

FILE

**FirstEnergy****Fax Transmission**

FIRSTENERGY CORP.  
76 South Main Street  
Akron, OH 44308  
330/384-5861  
Fax 330/384-3875

15  
RECEIVED-DOCKETING DIV  
2007 JAN 29 PM 2:59

PUCO  
FAX

To: PUCO Docketing Date: January 29, 2007  
Fax #: 614-466-0313  
From: James W Burk Pages: 15, including this cover page  
Subject: *PUCO Case No. 06-1112-EL-UNC*  
In the Matter of the Application of Ohio Edison Company, The Cleveland Electric  
Illuminating Company, and The Toledo Edison Company for Authority to Establish a  
Competitive Bid Process to Supply Market-Based Generation  
Reply Comments Ohio Edison Company, The Cleveland Electric Illuminating Company  
and the Toledo Edison Company

**Comments:** Attached are the *Reply Comments Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company* regarding the above case. The original and required number of copies will be sent via overnight mail for delivery on Tuesday, January 30, 2007. Please call me at 330 322-4045 if you have questions. Thank you.

**NOTE: IF YOU DO NOT RECEIVE ALL OF THE PAGES MENTIONED ABOVE,  
PLEASE CALL CONFIRMATION NO. 330-384-5861 or 330-384-5308.**

The information contained in this facsimile transmission is confidential and privileged pursuant to the attorney-client privilege and the work product doctrine. Disclosure to anyone other than the named recipient, or an authorized agent thereof, is strictly prohibited. If this transmission was received in error, please immediately notify us by telephone and return the transmission to the above address via U S Mail.  
Thank you.

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 JSB Date Processed 1-29-07

**FirstEnergy.**78 South Main Street  
Akron, Ohio 44308James W. Burk  
Senior Attorney330 384 3861  
Fax 330 384 3875

January 29, 2007

**VIA OVERNIGHT MAIL**

Ms. Renee J. Jenkins  
Director, Administration Department  
Secretary to the Commission  
Docketing Division  
The Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

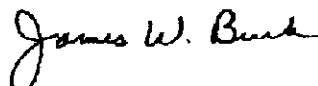
RE: PUCO Case No. 06-1112-EL-UNC  
In the Matter of the Application of Ohio Edison Company, The Cleveland Electric  
Illuminating Company, and the Toledo Edison Company for Authority to  
Establish a Competitive Bid Process to Supply Market-Based Generation  
Reply Comments Ohio Edison Company, The Cleveland Electric Illuminating  
Company and The Toledo Edison Company

Dear Ms. Jenkins:

Enclosed for filing please find the original and seventeen (17) copies of *Reply  
Comments* regarding the above-referenced case which was fax-filed today. Please file  
the attached. File-stamp the two extra copies and return them to the undersigned in the  
enclosed envelope

Thank you for your assistance in this matter. Please contact me if you have any  
questions concerning this matter.

Very truly yours,



James W. Burk

JWB:ls  
Enclosures 17

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 DB Date Processed 1-29-07

**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	)	Case No. 06-1112-EL-UNC
Edison Company for Authority to Establish	)	
A Competitive Bid Process to Supply	)	
Market-Based Generation.	)	

**REPLY COMMENTS OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY**

Now Come Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("Companies") and respectfully submit their Reply Comments to the initial comments submitted on January 12, 2007. In its December 13, 2006 Entry in this matter, the Commission directed interested persons to file initial comments on the Companies proposal no later than January 12, 2007. Initial comments were filed by the Staff of the Commission, Office of Consumers' Counsel ("OCC"), Ohio Partners for Affordable Energy ("OPAE"), Industrial Energy Users of Ohio ("IEU"), WPS Energy ("WPS"), Constellation New Energy ("Constellation"), and Northwest Ohio Aggregation Coalition ("NOAC"). The Entry designated that reply comments be filed no later than January 22, 2007. On January 17, 2007, the Commission granted the Companies' motion to extend the filing date for reply comments and extended the due date for all parties to and including January 29, 2007. The Companies' reply comments are set forth below.

