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Special Delivery

February 15, 2007

Public Utilities Commission of Ohio
Attention Docketing Division, Floor 13
180 East Broad Street
Columbus, Ohio 43215-3793

Greetings:

On behalf of Elyria Foundry, I enclose the original and required copies for filing of its Application for Rehearing, with its Memorandum in Support thereto attached, for Case No. 05-796-EL-CSS, In the Matter of the Complaint of Elyria Foundry Company v. Ohio Edison Company.

Please contact the undersigned as necessary.

Regards

Craig I. Smith
Attorney For Elyria Foundry

FILE

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

APPLICATION FOR REHEARING
BY ELYRIA FOUNDRY COMPANY

Elyria Foundry Company]"Elyria Foundry"] applies for rehearing, pursuant to ORC Sec. 4903.10 and Ohio Administrative Code Section 4901-1-35, from the Opinion and Order, dated January 17, 2007, ["Opinion and Order"] by the Public Utilities Commission of Ohio ["Commission"] in this proceeding to assert the following grounds that the Opinion and Order is unlawful or unreasonable, in that:

GROUNDS FOR REHEARING

1. The Commission erred by not finding that ORC Sec. 4909.18 required Ohio Edison to apply for and receive approval of its "2001 Policy" used to establish or modify a regulation or practice affecting Rider 75 rates. [O&O at 5]

2. The Commission erred by not finding that ORC Sec. 4905.30 required Ohio Edison to file as a schedule its "2001 Policy" as it contains the rules and regulations affecting Rider 75 rates. [O&O at 6]

3. The Commission erred by not finding that Ohio Edison's use of a single strike price resulted in undue or unreasonable prejudice or disadvantage under ORC Sec. 4905.35 because Elyria Foundry received the same service priority at higher rates

for the same risks of interruptions as paid for by lower priced interruptible customers. [O&O at 7]

4. The Commission erred by finding that different strike prices applied to customers with different rate structures could be viewed as prejudicial. [O&O at 7]

5. The Commission erred by finding that a single strike price, based on Ohio Edison's incremental costs and resources, is reasonable in light of the wide variety of billing determinants and circumstances. [O&O at 7]

6. The Commission erred by finding that insufficient evidence was presented to convince it that Ohio Edison's approach in this circumstance is unlawful or discriminatory. [O&O at 7]

7. The Commission erred by rejecting Elyria Foundry's definition of incremental expenses upon which to notice economic interruptions under Rider 75 at page 6. [O&O at 8-10]

8. The Commission erred by rejecting Elyria Foundry's analysis to establish that Ohio Edison unreasonably and unlawfully noticed interruptions for a minimum of 623 hours during 2005, and caused a minimum of an additional $94,555 in replacement power costs. [O&O at 8-10]

9. The Commission erred by not finding that Ohio Edison's incremental expense used as a basis for calling economic interruptions under Rider 75 at page 6 should have been determined before FES made competitive market sales. [O&O at 9-10]

10. The Commission erred by rejecting Elyria Foundry's assignment of incremental costs based upon FES' competitive market load being incremental to [coming after] Ohio Edison's retail interruptible load. [O&O at 9-10]

11. The Commission erred by finding the purchase power adjustment formula at Exhibit A of the PSA were the true measure of Ohio Edison's incremental costs. [O&O at 9-10]

12. The Commission erred when finding under its Interruptible Guidelines that Ohio Edison may include all of the obligations of FES, including nearly 3,000 MW of competitive retail sales within MISO, when determining its incremental cost of serving interruptible retail customers, because the Guidelines intended to provide low costs energy options to help large consumers compete in the global market. [O&O at 9-10]

13. The Commission erred when relying on its Interruptible Guidelines to include all of the obligations of FES when Ohio Edison determines its anticipated incremental cost of serving interruptible customers because the term "firm electric service customers" at Guideline 5 (a) refers to Ohio Edison's firm service; Ohio

Edison, not FES, has the obligation to maintain system integrity and service to firm customers as the provider of last resort services; Elyria Foundry receives service from Ohio Edison, not from FES; and Elyria Foundry never assumed the risks of service interruptions to enable FES to sell approximately 3,000 MW of competitive generation when its costs exceeded forecasted prices, or resulted in less planned for resources than actual loads. [O&O at 9-10]

14. The Commission erred in relying on its Interruptible Guidelines (used to approve Rider 75) for the conclusion that the anticipated incremental expense of Ohio Edison to supply incremental service should include competitive market loads [non-PSA] expenses of FES. [O&O at 9-10]

15. The Commission erred by reversing or modifying its approval under the Interruptible Guidelines that the term "firm electric service customers", as used in CEI Rider 11, and Toledo Edison Rider 11, mean those customers within their service territories receiving retail electric services from those companies not subject to interruptions except for system emergencies. [O&O at 9-10]

16. The Commission erred by not finding that FES' incremental costs for competitive services were streamed through to retail interruptible customers because Ohio Edison failed to allocate expenses [costs] of purchased power as required by the PSA adjustment formula of Exhibit A before it determined whether those costs (after being allocated to Ohio Edison) exceeded the incremental revenues of Elyria Foundry upon which to notice economic interruptions under Rider 75 at page 6. [O&O at 8-10]

17. The Commission erred by not finding that FES' incremental costs for competitive services were streamed through to retail interruptible customers, because the full cost of energy purchased by FES was used as the proxy for anticipated incremental expenses, without Ohio Edison using the allocation procedure under the purchase power adjustment formula of Exhibit A of the PSA, before determining whether those costs exceeded the incremental revenues of Elyria Foundry prior to noticing economic interruptions under Rider 75 at page 6. [O&O at 8-10]

