edison has the right, under Rider 75, to call economic interruptions of Elyria Foundry's service when the incremental revenue to be received from Elyria Foundry is less than the anticipated incremental expense to supply Elyria Foundry for a particular time period (Elyria Foundry Ex. 2, at 5). During interruptions, Elyria Foundry has several options. It can arrange for service from another supplier, purchase replacement power from Ohio Edison at a specified price, ignore the notice of interruption and pay for replacement power from Ohio Edison, or curtail its operations (Ohio Edison Ex. 1, at 4). Elyria Foundry always chooses to purchase replacement power from Ohio Edison (Elyria Foundry Ex. 1, at 5-6; Ohio Edison Ex. 1, at 4).

Ohio Edison's interruptible service is administered by FirstEnergy Solutions Corp. (FES), a wholly-owned subsidiary of FirstEnergy Corp. (FE) (Ohio Edison Ex. 1, at 5). Ohio Edison is also a wholly owned subsidiary of FE and is, therefore, a sister company of FES. FES is the owner of virtually all of the generation assets formerly owned by Ohio Edison and its sister operating companies and provides all electricity needed by the FE operating companies under a power supply agreement (PSA) approved by the Federal Energy Regulatory Commission (FERC) (Ohio Edison Ex. 2, at 6; Tr. II at 18). The cost of power under the PSA is based on fixed prices for power from the generating units owned or operated by FES plus a portion of the cost of purchased power. The purchased power costs are allocated among the FE operating companies based on a formula that determines each operating company's proportion of all electricity used in FE's entire service territory. (Ohio Edison Ex. 1, at 5; Ohio Edison Ex. 2, at 5-7).

FES administers the interruptible service program pursuant to internal guidelines that were documented in 2001 (2001 policy). The 2001 policy states that FES is to invoke an economic interruption when, for at least three consecutive hours, incremental out-of-pocket costs to supply power exceed a designated strike price and the current or expected load obligation will exceed available planned resources. The 2001 policy also instructs FES to interrupt all interruptible customers whenever an economic interruption is called. The strike price was originally set at \$85.00 per megawatt hour (mWh) but was decreased to \$65.00 per mWh in 2003. That strike price represents approximately the highest incremental revenue received from any interruptible customer in Ohio, according to Ohio Edison. (Ohio Edison Ex. 1, at 6-7 and at Ex. SEO-4.)

The number of economic interruptions experienced by Elyria Foundry each year from 1995 through 2004 varied, but was never more than 11. Mr. Knezevic indicated that, in early 2005, Elyria Foundry received a communication from Ohio Edison, warning that the number of interruptions under rider 75 might increase. In its letter, Ohio Edison explained that the frequency of interruptions is impacted by several factors. It specifically noted mild

weather conditions experienced in recent years, recent changes in the wholesale markets, the entry of Ohio Edison's parent company into Midwest Independent Transmission System Operator (MISO), growing uncertainty of prices in various markets, and growth in use of electricity. (Elyria Foundry Ex. 1, at 4, and at SK Ex. 1.) During 2005, Elyria Foundry experienced 44 economic interruptions, or four times the prior annual maximum (Tr. I at 13).

**B. Assertions by Elyria Foundry**

Elyria Foundry makes a variety of related allegations as to why the Commission should find in its favor. Elyria Foundry points out that Rider 75 does not include a definition of either incremental revenues or incremental expenses. It complains that, instead of a definition in the rider itself, Ohio Edison adopted its 2001 policy, which was never filed with or approved by the Commission and which, by its effect, determined the definitions of those terms. Elyria Foundry alleges that Rider 75, as effectuated by the 2001 policy, is unreasonably prejudicial in its treatment of interruptible customers, unreasonably results in sales of excess energy during interruptions, and causes an unreasonable number and length of interruptions due to the aggregation of all customers, and the assignment of low cost resources to customers of its unregulated affiliate, thereby forcing the interruptible Ohio Edison customers to subsidize the customers of FES.