## General Comments

In devising the competitive bid program, the Companies attempted to balance the components of the program between supplier and customer interests, with particular concern being paid to minimizing administrative costs. For example, customers need only be contacted once under the program with a firm bid price, as opposed to other programs where customers may enroll in a program only to find out later there were no bids or that the bid price is too high, and then have to be told that they cannot participate in the program. There is also no programmatic limitation on the amount a supplier is permitted to submit as a bid price, as was implicitly present in earlier FirstEnergy competitive bid programs. Finally, despite the comments of WPS and Constellation, the entirety of the FirstEnergy Ohio load is not proposed to be bid out as a single product, but each operating company will be separately bid out and no supplier need bid for the entire load of any particular company to participate; the minimum bid amount is 50 MW.

As their comments demonstrate, OCC, NOAC, Constellation and WPS all believe the Companies got it wrong by making the program too consumer friendly thereby not providing enough incentives for suppliers to participate, i.e., changes need to be made to the program that favor suppliers and disadvantage consumers. While the Companies believe the program as proposed is workable and meets the mandate of the Supreme Court's remand, in an effort to address concerns expressed by other parties, the Companies are willing to agree to modifications to the program, which are included below as part of the specific comments.

### **Specific Comments**

Many of the criticisms contained in the comments were not necessarily directed at the program, but more directed at past Commission decisions. NOAC, OCC, WPS, and Constellation continue to attack the Commission's past decisions in the RSP and RCP proceedings that established the shopping credit caps. The shopping credit caps are an integral component of those plans and cannot simply be dispensed with as suggested by these parties without dismantling the generation pricing contained in those plans, i.e., the RSP will not survive if shopping credit caps are terminated. Further, in its remand decision, the Supreme Court specifically upheld the shopping credit structure that had been approved by the Commission, which included the shopping credit caps. The shopping credit caps impact fewer than half of the Companies' tariffs, and have much less impact today due to the shopping credit adder being approved, which increased the shopping credits for customers and suppliers across the board. Further, eliminating the shopping credit caps from the program while such caps remain in place for all other shopping customers would be unduly discriminatory against those suppliers and customers engaged in competitive generation transactions outside the program. Removal of the shopping credit caps from the program is not a viable change and should be rejected by the Commission. As a point of clarification, the shopping credit that would apply to customers that chose to participate in the program would be the generation component plus the rate stabilization charge, subject to the shopping credit caps, plus the shopping credit adder amount in the tariffs.

Similarly, use of the price matrix was criticized by several of the same parties. But this is the same price matrix mechanism that the Commission previously approved in both of the Companies' prior competitive bid processes. The concept and mechanics for the price matrix that the Commission approved in the prior cases are the same as proposed in this program. It must be recalled, that this program is occurring in the same time frame as the RSP/RCP, and that the price matrix maintains the same relationship between rate schedules that exists as a part of the Companies' current rate structure. No change is being proposed to that rate structure in this proceeding. The Price Matrix methodology is used to maintain comparability between the product being served to customers under the RSP and the potential product to be served under the program. NOAC argues that suppliers may end up serving only customers with a low generation rate, but with the application of the price matrix, if suppliers bid such that their bid price is lower than the average RSP price, it would be far more reasonable to expect that customers from all classes and rate schedules would elect to participate in the program, keeping the average rate paid to the Supplier equivalent to their bid price.

NOAC, WPS, and Constellation also complain that through the use of the price matrix, suppliers are precluded from specifying a specific price for a specific customer or particular rate schedule. But it must be recalled that suppliers already have the authority under SB 3 to offer any specific price they choose to any customer or group of customers they choose. They have had this right since 2001 and nothing in the program impinges on a supplier's right to sell retail electric generation service at any price to any customer agreeable to taking the service. This program is being offered as an alternative to the choices that suppliers and customers already have, those being

taking service at RSP pricing from their electric utility or purchasing competitive retail electric generation from a CRES provider. The program seeks to use a different approach to pricing that may appeal to customers in addition to other choices already available to them.