18. The Commission erred in finding that Ohio Edison noticed economic interruptions after allocating its incremental costs during 2005 under the purchase power adjustment formula of Exhibit A of the PSA. [O&O at 9-10]

19. The Commission erred in its Opinion and Order by failing to make the required allocation of those costs before finding that Ohio Edison reasonably and lawfully noticed economic interruptions of Elyria Foundry during 2005. [O&O at 8-10]

20. The Commission erred by approving Ohio Edison's definition of the term "anticipated incremental expense" by using at its proxy the unallocated "cost of energy obtained or generated by the Company on a best efforts basis at the lowest

cost after all other prior obligations are met" under Rider 75 at page 7. [O&O at 9]

21. The Commission erred when finding that $450,000 in savings established compliance with and reasonable administration of Rider 75 by Ohio Edison since the amount of savings did not determine whether the incremental expense to supply interruptible service exceeded the incremental expense from Elyria Foundry for rendering such service, and, in fact, Elyria Foundry was entitled to $550,000 without excessively called for economic interruptions. [O&O at 10]

22. The Commission erred in finding that Elyria Foundry had 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. [O&O at 11]

Wherefore, the Commission should abrogate or modify its Opinion and Order, pursuant to ORC Sec. 4903.10 (B), consistent with the grounds raised for rehearing by Elyria Foundry. The Memorandum for Rehearing, attached hereto, sets forth reasons for granting this Application for Rehearing.

Submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Application for Rehearing by Elyria Foundry Company was served on February 15th 2007 upon Kathy J. Kolich, Esq, FirstEnergy Service Company, counsel for Ohio Edison, by first class mail, postage prepaid, addressed to 76 South Main Street, Akron, Ohio 44308.

Craig I. Smith

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

MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING BY ELYRIA FOUNDRY COMPANY

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Ohio Edison Company

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MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING BY ELYRIA FOUNDRY COMPANY

In support of its Application for Rehearing, Elyria Foundry Company ["Elyria Foundry"] presents reasons for the Commission to modify or abrogate its Opinion and Order ["O&O"].

STATEMENT OF FACTS

In this proceeding, FirstEnergy Corporation ["FirstEnergy" or "FE"] referred collectively to the overall organization, policies, parent, and affiliates, including Ohio Edison and FirstEnergy Solutions ["FES"], whether regulated or unregulated by the Commission. Ohio Edison is the regulated electric distribution company providing service to Elyria Foundry under firm Rate 23 and Rider 75 for interruptible service.

Toledo Edison and CEI are also affiliated electric distribution companies of FirstEnergy in Ohio. These affiliate distribution companies are referred to as the Ohio operating companies.

FirstEnergy Solutions is an affiliate of FirstEnergy. As a FERC licensed power marketer, FES sells full power requirements under a FERC approved Purchase Sales Agreement ["PSA"] to its affiliate Ohio Edison, and the other affiliated FE operating companies within MISO. FES also makes non-PSA competitive market sales as well as unaffiliated wholesale sales. [See Tr. II at 89]

Since Ohio restructuring began under ORC Chapter 4928, Ohio Edison, as well as FE's other Ohio operating companies, became "wires companies". During 2005 the Ohio operating companies purchased all of their electricity requirements from the affiliate FirstEnergy Solutions under the FERC approved PSA.

FES provides PSA generation from plants formerly owned or controlled by Ohio Edison and the other operating companies. FES also purchases power in the wholesale market when its generation is insufficient to meet customer demands. [OE Ex. 2 at 4-7]

The price of generation provided by FES to Ohio Edison and the other operating companies is fixed by PSA Exhibit A, parts 1 and 2. Additionally, the formula of Exhibit A, at part 3, allocates FES' purchased power costs to Ohio Edison, each of the other operating companies, and to FES itself. Ohio Edison is allocated approximately 45% of those purchase power costs. [EF Ex. 5 at AJY-7]

Using the power it obtains from the generation it owns and/or controls, plus the power it purchases, FES makes sales that are in addition to those required under the PSA. FES sells large amounts of power to competitive market loads, as well as wholesale loads. FES corporate obligations in the MISO area for the June or July summer peak are an estimated 12,500 MW. Its PSA obligations totaled 9,500 MW, which included power requirements for Ohio Edison to serve its remaining wholesale obligations in its name. The remaining 3,000 MW of non-PSA obligations is associated with FES' competitive market load in the MISO footprint. [Tr. II at 24-30]

FES uses a single portfolio to manage its energy resources within its MISO control area. FES adds its competitive obligations to the PSA requirements forecast. [Tr. II at 41-42] FES considers its resources in the MISO area to include all of FES generation, long-term power purchases, and the retail interruptible load of the operating companies. FES is obligated in the MISO area to supply its competitive market loads and its PSA requirements (including the remaining wholesale requirements of the operating companies, and the retail interruptible loads of Ohio Edison and the other Ohio operating companies). [OE Ex. 2 at 9, CJI-2 (A-J)]

Rider 75 requires Elyria Foundry to fully interrupt its non-firm service during system operating emergencies within ten minutes of notice from Ohio Edison. Buy-through power is not available during system emergencies. In keeping with standard utility practice, Elyria Foundry receives a reduced rate in exchange for its acceptance of interruptible service.