**1. Need for Commission Approval of 2001 Policy**

Elyria Foundry, initially, complains that the 2001 policy was not filed with the Commission, approved by the Commission, or publicly noticed (Elyria Foundry Ex. 2, at 6; Tr. I at 182; Elyria Foundry Initial Brief at 19-20). Elyria Foundry argues that the 2001 policy should have been approved under either Section 4909.18 or Section 4905.31, Revised Code, and that it should have been publicly noticed under Section 4905.30, Revised Code. The Commission disagrees.

Section 4909.18, Revised Code, addresses the filing of applications for Commission approval of the establishment or modification of rates and services. The evidence in this proceeding clearly shows that the interruptible program was approved by the Commission, as set forth in Ohio Edison's tariffs. The 2001 policy was merely a documentation of the company's internal operational standards. Therefore, a tariff amendment application under Section 4909.18, Revised Code, was unnecessary.

Section 4905.31, Revised Code, relates to certain "arrangements" among public utilities or between a public utility and its customers, consumers, or employees providing for, among other things, stipulated variations in costs. Once again, this is inapplicable to the present situation.

Section 4905.30, Revised Code, requiring the filing of all rates and charges, and rules and regulations affecting them, is also inapplicable. The Commission finds that the matters covered by the 2001 policy were not "rules and regulations" affecting rates. The 2001 policy merely documented Ohio Edison's internal means of implementing its approved tariffs.

## 2. Unreasonable Prejudice Caused by 2001 Policy

The 2001 policy provides that an interruption will be called, basically, when incremental out-of-pocket costs to supply power exceed a given strike price. That strike price was, during the time period covered by Elyria Foundry's complaint, \$65.00 per mWh (or \$0.065 per kWh). Under that policy, whenever an economic interruption is to be called, all interruptible customers will be interrupted, regardless of the rate the individual customer is paying. According to the testimony of Mr. Oulette, a witness on behalf of Ohio Edison, the lowest price paid by an Ohio Edison customer under Ohio Edison's interruptible tariffs is in the range of three or four cents per kWh. (Ohio Edison Ex. 1 at Ex. SEO-4; Tr. I at 168-172.)

Elyria Foundry submits that, by interrupting all interruptible customers at the same time, Ohio Edison is in violation of Section 4905.35, Revised Code (Elyria Foundry Initial Brief at 29). That section provides that no public utility may give any undue or unreasonable preference or advantage to any person, or subject any person to any undue or unreasonable prejudice or disadvantage. Elyria Foundry's contention is that, when customers are paying different rates and are being interrupted at the same strike price, those customers receive different advantages. That is, a customer paying 3.25 cents per kWh and being interrupted at 6.5 cents per kWh receives a 100% (3.25 cents per kWh) advantage (as compared with the minimum point at which the tariff language would allow interruption), while a customer paying 5.135 cents per kWh would only be able to have its revenues exceeded by 25% before it is interrupted. (Elyria Foundry Ex. 2, at 35-36.)

Ohio Edison disputes Elyria Foundry's approach. Ohio Edison argues that discrimination is unlawful under Section 4905.35, Revised Code, only where similarly situated customers of a utility are treated differently or where dissimilarly situated customers or a utility are treated the same. It points out that dissimilar treatment of customers of different utilities is not covered by the statute. It also argues that Ohio Edison's pricing under its interruptible tariff is based on "billing determinants such as hours use, power factor, voltage, size of measured demand, on-and off-peak splits of energy consumption, and the portion of the customer's total load that can be interrupted." (Ohio Edison Ex. 2, at 18.) Therefore, Ohio Edison contends, the Commission should not look for discrimination by comparing the rates of differently situated customers.

The Commission does not find any evidence of prejudicial treatment in violation of Section 4905.35, Revised Code. Ohio Edison, by applying the same strike price to all interruptible customers, is interrupting those customers at the same times and for the same

duration. To apply different strike prices to customers with different rate structures could also be viewed, by some, as prejudicial. We feel that, in light of the wide variety of billing determinants and circumstances of individual customers, a reasonable choice in this particular circumstance is to apply a single strike price, based on Ohio Edison's incremental costs and resources. Elyria Foundry has not presented sufficient evidence to convince us that Ohio Edison's approach in this circumstance is unlawfully prejudicial or discriminatory.