NOAC, OCC, Constellation, and WPS, as well as Staff, expressed concern about the amount of time between the bid and when customers would be assigned to a supplier. The program contemplated notifying customers about the program through a bill insert which would be sent out over a month's billing cycles. But contacting customers first does not elongate the time between the bid submission and when the supplier knows what customers they will be serving. Even knowing what the potential level of participation is before the bid, customers will again need to be approached after the price is determined to obtain the final list of participants. Additionally, customer assignment to a supplier and the supplier enrollment process will still need to be conducted resulting in a length of time virtually no different than would occur if the bid process were held before notifying customers. WPS suggests notifying customers all at once with a letter, which would allow a shortening of the time between bid and customer assignment, but it also would substantially increase the administrative costs of the program, an area of concern for OCC, OPAE, IEU, and Staff, as well as the Companies. While the Companies do not believe that the cost of such an approach is cost justified, in order to resolve this proceeding, they would be willing to change the program to send out one letter instead of bill inserts to notify customers of the availability of the program, so long as they are assured of recovery of the costs through a Commission-approved mechanism.

WPS also suggests notifying customers first and asking for those who would participate should the bid result in a power price lower than the RSP. One would expect that the vast majority of customers would respond positively to the chance to pay less for electricity, only to be disappointed and confused when the lower pricing never materializes. Such frustration can only lead to additional calls to the call centers of both the Companies and the Commission by upset customers wondering what happened to the lower prices.

Another point of contention for NOAC, Constellation, OCC, and WPS was the provision in the program allowing customers to switch back to the electric utility after one month of service from the winning bidder, stating that this increases the risk for the supplier. The Companies continue to believe that, given the timing and structure of the proposed competitive bid process, this provision should be retained in this instance due to the unique circumstances under which this program has been proposed.

One other cost saving measure would be to eliminate the need for a third party administrator and in its place have the program overseen by the Companies, OCC, and Staff.

Constellation and WPS opposed the provision of the program related to transmission costs. The Companies proposed that suppliers be responsible for transmission/RTO costs, and that the suppliers transmission rate billed to retail customers be set at the same rate set forth in the Companies' tariffs. WPS and Constellation expressed a desire to be able to include any amount for transmission rate in their charge to customers, which the Companies believe will confuse customers and make a generation pricing apples to apples comparison more difficult. If suppliers



believe that the amount recovered in the Transmission and Ancillary Service Rider is inadequate to cover their liability to MISO, the supplier is able to build the incremental requirement into their generation bid submission. The price of a commodity product consists of the product cost, margin and perceived risk. If under recovery of transmission costs is viewed as an additional risk, supplier's have the opportunity to set their bid accordingly. Conversely, the supplier has the flexibility to reduce their bid price should they feel the Companies' Transmission and Ancillary Service Rider values exceed the supplier's liability to MISO.

The Staff stated that the program was not clear enough as to how suppliers would be remitted the transmission cost. The expectation was that the Companies would pay the amount in the transmission and ancillary service rider associated with the customers taking from the supplier to the supplier on a monthly basis. Any needed details can be worked out between Staff and the Companies as a part of the process undertaken to develop the RFP.

OCC suggests that it would be helpful for consumers to know who the winning suppliers are prior to the customer committing to taking service. The Companies believe this is a reasonable suggestion and would agree to modify the bill insert (or letter if so ordered by the Commission) to set forth the names of all winning suppliers on the bill insert.

OPAE requests that PIP customers be permitted to participate in the program for standard service, reasoning that anything that reduces the PIP customer bill is desirable. The program excluded PIP customers from participation based on the belief that shopping by PIP customers could only be accomplished through aggregation by the

Ohio Department of Development. If this is not the case, and the ODOD agrees to the participation of PIP customers and the Commission deems such participation both permissible and lawful, then the Companies would agree to modify the program as filed to permit the participation of PIP customers.

Staff expressed concern that not enough information is being provided under the program to permit suppliers to bid. The program contemplates providing the suppliers with multiple load profiles and usage information, but the Companies will work with Staff to define what additional information may be needed to assist suppliers in formulating a bid.

