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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Complaint of Elyria  
Foundry Company,

Complainant

V.

Case No. 05-796-EL-CSS

Ohio Edison Company

Respondent

MEMORANDUM CONTRA BY ELYRIA FOUNDRY COMPANY  
TO MOTION TO STRIKE GROUNDS FOR REHEARING #15

Ohio Edison filed a motion to strike the following grounds for rehearing: by

Elyria Foundry:

"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]"  
[OE Memo. at 1]

Ohio Edison also moved to strike the following italicized language of the memorandum in support filed by Elyria Foundry:

"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

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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."*

[OE Memo To Strike at 2; App. For Rehearing at pg. 21-22]

Ohio Edison correctly understands that rehearing error #15 dealt with the Commission using the same Guidelines to define differently firm service for Ohio Edison than for both CEI and Toledo Edison.

CEI Rider 11, which contains virtually the same language as Toledo Edison's Rider No. 8, determines incremental costs for interruptible customers after CEI and Toledo Edison provided firm electric service to their retail customers within their service territories.

Under the 2001 Policy [OE Ex. 1, SEO-4] all interruptible customers of Ohio Edison, CEI, and Toledo Edison are treated the same. In this proceeding the Commission read the Ohio Edison interruptible tariff in context of the same Guidelines used for CEI and Toledo Edison to determine incremental costs for interruptible customers after both Ohio Edison's retail customers and FirstEnergy Solutions' customers are provided firm

service. [O&O at 9-10]

Elyria Foundry's ground for rehearing #15 addresses the reversal or modification of the CEI and Toledo Edison riders previously approved by the Commission for the Commission to reach its decision in this case upon reading the very same Guidelines in context of the Ohio Edison interruptible tariff.

The determination of incremental costs under CEI/Toledo Edison riders clearly were reversed or modified because, otherwise, use of the 2001 Policy as "merely a documentation of the company's [Ohio Edison] internal operational standards" [O&O at 5], which also applied to CEI and Toledo Edison, could not have resulted in FirstEnergy aggregating 300 MW of interruptible load by interrupting all of Ohio Edison, CEI and Toledo Edison's customers at the same time for the same duration at the same replacement power costs. Ohio Edison's interruptible customers account for about 33% of that interruptible load.

Ohio Edison, fully aware of this inconsistency, moves to strike the grounds for rehearing #15 raised under ORC sec. 4903.10 to prevent rehearing and appeal to the Ohio Supreme Court. The Commission would abuse its discretion by granting the motion to strike on the superfluous grounds presented by Ohio Edison. Elyria Foundry has standing to seek rehearing on matters determined in this proceeding. Elyria Foundry was harmed by the Commission's modification or reversal of its definition of firm service for the CEI and Toledo Edison interruptible riders when finding in context of the very same Guidelines that firm service also included 3,000 MW of competitive loads served by FirstEnergy Solutions. The Commission should have followed its earlier precedent for

determining incremental costs under the Guidelines. The motion to strike by Ohio Edison lacks merit and must be denied.

Respectfully submitted



Craig I. Smith (0019207)  
2824 Coventry Road  
Cleveland, Ohio 44120  
216-407-0890  
WTTTMLC@aol.com

**Counsel for Elyria Foundry**

#### **Certificate of Service**

I hereby certify that a true copy of the foregoing Memorandum Contra was served by first class mail, this 27 day of February 2007 upon Kathy J. Kolich, attorney for Ohio Edison Company, addressed to FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308.



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Craig I. Smith