3. Unreasonable Charges Under 2001 Policy for Periods During Which Ohio Edison was Making Hourly Wholesale Sales

Elyria Foundry also contends that, in violation of Section 4905.22, Revised Code, prohibiting unreasonable charges, Ohio Edison's 2001 policy results in Ohio Edison having extra power available for wholesale sales, during times when economic interruptions have been called. According to Elyria Foundry, customers may be interrupted "while there is extra energy available on the system" or extra energy may become available "because of the interruption itself" and Ohio Edison may sell this extra energy at wholesale. Elyria Foundry asserts that, because Ohio Edison "should not profit by requiring more economic interruptions than needed[,] . . . the revenue collected should go to the [interruptible] customers as an offset to the economic interruption that was called." (Elyria Foundry Ex. 2 at 20-23.)

Ohio Edison disputes Elyria Foundry's opinion on this topic. Citing the testimony of Mr. Idle on its behalf, Ohio Edison explains that, during an economic interruption, Ohio Edison may sell hourly energy into the market for one of several reasons, including planning for the next day's resources through purchases of 16-hour blocks, unanticipated changes in load for reasons such as weather or curtailments, or reliability dispatches by MISO. Mr. Idle summarized the situation, stating that "energy portfolio management is not an exact science. The goal is to match as closely as possible the resources with the obligations. Obviously there will be times when circumstances prevent a perfect match and FES may have to sell back into the market for short periods of time during an economic buy through event." (Ohio Edison Ex. 2, at 15-16; Ohio Edison Initial Brief at 14-15.)

Ohio Edison's tariff provides that it may call an economic interruption in the event that incremental revenues to be received from the interruptible customer are less than the anticipated incremental expense to supply the power for that period. If an interruption is called, there is nothing in the tariff to prevent Ohio Edison from making business decisions to sell power, as in the circumstances noted by Mr. Idle. The company may find itself in the position of having surplus power for an unanticipated reason or, for various operational reasons, may need to enter into a sale transaction. This is neither unreasonable nor a violation of law, regulation, tariff, or guideline.

4. Unreasonable Interruptions Result from Ohio Edison's Prioritization of Service

Elyria Foundry advances the proposition that Ohio Edison improperly defines its incremental costs to supply Elyria Foundry and, therefore, unreasonably and incorrectly prioritizes service to its various customers.

As pointed out by Elyria Foundry, Rider 75 does not specifically define the term "incremental expense to supply" (Elyria Foundry Ex. 2, at 5). Ohio Edison discussed the manner in which it determines the "incremental expense to supply" Elyria Foundry. It explained that it purchases all of its power requirements through a purchase sales agreement (PSA) approved by FERC. According to Ohio Edison, the PSA provides that FES will supply all of Ohio Edison's requirements at a price calculated under a defined formula that, basically, allocates the cost of purchased power "based on the percentage of all purchased power by FES that was used to serve all Ohio Edison obligations." (Ohio Edison Ex. 2, at 6-7.) The formula in the PSA, specifically, charges Ohio Edison a set price per kilowatt for capacity, plus a set price per MWh for energy, plus applicable taxes, plus an adjustment for purchased power. That purchased power adjustment is the part of the charge that is relevant in this proceeding. To determine the adjustment for purchased power, FES calculates Ohio Edison's power supply requirements for a given month and divides that amount by FES's total power supply delivered during that month to the entire control area covered by all FE operating companies. This fraction is then multiplied by the dollar value of all purchased power delivered within the FE control area during that month. Ohio Edison is thereby charged for its proportionate amount of all purchased power delivered by FES. (Ohio Edison Ex. 2 at CJI-1 page 10; Tr. I at 72.) Thus, and critically for this case, the "obligations" that are considered, in determining whether to call an economic interruption, include all power deliveries by FES into the FE control area, whether sold under the PSA or otherwise. (*See, also*, Tr. II at 27, 53)

According to Elyria Foundry, the term "incremental expense to supply" should mean "the lowest additional cost to be incurred to supply interruptible customers - after the lowest possible costs have been assigned to firm Retail customers." (Elyria Foundry Ex. 2, at 6 [emphasis omitted].) Elyria Foundry complains that, under the 2001 policy, Ohio Edison determines the level of the incremental expense to serve Elyria Foundry only after FES has satisfied its entire wholesale and competitive load. Elyria Foundry believes that this is an incorrect prioritization of service. Elyria Foundry contends that this prioritization results in the "streaming" of FES's costs to interruptible customers. (Elyria Foundry Ex. 2, at 7; Elyria Foundry Ex. 5, at 2; Elyria Foundry Initial Brief at 22, 25.)