In addition to interruptions for operating emergencies, Ohio Edison may call/notice economic interruptions under Rider 75 whenever the incremental revenue received from Elyria Foundry is less than the anticipated expense to supply Elyria Foundry with the interruptible energy for the hours of the requested interruption. [OE Ex. 1, SEO-3 at 6] Noticed economic interruptions require Elyria Foundry to curtail its interruptible load or arrange for the purchase of replacement electricity to buy-through the interruption. [OE Ex. 1, SEO-3 at 7-8] If an economic interruption is called/noticed, buy-through prices charged are established by Ohio Edison. [OE Ex. 1, SEO-3 at 7] Buy-through rates for 2005 are part of the record in this case. [See OE Ex. 2, CJI-4; EF Ex. 3, AJY-6]

FES followed the prerequisites of the Utility Services Economic Interruption Policy as of July 24, 2001 ["2001 Policy"] to notice economic interruptions during 2005 of Elyria Foundry. [Tr. II at 64-69] The 2001 Policy calls for economic interruptions whenever FES' incremental, out-of-pocket, costs to supply exceed $65/MWh, and current or expected load obligations exceed available planned resources. Under the policy, interruptions are called at the same time, for the same duration, at the same replacement power costs, for all economically interruptible customers served under contract or tariff of Ohio Edison, CEI, and Toledo Edison. FES must anticipate high prices for at least three hours before interrupting, and follow all contract and tariff restrictions. Surplus power resulting from the economic interruptions is sold on an hourly basis into the wholesale power market. [OE Ex. 1, SEO-4]

During 2005, Elyria Foundry purchased replacement power during the 44 days that economic interruptions were called [ten times the historic average], for a total of 642 hours, in order to avoid shutting down its six-days-a-week operations. Many economic interruptions lasted 16 hours or more, and more interruptions occurred during January and December 2005, than the summer months. [EF Ex. 2, AJY-1; EF Ex. 1 at 5-6; Tr. Vol. I at 31-32] Elyria Foundry incurred at a minimum $94,555 in additional electric expenses to buy-through 623 hours of unreasonable, unjust and unlawful economic interruptions. [EF Ex. 3 at 33; EF Ex 5 at 36-37]

GROUNDS FOR REHEARING

1. The Commission erred by not finding that ORC Sec. 4909.18 required Ohio Edison to apply for and receive approval of its "2001 Policy" used to establish or modify a regulation or practice affecting Rider 75 rates. [O&O at 5]

2. The Commission erred by not finding that ORC Sec. 4905.30 required Ohio Edison to file as a schedule its "2001 Policy" as it contains the rules and regulations affecting Rider 75 rates. [O&O at 6]

The 2001 Policy used to implement Rider 75 was not approved under ORC Sec. 4909.18, or filed for public inspection under ORC Sec. 4905.30. ORC Sec. 4909.18 requires that:

> "Any public utility desiring to establish any rate *** or to modify, amend, [or] change *** any regulation or practice affecting the same, shall file a written application with the public utilities commission***."

Ohio law requires Ohio Edison to file an application to establish or modify any regulation or practice affecting the rates charged Elyria Foundry. Ohio Edison is legally required to print and file with the Commission all rules and regulations affecting Rider 75 rates for use and information of the public. [ORC Sec. 4905.30]

The Commission determined the 2001 Policy merely documented Ohio Edison's internal operational standards of an already approved interruptible program set forth in Ohio Edison's tariffs. The Commission found a "tariff amendment application under Section 4909.18, Revised Code, was unnecessary." [O&O at 5]

The Commission further determined that matters of the 2001 Policy "were not 'rules and regulations' affecting rates" and, therefore, ORC Sec. 4905.30 did not apply. According to the Commission, the 2001 Policy merely documented the internal means that Ohio Edison used to implement its approved tariffs. [O&O at 6]

The legal standard for filing and Commission approval is whether the regulation, rule, or practice affected any rate. The 2001 Policy affected Elyria Foundry's rates by setting forth the prerequisites and practices for noticing economic interruptions during which higher priced replacement power costs (greater than the incremental revenue of 5.135 cents per kWh) was the result. Rider 75's published rates no longer applied during an economic interruption. The 2001 Policy established the rules, regulations and practices affecting when the published rates of Rider 75 no longer applied. The 2003 modification, amendment or change to the rules, regulations and practices of the 2001 Policy to lower the strike price further affected the rates of Rider 75 by resulting in higher overall rates/costs and more frequent interruptions.

The 2001 Policy substantively supplanted Rider 75 terms and conditions by setting incremental revenues at $65/MWh for all interruptible program participants of the Ohio operating companies. The policy interrupted all customers at the same time, for the same duration, and at the same strike price to create a 300 MW pool of interruptible load served by higher priced replacement power. The 2001 Policy's prerequisites and practices sharply contrast to the language of Rider 75 that only addresses the relationship between the rates (revenues) of individual customers and the incremental expense of supply to Ohio Edison.

It is uncontested that the strike price in the 2001 Policy was changed from $85 per MWh to $65 per MWh. [OE Ex. 1, SEO-4] Lowering the strike price clearly changed the rate level at which economic interruptions were called. This change in the rules, regulations and practices affecting Rider 75 rates significantly impacted when and how often economic interruptions were called, and the rates paid by Elyria Foundry during those economic interruptions —almost half of the economic interruptions in 2005 would not have been called if the $85/MWh (8.5 cents/kWh) strike price was in effect. [EF Ex. 2, AJY-1]

The preamble to the 2001 Policy further established the intent for a stand-alone document separate and apart from Rider 75. The 2001 Policy did not merely document

Ohio Edison's internal operational standards or internal means to implement its approved tariffs. Ohio Edison actually reserved the right:

> *** on any given day *** without notice, to depart from the policy set forth below and interrupt to the full extent permitted by a customer's contract or tariff. [OE Ex. 1, SEO-4]

The 2001 Policy established or modified the rules, regulations or practices affecting Rider 75 rates, as well as those of CEI's Rider 8 and Toledo Edison's Rider 11, without Commission approval. [EF Ex. 2 at 7-8] The 2001 Policy completely negated the approved language of CEI Rider 8 and Toledo Edison Rider 11 establishing for interruptible customers the hierarchy of service coming right after firm retail customers. [EF Ex. 2 at 12-13]

The 2001 Policy remained hidden by Ohio Edison (and the other operating companies) from Elyria Foundry because it was never filed for public inspection under ORC Sec. 4905.30.