IEU suggests alternative means for the Companies to collect the administrative costs incurred in conducting the program including charging the costs to only those customers and suppliers that participate or on a per customer basis given that the costs do not necessarily vary with usage level. The program contemplated that the costs would be collected on a per kWh basis, but the Companies acknowledge the concerns expressed by IEU with regard to high use customers. The Companies do not believe that only those customers and suppliers that participate should bear the cost, since the cost may well be prohibitively high if only a small numbers of customers and suppliers participate. Given the expected level of administrative cost for the program, particularly if the requirement for a third party administrator is eliminated and a bill insert is the methodology to be used to notify customers, the Companies would be willing to accept collecting administrative costs on a per customer basis as an alternative to that originally proposed in the program. The Companies continue to believe that the best

solution to the concern about the level of administrative costs is as much taking steps to minimize those costs as it is the collection methodology to be used.

Both Staff and OCC suggest that a green product should be offered to customers by the Companies, either instead of the proposed program or in addition to the program. The Company in their RSP Remand application in this proceeding committed to working with OCC and Staff to develop a green product to be included in this proceeding, and discussions related to the formulation of such a product for inclusion in this proceeding are underway. The Companies believe the best solution is to offer the competitive bid product for standard service, as originally proposed by the Companies with the modifications suggested in these reply comments to accommodate the concerns of other parties, with a concerted effort to minimize the costs of the competitive bid program, and separately offer a green tariff to customers.

The green product would be established through a separate tariff filing and would be available to all customers. For the cost of 2.5 cents/kWh customers could "green up" electricity in 100 kWh blocks, with a minimum purchase of two blocks. This price would be fixed for the duration of the program. The Companies would make up to at least 150,000 MWhs, or approximately 2% of load, available under this program for the duration of the RSP period, i.e., through the participating customers' December 2008 meter read cycles. No specific competitive bid or request for proposal would be part of this tariff offering so as to expedite making the tariff available to customers and to be assured that it will be offered to customers. Those customers that elect to participate in the green product tariff may participate for the entire period or may discontinue their participation in the program on a meter read date at any time during the program by

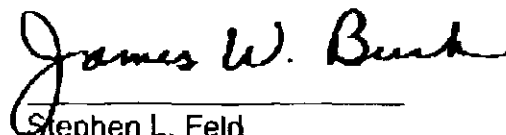
providing notice to the Companies. Additional details would be included in the tariff filing.

The approach of offering both a competitive bid standard service and a green product tariff is most desirable because it provides meets the mandate of the Supreme Court on remand, allows suppliers the opportunity to competitively bid to provide generation service to customers that choose to take it, and means that customers will have additional means to participate in customer choice through the offering of the green product tariff, above and beyond the customers' current choices between the Companies' existing market-based standard service offer and individual offers made by competitive suppliers.

**Conclusion**

The Companies believe that the program as proposed is reasonable and balances the competing interests of the parties, while meeting the requirements of the Supreme Court's remand. However, in an effort to address the concerns of other parties and have the Commission approve the program, the Companies are willing to make the changes set forth hereinabove. The Companies urge the Commission to approve the program as it would exist with those changes.

Respectfully submitted,

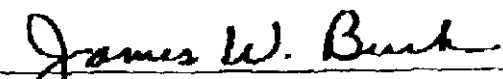


Stephen L. Feld  
Associate General Counsel  
James W. Burk  
Senior Attorney  
FirstEnergy Corp.  
76 South Main Street  
Akron, Ohio 44308  
Phone 330-384-5861  
Fax 330-384-3875  
Email: [felds@firstenergycorp.com](mailto:felds@firstenergycorp.com)  
[burkj@firstenergycorp.com](mailto:burkj@firstenergycorp.com)

Attorneys for  
The Cleveland Electric Illuminating Company  
Ohio Edison Company  
and The Toledo Edison Company

**Certificate of Service**

This is to certify that a copy of the foregoing Reply Comments was served upon the persons at the addresses listed below via US Mail postage prepaid this 29<sup>th</sup> day of January 2007.