Ohio Edison's view is that the PSA is the proper place to find Ohio Edison's incremental expense. Specifically, Ohio Edison's witness Idle stated that "incremental expense is the last group of costs associated with the last purchase of energy used to meet the last block of demand. For purposes of defining incremental cost during an economic



buy through event, the price of power being purchased to serve that portion of a customer's interruptible load that it chooses not to curtail is the incremental expense to [Ohio Edison]." (Ohio Edison Ex. 5, at 6.) Responding to Elyria Foundry's contention that, from a prioritization standpoint, interruptible customers should not be interrupted when lower cost resources are supplying FES's wholesale or competitive load, Ohio Edison's witness maintained that "interruptible load is, by definition, non-firm load. . . . The bottom line is that you cannot treat a non-firm load such as interruptible load as if it were firm load. To do so would defeat the purpose of having interruptible load." (Ohio Edison Ex. 2, at 17-18.)

As noted, the provisions of Rider 75 do not specifically address a definition for "incremental expense to supply." At page 6 of 12 of that rider, Ohio Edison "reserves the right to interrupt service to the customer's interruptible load whenever the incremental revenue to be received from the customer is less than the anticipated incremental expense to supply the interruptible energy for the particular hour(s) of the interruption request." The Commission finds that it is appropriate for Ohio Edison to determine its incremental expense to serve its interruptible customers on the basis of the pricing formula in the PSA. Although the PSA only requires the calculation of charges on a monthly basis, that PSA formula is an actual determination of costs to Ohio Edison. If an interruptible customer chooses to curtail its usage or purchase its power requirements from another supplier during an interruption, the amount of power purchased under the PSA will be reduced by that amount. On the other hand, if an interruptible customer, such as Elyria Foundry, chooses to buy through the interruption, Ohio Edison's costs under the PSA will increase by the amount of the buy-through. Thus, the pricing formula in the PSA is a true measure of incremental expenses.

The tariff provision must also be read in the context of the Commission's general consideration of interruptible service provision and the guidelines that resulted from that consideration. *In the Matter of Interruptible Electric Service Guidelines, Pursuant to the Agreement by Participants in the Commission Roundtable on Competition in the Electric Industry*, Case No. 95-866-EL-UNC. While those guidelines do not specifically address the precise question at issue in this case, they do reflect the Commission's recognition that the key to interruptible programs is the distinction between firm and interruptible service. For example, guideline 5(a) provides that, in seeking to obtain replacement energy during an interruption, the provider "shall use its best efforts to obtain and deliver the lowest cost replacement electricity, excluding that obtained for firm electric service customers, for each interruptible electric service class." Similarly, in its finding and order in phase two of its consideration of the guidelines, the Commission noted that "[e]ach utility has an obligation to maintain system integrity and service to firm . . . customers, and it is important to remember that [interruptible] customers receive substantial discounts for accepting risk of service interruption." Finding and Order (December 22, 1998), 8-9. The Commission believes now, as it did then, that interruptible service should not be prioritized, from an economic point of view, ahead of any firm service. Thus, the Commission also finds that it is not unreasonable to consider all of the obligations of FES, including sales that are made

by FES outside of the PSA, in the determination of the incremental cost to Ohio Edison of serving interruptible customers.

Finally, the Commission would note that, according to the testimony in this proceeding, Elyria Foundry saved approximately \$450,000 in 2005, as a result of participating in the interruptible program (Ohio Edison Ex. 1, at 5; Tr. I at 203). The Commission finds it difficult to imagine how unreasonable the implementation of the program can be, when the customer, having hedged its bets through its participation in the interruptible program, has ended up with a substantial economic advantage.