The Commission should grant rehearing to find that Ohio Edison under ORC Sec 4909.18 and Sec. 4905.30 unlawfully used its 2001 Policy during 2005. An application for approval by Ohio Edison would have asserted Commission jurisdiction to determine whether its terms were just and reasonable. An application and hearing on the 2001 Policy would have given the Commission and customers an opportunity to eliminate the discrepancies between the 2001 Policy and the approved tariffs/contracts. Commission review and approval would have made the 2001 Policy a lawful and reasonable rule, regulation or practice affecting Rider 75 rates in a publicly available schedule.

3. The Commission erred by not finding that Ohio Edison's use of a single strike price resulted in undue or unreasonable prejudice or disadvantage under ORC Sec. 4905.35 because Elyria Foundry received the same service priority at higher rates for the same risks of interruptions as paid for by lower priced interruptible customers. [O&O at 7]

4. The Commission erred by finding that different strike prices applied to customers with different rate structures could be viewed as prejudicial. [O&O at 7]

5. The Commission erred by finding that a single strike price, based on Ohio Edison's incremental costs and resources, is reasonable in light of the wide variety of billing determinants and circumstances. [O&O at 7]

6. The Commission erred by finding that insufficient evidence was presented to convince it that Ohio Edison's approach in this circumstance is unlawful or discriminatory. [O&O at 7]

The Commission found that a single strike price based on Ohio Edison's incremental costs and resources appears reasonable because of the wide variance in billing determinants and circumstances among customers. [O&O at 6 and 7]

ORC Sec. 4905.35 prohibits Ohio Edison from subjecting Elyria Foundry to "undue or unreasonable prejudice or disadvantage."

Elyria Foundry raised this issue in the context of the noticing provision under Rider 75. The notice provision sets the threshold for calling economic interruptions whenever "the incremental revenue to be received from the customer is less than the anticipated incremental expense to supply" that incremental energy. [OE Ex. 1, SEO-3 at pg. 6]

The Commission erred first in its analysis of the issue. Ohio Edison's interruptible Riders 73, 74, and 75 require a customer by customer comparison of incremental revenue with Ohio Edison's anticipated incremental expense for interruptible supply during hours of potential economic interruption. Incremental revenues may or may not be equal among Ohio Edison's interruptible customers served by each of those riders. For all customers on Riders 74, the incremental on-peak revenues are equal at 6.5 cents per kWh, i.e., all Rider 74 customers get the same rate, no matter the variation in billing determinants or circumstances. For all customers on Rider 75, taking service at 23 and 34.5 kV, the incremental on-peak revenues are equal at 5.135 cents per kWh--once again, these customers get the same rate, no matter the variation in billing determinants or circumstances. Customers on Rider 75 taking service at higher voltages have lower incremental rates/revenues, while customers taking service on that rider at lower voltages have higher incremental rates/revenues. Customers on Rider 73 have different incremental rates/revenues because for each customer the rates paid depend upon load factor. Incremental revenues for Ohio Edison interruptible customers vary from somewhere in the 3-cent range up to 6.5 cents per kWh. The incremental revenue for Elyria Foundry is 5.135 cents/kWh. [Tr. I at 168-172]

Unequal incremental revenues may occur when the pricing of interruptible service considers such factors as avoided costs, service priority, historic interruptions, customer operating characteristics, and risks associated with interruptions. *[In Re Interruptible Guidelines, Case No. 95-866-El-UNC, Finding and Order, dated February 15, 1996 at pg. 2-3, par. 5.]* The Commission Guidelines called for a review of rates to ensure similarly situated customers are not treated discriminatorily. *[id at pg. 6-7, par. 12]* Finally, the Guidelines require that the interruptible tariff specify with:

> *** as much detail as is reasonably possible, the conditions and circumstances under which the customers service may be interrupted and the priority of the service provided therein." *[In Re Interruptible Guidelines, supra, Entry on Rehearing, dated April 11, 1996, Appendix A., at par. 1]*

The Commission approved Riders 73, 74, and 75 for Ohio Edison interruptible service under its Guidelines. Contrary to Rider 75 language related to the incremental revenue of an individual customer, Ohio Edison used the 2001 Policy (without Commission approval) to change its Riders by noticing economic interruptions based only on a uniformly applied strike price of 6.5 cents/kWh. CEI and Toledo Edison did likewise.

Interruptible customers of Ohio Edison with incremental revenues in the range of 3-cents/kWh gained an advantage by nearly a factor of two with the same interruptible risks as Elyria Foundry. Rider 75 customers paying incremental revenues in the low 5 cents/kWh range are entitled to a higher service priority, with less economic interruptions and lower buy-through costs, than customers receiving interruptible service at lower incremental rates in the 3 cents/kWh range.