  
James W. Burk

Leslie A. Kovack, Senior Attorney  
Joyce Anagnos, Senior Attorney  
420 Madison Avenue, Suite 100  
Toledo, Ohio 43604-1219  
leslie.kovack@ci.toledo.oh.us  
Counsel for Toledo

Sheilah H. McAdams, Law Director  
Marsh & McAdams  
204 West Wayne Street  
Maumee, Ohio 43537  
sheilahmca@aol.com  
Counsel for Maumee

Paul S. Goldberg, Law Director  
Phillip D. Wurster, Asst. Law Dir.  
6800 W. Central Avenue  
Toledo, Ohio 43617-1135  
pgoldberg@ci.oregon.oh.us  
Counsel for Oregon

Peter D. Gwyn, Law Director  
110 W. Second St.  
Perrysburg, Ohio 43551  
pgwyn@toledolink.com  
Counsel for Perrysburg

Lance M. Kerffer  
Assistant Prosecuting Attorney  
711 Adams Street, 2<sup>nd</sup> Floor  
Toledo, Ohio 43624-1680  
lkeiffer@co.lucas.oh.us  
Counsel for Lucas County

Brian J. Ballenger, Law Director  
Ballenger & Moore  
3401 Woodville Rd., Suite C  
Toledo, Ohio 43619  
ballengerlawbjb@sbcglobal.net  
Counsel for Northwood

James E. Moan, Law Director  
4930 Holland-Sylvania Road  
Sylvania, Ohio 43560  
jimmoan@hotmail.com  
Counsel for Sylvania

Paul Skaff, Assistant Village Solicitor  
Leatherman, Witzler, Dombey & Hart  
353 Elm Street  
Perrysburg, Ohio 43551  
paulskaff@justice.com  
Counsel for Holland

Thomas R. Hays, Solicitor  
3315 Centennial Road, Suite A-2  
Sylvania, Ohio 43560  
hayslaw@buckeye-express.com  
Counsel for Lake Township

David C. Rinebolt  
Ohio Partners for Affordable Energy  
231 W. Lima Street  
P.O. Box 1793  
Findlay, Ohio 45840  
drinebolt@aol.com

Colleen L. Mooney  
Ohio Partners for Affordable Energy  
1431 Mulford Road  
Columbus, Ohio 43212  
cmooney2@columbus.rr.com

Marc Dann  
Duane W. Luckey  
Thomas W. McNamee  
William L. Wright  
Attorney General's Office  
Public Utilities Section  
108 E. Broad Street, 9<sup>th</sup> Floor  
Columbus, Ohio 43215  
Thomas.mcnamee@puc.state.oh.us  
william.wright@puc.state.oh.us

Kimberly W. Bojko  
Ann M. Hotz  
Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
bojko@occ.state.oh.us  
hotz@occ.state.oh.us

David Boehm  
Michael L. Kurtz  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
dboehm@bklawfirm.com  
mkurtz@BKLawfirm.com  
Counsel for Ohio Energy Group

Samuel C. Randazzo  
Lisa G. McAlister  
Daniel J. Neilsen  
Joseph M. Clark  
McNees, Wallace & Nurick  
Fifth Third Center  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, OH 43215-4228  
srandazzo@mwncmh.com  
lmcaster@mwncmh.com  
dneilsen@mwncmh.com

M. Howard Petricoff  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
Attorneys for WPS Energy Services, Inc.  
Attorneys for Constellation NewEnergy, Inc.

Teresa Ringenbach  
Company Representative  
WPS Energy Services, Inc.  
600 Superior Avenue., Suite 1300  
Cleveland, Ohio 44114  
tlringenbach@wpsenergy.com

David I. Fein  
Senior Regulatory Counsel  
Constellation NewEnergy, Inc.  
550 West Washington Blvd., Suite 300  
Chicago, Illinois 60661

Terry Harvill  
Company Representative  
Constellation NewEnergy, Inc.  
1000 Town Center, Suite 2350  
Southfield, MI 48075