### C. Conclusion

The Commission finds that Ohio Edison's interruptible program, as set forth in its tariffs and as implemented by Ohio Edison, is not unreasonable or prejudicial. The Commission further finds that Ohio Edison did not violate any applicable statutes or regulations in its implementation of Rider 75.

The Commission also notes, however, that Rider 75 requires, by its terms, three years' prior written notice if a covered customer wishes to return to firm service, "consistent with system planning criteria." This notice requirement parallels the Commission's guidelines. Rider 75 further provides that, upon mutual agreement, customers may return to firm service with less than three years' notice, provided that the customer will be billed for applicable firm service plus any reasonable additional costs incurred in providing such service, until the three-year notice period is fulfilled. The Commission finds that, since we initially discussed the notice period in our adoption of the guidelines in 1996, the electric industry has undergone substantial changes, with electric restructuring and the advent of regional transmission organizations such as MISO, causing utilities to invoke economic interruptions more often than had then been contemplated. Therefore, the Commission finds that Ohio Edison should provide all of its interruptible customers a one-time, 90-day opportunity to return to firm pricing and that, for this one-time opportunity, the "reasonable additional costs" of such service, as provided for in the tariff, should be deemed to be zero. In order to accomplish this, within 90 days from the date of this opinion and order Ohio Edison shall send a notice to all of its interruptible customers, informing them that, for a period of 90 days from the date of the notice, Ohio Edison will agree to allow a return to firm electric service without the three-year notice set forth in Tariff 75, at the applicable firm electric service rate. Based on the facts of this case, it appears that the same interruptions were called in all three FE operating companies in Ohio. Therefore, this same requirement shall apply to each of the other FE operating companies in Ohio.

Any arguments made by parties and not addressed in this opinion and order are denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Ohio Edison is an electric light company, as defined in Section 4905.03(A)(4), Revised Code, and is a public utility as defined by Section 4905.02, Revised Code.
- (2) Elyria Foundry was an industrial customer of Ohio Edison, purchasing firm power and interruptible power during the period from January 1, 2005, through December 31, 2005.
- (3) Ohio Edison is required by Section 4905.22, Revised Code, to furnish necessary adequate service and facilities, and to furnish and provide such instrumentalities and facilities as are adequate and in all respects just and reasonable.
- (4) Elyria Foundry filed a complaint against Ohio Edison on June 20, 2005. A public hearing was held on June 28, June 29, and August 16, 2006.
- (5) The burden of proof in a complaint proceeding is on the complainant. *Grossman v. Public Utilities Commission*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).
- (6) Elyria Foundry has not provided sufficient evidence that Ohio Edison's charges, under its Rider 75, violated any applicable statute, regulation, or guideline, or that Ohio Edison failed to comply with any filing or notice requirement concerning its implementation of Rider 75.
- (7) Ohio Edison should be required to allow its interruptible customers a 90-day opportunity to return to firm service without the required three-year notice.

**ORDER:**


It is, therefore,

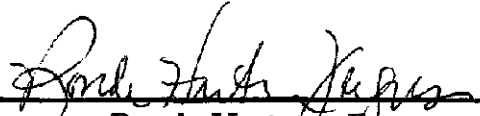
ORDERED, That the complaint of Elyria Foundry be dismissed. It is, further,

ORDERED, That Ohio Edison shall notify its interruptible customers of their 90-day opportunity to return to firm service, as discussed in this opinion and order. It is, further,

ORDERED, That a copy of this opinion and order be served upon all parties of record.

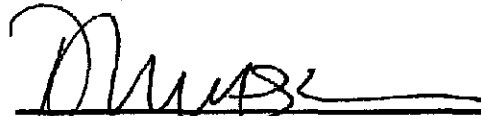
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
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Alan R. Schriber, Chairman

  
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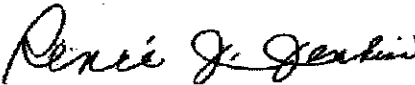
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Renee J. Jenkins  
Secretary