ORC Sec. 4905.35 prohibits undue or unreasonable prejudice or disadvantage. This section prohibits different rates being charged for the utility performing "a like and contemporaneous service under substantially the same circumstances and conditions." *Ohio Consumers' Counsel v. Pub. Util. Comm., 109 Ohio St. 3d 328 at 336, 2006-Ohio-2010* The single strike price causes Ohio Edison to provide economically interruptible power under substantially the same circumstances and conditions, but at different prices for assuming the same interruptible risks. The spread between customers with the lowest and highest incremental revenues is huge. A single strike price unduly or unreasonably prejudices or disadvantages Elyria Foundry. A like and contemporaneous service under substantially the same circumstances and conditions is received at much higher incremental rates.

The Commission determined that Ohio Edison's use of a single strike price was reasonable "in light of the wide variation of billing determinants and circumstances of individual customers." [O&O at 7] The Commission erred in not recognizing that all Rider 75 customers are charged the same incremental rate (with the only difference related to voltage level), without regard to the individual billing determinants or circumstances. Likewise, Rider 74 customers were all charged a single incremental rate, no matter what the billing determinants or circumstances. A single strike is inappropriate.

Elyria Foundry seeks rehearing for the Commission to abrogate or modify its Opinion and Order. Elyria Foundry should have received incremental rates at the same low levels as other Ohio Edison customers receiving interruptible service under substantially the same circumstances in conformance with ORC Sec 4905.35.

7. The Commission erred by rejecting Elyria Foundry's definition of incremental expenses upon which to notice economic interruptions under Rider 75 at page 6. [O&O at 8-10]

8. The Commission erred by rejecting Elyria Foundry's analysis to establish that Ohio Edison unreasonably and unlawfully noticed interruptions for a minimum of 623 hours during 2005, and caused a minimum of an additional $94,555 in replacement power costs. [O&O at 8-10]

9. The Commission erred by not finding that Ohio Edison's incremental expense used as a basis for calling economic interruptions under Rider 75 at page 6 should have been determined before FES made competitive market sales. [O&O at 9-10]

10. The Commission erred by rejecting Elyria Foundry's assignment of incremental

***costs* based upon FES' *competitive market* load being *incremental to* [*coming after*] Ohio Edison's retail interruptible load. [O&O at 9-10]**

11. The Commission erred by finding the purchase power adjustment formula at Exhibit A of the PSA were the true measure of Ohio Edison's incremental costs. [O&O at 9-10]

Rider 75 requires Elyria Foundry to fully interrupt its non-firm service during system operating emergencies within ten minutes of notice from Ohio Edison. Buy-through power is not available during system emergencies.

Ohio Edison may notice economic interruptions under Rider 75 "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." [OE Ex. 1 at SEO-3 at 6]

Noticed economic interruptions require Elyria Foundry to curtail load or arrange for the purchase of replacement electricity to buy-through the interruption. [OE Ex. 1, SEO-3 at 7-8]

The Ohio operating companies purchased all of their electric requirements during 2005 under the FERC approved PSA on a firm basis. [OE Ex. 2, CJI-1 at 2, paragraph II-A] This firm obligation included the requirements of interruptible customers such as

Elyria Foundry.

FES also makes non-PSA sales from its portfolio of generation and purchase power to competitive market customers and unaffiliated power marketers within MISO. [See Tr. II at 89]

The PSA fixes the generation prices for service from FES to Ohio Edison and the other operating companies under Exhibit A, parts 1 and 2. The formula of Exhibit A, at part 3, allocates total purchased power costs into the control area between Ohio Edison, the other operating companies receiving PSA, and FES unregulated [non-PSA] load. [OE Ex. 2, CJI-1 at 10]

FES' total obligations in MISO for the June or July summer peak periods are estimated at 12,500 MW. PSA obligations (Ohio Edison, Toledo Edison, and CEI) totaled 9,500 MW, which included Ohio Edison's remaining wholesale obligations. Non-PSA obligations of FES for competitive market load and wholesale sales totaled 3,000 MW. [Tr. II at 24-30]

FES manages its energy resources within its control area of MISO as a single portfolio. FES adds its competitive obligations to the PSA requirements forecast. [Tr. II at 41-42] Resources of the MISO portfolio include all of FES generation, long-term power purchases, and the interruptible buy-through load. FES obligations in the MISO area are for competitive market loads, and its PSA requirements (that include Ohio Edison's wholesale requirements, and interruptible loads of the Ohio operating companies). [OE Ex. 2 at 9, CJI-2 (A-J)]

The Commission concluded that Rider 75 does not specifically define "incremental expense to supply". [O&O at 8]

The Commission found that the "anticipated incremental expense to supply the interruptible energy" during the interrupted hours could be determined by the purchased power adjustment of the PSA pricing formula. [O&O at 9] The Purchase Power Adjustment Formula [OE Ex. 1, CJI-1 at 10] charged Ohio Edison for its monthly-allocated share of FES' total purchased power costs. Ohio Edison's monthly allocation percentage is based upon Ohio Edison's monthly supply requirements divided by FES' total control area deliveries during that month. [O&O at 8]

On a monthly basis during 2005, Ohio Edison was only responsible for 44.08% to 46.11% of those PSA purchase power costs. [EF Ex. 5 at AJY-7]

The Commission unlawfully and unreasonably rejected Elyria Foundry's assignment of incremental costs that was based upon the premise that FES' competitive market load was incremental to [came after] Ohio Edison's retail interruptible load. As a result, Ohio Edison assigned higher costs to its regulated customers than FES assigned to its competitive market by ignoring the clear language in the PSA that the competitive market sales that FES made outside of the PSA were "at its own risk". [OE Ex. 2, CJI-1 at 3, paragraph III-C] Simply, Ohio Edison used economic interruptions of retail customers to lower FES' cost to supply its competitive market customers.

