

FILE

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To: PUCO Docketing **Date:** February 20, 2007
Firm: **From:** Kathy J. Kolich, Esquire
Fax #: 614/466-0313 **Pages:** 6 (including cover page)
Subject: Re: Case No. 05-796-EL-CSS
Motion to Strike and Memorandum in Support

Comments: Following is the Motion to Strike and Memorandum in Support regarding the above case. The original and the required number of copies will be sent via overnight mail for delivery Wednesday, February 21, 2007. Please call me if you have any questions. Thank you.

**IF YOU DO NOT RECEIVE ALL OF THE PAGES MENTIONED ABOVE,
PLEASE CALL CONFIRMATION NO. 330/384-4580 or 330/384-5801.**

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(21842)

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Technician *[Signature]* Date Processed *2-20-07*



76 South Main Street
Akron, Ohio 44308

Kathy J. Kolich
Senior Attorney

330-384-4580
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***Via Federal Express
and Facsimile (614-466-0313)***

February 20, 2007

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 43215-3793

Dear Ms. Jenkins:

**Re: *Motion to Strike and Memorandum in Support
Elyria Foundry v. Ohio Edison Company
Case No. 05-796-EL-CSS***

Enclosed for filing, please find the original and twelve (12) copies of the *Motion to Strike and Memorandum in Support* regarding the above-referenced case. Please file the enclosed *Motion*, time-stamping the two extras and returning them to me 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,

kag
Enclosures
cc: Parties of Record

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

Elyria Foundry,

Complainant,

v.

Ohio Edison Company,

Respondent.

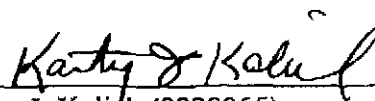
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CASE NO. 05-796-EL-CSS

MOTION TO STRIKE

For the reasons more fully discussed in the attached memorandum in support, Respondent, Ohio Edison Company, respectfully moves for the striking of Complainant's 15th assignment of error and any and all arguments or references pertaining thereto that are set forth in Complainant's Application for Rehearing and supporting memorandum that was filed in this proceeding on February 16, 2007.

Respectfully submitted,


Kathy J. Kolich (0038855)
Senior Attorney
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
Phone: 330-384-4580
Fax: 330-384-3875
On behalf of Ohio Edison Company

MEMORANDUM IN SUPPORT OF MOTION TO STRIKE

On January 17, 2007, the Commission issued its Opinion and Order in this proceeding.

On February 16, 2007, Complainant, Elyria Foundry Company, filed an Application for Rehearing in which it raised 22 assignments of error, including its fifteenth:

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 [The Cleveland Electric Illuminating Company] Rider 11 and [The] Toledo Edison [Company] Rider [8], mean those customers within their service territories receiving retail electric services from those companies not subject to interruption except for system emergencies.

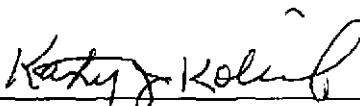
Complainant is a customer of Ohio Edison Company, taking interruptible service under Rider 75 of Ohio Edison Company's Commission-approved tariff, P.U.C.O. No. 11. Complainant is neither a customer of CEI nor Toledo Edison and, therefore, the manner in which the Commission's Order in this proceeding may or may not affect these companies' tariffs is of no concern to Complainant. Moreover, even if it is assumed for the sake of argument that Complainant's 15th assignment of error is valid, Complainant cannot demonstrate any harm. Accordingly, Complainant lacks the standing necessary to raise its 15th assignment of error. *See, State, ex rel. Consumers League of Ohio et al., v. Ratchford, Supt., et al.*, 8 Ohio App.3d 420, 424 (Franklin Co. 1982) ("Standing requires demonstration of a concrete injury in fact, rather than an abstract or suspected injury.")

In light of the foregoing, Respondent, Ohio Edison Company, respectfully requests that the fifteenth assignment of error set forth in Complainant's Application for Rehearing be stricken for lack of standing to raise the issue. Further, Ohio Edison

requests that any references made in its memorandum in support to this assignment of error also be stricken, including without limitation:

- The Sentence, "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]. (EF AFR pp. 21-22.)
- The Sentence, "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. (EF AFR p. 22.)

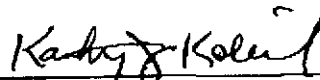
Respectfully submitted,


Kathy J. Kolich (0038855)
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Fax: 330-384-3875
On behalf of Ohio Edison Company

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing Motion to Strike and Supporting Memorandum was served upon Craig I. Smith, Attorney at Law, 2824 Coventry Road, Cleveland, Ohio 44120 by regular U.S. Mail, postage prepaid, this 20th day of February, 2007.

Respectfully submitted,



Kathy J. Kolich (0038855)

Senior Attorney

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On behalf of Ohio Edison Company