The 2001 Policy voided the protections of the noticing provision of Rider 75 at pg. 6 where incremental cost for regulated interruptible load was priced right after regulated firm load from 1996 (when Rider 75 was first implemented) until five years later (when the 2001 Policy was written). In the 1996-2001 timeframe the regulated firm load had consisted of both Ohio Edison's retail load as well as its FERC wholesale load—it did not include competitive market sales.

Both the PSA and the 2001 Policy (as well as the separation of regulated and unregulated activities) came well after the establishment of the implementation language of Rider 75. It is unlawful and unreasonable to define the terms "incremental expenses" for Rider 75 based upon parameters and documents that were developed five years after that rider went into effect. The 2001 Policy used FES' highest system incremental costs to subsidize FES' "at risk" competitive market loads, and, as discussed *supra*, streamed FES' incremental costs for competitive services through to retail interruptible customers.

Elyria Foundry's expert Anthony Yankel defined "incremental expense to supply" per Rider 75 as was the original intent of Rider 75, which remained unchanged until the 2001 Policy. Mr. Yankel defined "incremental expense to supply" as the lowest additional cost incurred to supply retail interruptible customers after the lowest possible costs were assigned to firm retail customers. [EF Ex. 2, at 6]

Mr. Yankel quantified the impact on Elyria Foundry of Ohio Edison assigning costs to its retail customers after FES provided its customers with up to 3,000 MW of competitive market load. Ohio Edison interrupted retail customers for 642 hours during 2005. Under Mr. Yankel's definition, the lawful and reasonable number of interruptions noticed under Rider 75 is a maximum of only 19 hours. At a minimum Elyria Foundry incurred $94,555 in unreasonable or unlawful charges. [EF Ex. 2 at 32-33]

The Commission erred in finding that a true measure of Ohio Edison's incremental expense for purposes of Rider 75 is the purchase power adjustment formula of PSA Exhibit A. The PSA does not define the term incremental expense. It does not specifically assign hourly "incremental expenses" to Ohio Edison for the high cost hourly purchases incurred by FES. Total monthly expenses were allocated very generally to Ohio Edison on a total monthly energy basis through the PSA. [EF Ex. 5 at 8-9] Hourly or even daily "incremental" expense for the last block of costs were not contextually or mathematically defined by Exhibit A of the PSA upon which to interrupt retail interruptible customers under Rider 75.

For these reasons Elyria Foundry seeks rehearing for the Commission to abrogate or modify its Opinion and Order to calculate the "incremental expenses" for Rider 75 after removal of the highest costs associated with FES' competitive market load. Removal of such costs would disallow 623 hours of economic interruptions during 2005. The incremental costs associated with Rider 75 customers should consist of the "increment" of costs above that required to meet Ohio Edison's firm load requirements, but below FES' competitive market costs.

12. The Commission erred when finding under its Interruptible Guidelines that Ohio Edison may include all of the obligations of FES, including nearly 3,000 MW of competitive retail sales within MISO, when determining its incremental cost of

serving interruptible retail customers, because the Guidelines intended to provide low costs energy options to help large consumers compete in the global market. [O&O at 9-10]

13. The Commission erred when relying on its Interruptible Guidelines to include all of the obligations of FES when Ohio Edison determines its anticipated incremental cost of serving interruptible customers because the term "firm electric service customers" at Guideline 5 (a) refers to Ohio Edison's firm service; Ohio Edison, not FES, has the obligation to maintain system integrity and service to firm customers as the provider of last resort services; Elyria Foundry receives service from Ohio Edison, not from FES; and Elyria Foundry never assumed the risks of service interruptions to enable FES to sell approximately 3,000 MW of competitive generation when its costs exceeded forecasted prices, or resulted in less planned for resources than actual loads. [O&O at 9-10]

14. The Commission erred in relying on its Interruptible Guidelines (used to approve Rider 75) for the conclusion that the anticipated incremental expense of Ohio Edison to supply incremental service should include competitive market loads [non-PSA] expenses of FES. [O&O at 9-10]

15. The Commission erred by reversing or modifying its approval under the

Interruptible Guidelines that the term "firm electric service customers", as used in CEI Rider 11, and Toledo Edison Rider 11, mean those customers within their service territories receiving retail electric services from those companies not subject to interruptions except for system emergencies. [O&O at 9-10]

Riders 73, 74, and 75 of Ohio Edison were approved under the Guidelines. *[In Re Interruptible Guidelines, Case No. 95-866-EL-UNC, Entry on Rehearing, dated April 11, 1996.]*. The Guidelines generally intended for Rider 75 (as well as other tariffs and special contract provisions) to provide increased competitive options for Ohio's businesses without unduly harming the interests of utility shareholders or ratepayers. *[In Re Interruptible Guidelines, supra, Entry on Rehearing, dated April 11, 1996, at pg. 1, par. 1]* The guidelines provided options for avoiding interruptions and guidance on receiving Commission approvals of tariffs and contracts. *[id at pg. 1, par. 2]* The Commission made clear that all jurisdictional electric utilities must offer interruptible service with buy-through options. *[id at pg. 2, par. 7]* Buy-through options are necessary for providing the quality of service that Ohio Edison's largest customers expect and need. *[id at pg. 3, par. 7]*

In this case, the Commission relied on its interruptible electric service Guidelines to distinguish firm from non-firm [interruptible] service upon which to conclude that both Ohio Edison and FirstEnergy Solutions provide firm services with higher service priorities than non-firm Ohio Edison retail service. The Commission concluded that firm and non- firm services are distinctly separated services no matter the provider. Consequently, the Commission erroneously concluded that Ohio Edison's anticipated incremental expense under Rider 75 shall consider all of the:

> ***obligations of FES, including sales that are made by FES outside of the PSA*** [O&O at 9-10]

The part of the Guidelines relied upon by the Commission pertain to replacement electricity, not the determination of anticipated incremental expenses for noticing economic interruptions. Guideline 5(a) calls for the utility to obtain the lowest cost replacement electricity using best efforts, "excluding that obtained for firm electric service customers", for each interruptible service class. *[In Re Interruptible Guidelines, supra, Entry on Rehearing, dated April 11, 1996, at App. A, pg. 3, par. 5]* The Guidelines provide no support for the Commission's decision to give FES' 3,000 MW of competitive market load higher service priority over its affiliate [Ohio Edison] retail interruptible load. The anticipated incremental expenses of Ohio Edison supplying interruptible service should not include FirstEnergy's non-PSA costs. This Commission's holding contradicts its approval of the CEI and Toledo Edison interruptible riders using the Guidelines.

Guideline 5 (a) provides that "firm electric service customers" are the only customer group to receive power at a lower than best efforts pricing offered to retail interruptible customers. CEI's Rider 11 and Toledo Edison's Rider 8, approved by the Commission under the Guidelines, defined "firm electric service customers" as customers within their service territories receiving retail electric service not interruptible except for System Emergencies. [EF Ex. 3 at 12-13] Firm electric service customers of CEI and Toledo Edison receive the same service as Ohio Edison's firm retail customers. However, FES is a FERC licensed power marketer supplying competitive electric service in Ohio. FES is an affiliate separated from Ohio Edison. Elyria Foundry receives service from Ohio Edison under rate schedules approved by the Commission. Elyria Foundry has no legal relationship with FES.

The Commission erred in relying on the Guidelines for determining anticipated incremental expenses for Ohio Edison to supply interruptible energy. Elyria Foundry seeks rehearing for the Commission to modify or abrogate its Opinion and Order by finding that its Interruptible Guidelines do not support giving FES' competitive market load priority over retail interruptible load.

The decision in this case contradicts the Commission's previous interpretation of the Guidelines used when approving the interruptible riders for CEI and Toledo Edison. The decision further contradicted the intent of the Guidelines to provide increased competitive options to Ohio Edison's largest business customers.

16. The Commission erred by not finding that FES' incremental costs for competitive services were streamed through to retail interruptible customers because Ohio Edison failed to allocate expenses [costs] of purchased power as required by the PSA adjustment formula of Exhibit A before it determined whether

those costs (after being allocated to Ohio Edison) exceeded the incremental revenues of Elyria Foundry upon which to notice economic interruptions under Rider 75 at page 6. [O&O at 8-10]

17. The Commission erred by not finding that FES' incremental costs for competitive services were streamed through to retail interruptible customers, because the full cost of energy purchased by FES was used as the proxy for anticipated incremental expenses, without Ohio Edison using the allocation procedure under the purchase power adjustment formula of Exhibit A of the PSA, before determining whether those costs exceeded the incremental revenues of Elyria Foundry prior to noticing economic interruptions under Rider 75 at page 6. [O&O at 8-10]

18. The Commission erred in finding that Ohio Edison noticed economic interruptions after allocating its incremental costs during 2005 under the purchase power adjustment formula of Exhibit A of the PSA. [O&O at 9-10]

19. The Commission erred in its Opinion and Order by failing to make the required allocation of those costs before finding that Ohio Edison reasonably and lawfully noticed economic interruptions of Elyria Foundry during 2005. [O&O at 8-10]

20. The Commission erred by approving Ohio Edison's definition of the term "anticipated incremental expense" by using at its proxy the unallocated "cost of energy obtained or generated by the Company on a best efforts basis at the lowest cost after all other prior obligations are met" under Rider 75 at page 7. [O&O at 9]

These assignments of error assume without accepting as true, that: 1) the 2001 Policy did not have to be filed or approved by the Commission; 2) it was unnecessary to have a priority of service among interruptible customers based upon the incremental revenues each customer paid—hence all customers could be interrupted at the same time, for the same length of time, and offered the same buy-through price; and 3) that the incremental expense to be used to establish the right to call an economic interruption is the highest incremental cost to serve all of FES' load, including all of its competitive market load.

The Commission's Order recognized that:

> "*** 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." [O&O at 4] (Cites deleted, Emphasis added)

Mr. Idle's testimony clearly recognized the need for allocation of purchase power costs, by stating that:

> " ***The price of this purchased power is allocated to Ohio Edison based

on the formula set forth on Exhibit A of the PSA. Generally, the cost of purchased power is allocated to Ohio Edison based on the percentage of all purchased power by FES that was used to serve all Ohio Edison obligations.***." [OE Ex. 2 at 6-7]

Mr. Idle then described how FES decides to call an economic buy-through event without making the necessary allocation. He explained that:

> "*** If it is estimated that FES will be short for 16 hours or more, then FES will purchase firm next day blocks of energy on a bilateral basis, if they are available in the marketplace. If the price of these blocks is $65/MWh or more, then a next day economic buy through event is called." [OE Ex. 2 at 7]

Ohio Edison, according to Mr. Idle, called economic interruptions when FES' purchase price was $65/MWh or greater. However, Ohio Edison never takes into account that its allocated costs are only on the order of 45% of the FES' purchase costs. More specifically, if Elyria Foundry used the last 10 MWh of interruptible energy at a time when FES was purchasing it from the market at a maximum price of $100/MWh, the cost to FES for this last10 MWh of purchase would be $1,000 or $100/MWh. However, the amount that would be allocated to Ohio Edison would only be $450 ($1,000 x 0.45 = $450) or $45 for each of the 10 MWh used by Elyria Foundry.

The record shows that Ohio Edison's monthly allocated percentage of purchase power costs ranged in 2005 from a low of 44.08% to a high of 46.11%. [EF Ex. 2, AJY-7]

However, Ohio Edison implemented Rider 75 without making this approximately

45% allocation. Rider 75 at page 6 only reserves the right for Ohio Edison 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." (Emphasis added) Ohio Edison failed to use allocated costs per the PSA's purchase power adjustment formula to determine its actual "incremental costs". Consequently, Ohio Edison used FES' highest incremental costs and not the incremental expense that Ohio Edison would incur to supply the incremental energy.

Costs were streamed because Ohio Edison used a proxy for the anticipated "incremental expenses" without the allocations required by the purchased power adjustment formula found in Exhibit A of the PSA.

The Commission erred in its Opinion and Order by failing to make the required allocation of those costs before finding that Ohio Edison reasonably and lawfully noticed economic interruptions of Elyria Foundry during 2005. The Opinion and Order treated the incremental cost to serve Elyria Foundry as the full buy-through cost when stating:

> "*** 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.***" [O&O at 9]

The Commission erred by approving Ohio Edison's definition of "anticipated incremental expense" for Rider 75. Ohio Edison defined that term by using as its proxy the unallocated "cost of energy obtained or generated by the Company on a best efforts basis at the lowest cost after all other prior obligations are met". [OE Ex. 1, SEO-3 at 7] Ohio Edison passed off to retail interruptible customers the highest unallocated system costs of FES, including those costs of providing competitive generation services in excess of its PSA requirements.

Proper allocation of costs would have resulted in zero interruptions during 2005. Assuming the highest monthly allocation percentage (even though it is not applied every month) to Ohio Edison of 46.11% [EF Ex.3, AJY-7], the minimum price of purchase power would have to be $141/MWh before the strike price of $65/MWh is reached ($141 x 0.4611 = $65). The maximum purchase price for the FES system in 2005 during economic buy-through events was only $125/MWh (12.5 cents per kWh) on August 4, 2005. [EF Ex. 2, AJY-1] A proper allocation of costs to Ohio Edison would have never resulted in the calling of an economic interruption during 2005 even conceding for sake of argument the use of the 2001 Policy.

Further, assuming use of 46.11% as the maximum allocation factor (even though it is not applied every month), and that Ohio Edison called economic interruptions by following a priority of service, Elyria Foundry would need to buy-though during only seven days instead of the 44 days of called for economic interruptions in 2005. With a priority of service used, Elyria Foundry would have to buy-though or curtail when purchase power prices were $111/MWh or higher because the incremental expense would have met or exceeded Elyria Foundry's $51.35/MWh incremental revenue to Ohio Edison ($111 x 0.4611 = $51.18). The purchase power rate of $111/MWh was exceeded in 2005 on August 3 and 4; September 26; and December 5, 6, 12, and 13. [EF Ex. 2, AJY-1]

For the reasons stated above, Elyria Foundry seeks rehearing to modify or abrogate the Opinion and Order because Ohio Edison failed to properly define the term "anticipated incremental expense" and further failed to follow the PSA allocation procedure when calling an economic interruption as required by the Commission's findings.

21. The Commission erred when finding that $450,000 in savings established compliance with and reasonable administration of Rider 75 by Ohio Edison since the amount of savings did not determine whether the incremental expense to supply interruptible service exceeded the incremental expense from Elyria Foundry for rendering such service, and, in fact, Elyria Foundry was entitled to $550,000 without excessively called for economic interruptions. [O&O at 10]

Ohio Edison noticed 623 hours of unlawful and unreasonable interruptions of Elyria Foundry. The interruptions resulted in Elyria Foundry incurring a minimum of $94,555 in additional electric costs for buy-through electricity to avoid shutting down its casting operations and melt furnaces. Elyria Foundry incurred these buy-through cost because interruptions would result in forever lost production because of its six-day-a-week operations.

The Commission erred by implying that savings achieved demonstrated lawfully and reasonably noticed economic interruptions. The Commission found 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." [O&O at 10]

The Commission may view $450,000 on a $3.0 million electric bill as providing a substantial economic advantage; however, over who. Elyria Foundry (as one of Lorain County's largest employer with 400 high paying jobs and a major taxpayer) uses every dollar of Rider 75 savings to compete for business in a thinly margined industry with competitors within and outside Ohio with much lower base electric costs. During 2005, FirstEnergy Corporation captured for its shareholders a minimum of nearly $100,000 in additional savings rightfully due Elyria Foundry under a properly administered interruptible buy-through program.

Elyria Foundry seeks rehearing in order for the Commission to modify or abrogate its Opinion and Order by applying the terms of Rider 75 at par. 6 instead of relying upon inferences drawn by the level of savings realized by Elyria Foundry.

22. The Commission erred in finding that Elyria Foundry had 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. [O&O at 11]

Elyria Foundry presented evidence and the legal basis for meeting its burden of proof under the required preponderance standard that Ohio Edison unlawfully and unreasonably noticed economic interruptions during 2005 contrary to the noticing provision of Rider 75 at page 6, as approved by the Commission's interruptible guidelines. The Commission erred, as enumerated herein, by finding that Elyria Foundry had 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.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum in Support for Rehearing, by Elyria Foundry Company was served on February 15th 2007 upon Kathy J. Kolich, Esq, FirstEnergy Service Company, counsel for Ohio Edison, by first class mail, postage prepaid, addressed to 76 South Main Street, Akron, Ohio 44308.

Craig I. Smith