

9



76 South Main Street
Akron, Ohio 44308

Mark A. Hayden
Attorney

330-761-7735
Fax: 330-384-3875

August 8, 2008

VIA FEDERAL EXPRESS
AND FACSIMILE (614-466-0313)

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

PUCO

RECEIVED-DOCKETING DIV
2008 AUG -8 PM 1:43

RE: PUCO Case No. 08-124-EL-ATA, Case No. 08-125-EL-AAM
In the Matter of the Application of Ohio Edison Company, The Cleveland Electric
Illuminating Company, and The Toledo Edison Company for Authority to
Modify Certain Accounting Practices and for Tariff Approvals
Motion to Suspend Proceedings; Memorandum in Support

Dear Ms. Jenkins:

Enclosed for filing, please find the original and twelve (12) copies of *Motion To Suspend Proceedings*; and *Memorandum in Support* for docketing 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,

Mark A. Hayden

MAH:ki
Enclosures 12

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 M Date Processed 8/8/08

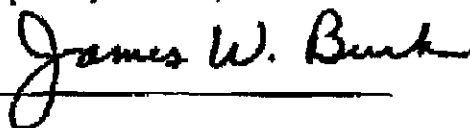
**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	
Edison Company for Authority to)	Case No. 08-124-EL-ATA
Modify Certain Accounting Practices)	Case No. 08-125-EL-AAM
and for Tariff Approvals)	

MOTION TO SUSPEND PROCEEDINGS

Come now Ohio Edison Company (hereinafter "OE"), The Cleveland Electric Illuminating Company (hereinafter "CEI"), and The Toledo Edison Company (hereinafter "TE", with OE, CEI and TE, collectively referred to as the "Companies"), pursuant to Rule 4901-1-14, Ohio Administrative Code, and respectfully request the Public Utilities Commission of Ohio ("Commission") to suspend all filings, discovery, testimony, and proceedings in the above mentioned cases otherwise required by the Commission's June 11, 2008 Entry in this matter, including the hearing scheduled in this matter for September 29, 2008, for the reason that the issues in this case have been included for resolution in the Companies Electric Security Plan, Case No. 08-935-EL-SSO. A memorandum in support of this motion is attached providing the detailed basis for this motion.

Respectfully submitted,



James W. Burk, Counsel of Record
Senior Attorney
Mark A. Hayden
Attorney
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
(330) 384-5861

Fax: (330) 384-3875

Email: burkj@firstenergycorp.com

haydenm@firstenergycorp.com

On behalf of Ohio Edison Company,
The Cleveland Electric Illuminating Company,
and The Toledo Edison Company

**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)	
Edison Company for Authority to)	Case No. 08-124-EL-ATA
Modify Certain Accounting Practices)	Case No. 08-125-EL-AAM
and for Tariff Approvals)	

MEMORANDUM IN SUPPORT

Following a prehearing conference that occurred in this proceeding on March 27, 2008, the Attorney Examiner issued an Entry setting forth a procedural schedule for the aforementioned matter and addressing other procedural matters. That procedural schedule required the filing of a staff report on or before June 4, Company and intervener testimony on June 15, motions for interventions to be filed on or before June 20, discovery requests submitted no later than July 1, staff testimony on July 3, and a hearing commencing on July 15. On June 2, 2008, the Companies filed a Motion to Suspend this proceeding. This Motion was denied on June 11, 2008 by Entry, but the procedural schedule was continued such that the Companies' direct testimony is now due to be filed by August 29, 2008, and the hearing is scheduled for September 29, 2008.

Importantly, during the course of this proceeding, the state legislature was considering and debating new energy legislation for the state of Ohio, with one of the primary issues centering around how generation pricing will be accomplished commencing in 2009. This legislation, known as Am. Sub. S.B. 221, was passed by both houses and later signed into law by the Governor on May 1, 2008. One outcome of that legislation was that all electric distribution utilities are required to file an electric security plan ("ESP") with the Commission. Such ESP

must include a proposal for the supply and pricing of retail generation service, and may include any number of other proposals, including without limitation, deferrals and the recovery of deferrals.

Pursuant to the legislation, the Companies' filed an ESP on July 31, 2008, containing a proposal addressing the recovery of deferred fuel costs, which is the subject matter of the instant proceeding.¹ As part of the Companies' ESP, the Companies will establish a recovery mechanism for recovery of the accumulated 2006 and 2007 deferred fuel expenses as of December 31, 2008, including carrying charges. Such rider will be effective commencing on January 1, 2009 on a service rendered basis and will be reconciled on an annual basis.

While the June 11 Entry denied the Companies' previous motion to suspend these proceedings, such Entry was issued prior to the Companies' filed ESP containing a proposal addressing the issue of deferred fuel costs, which renders this proceeding duplicative. Further, the Office of the Consumers' Counsel ("OCC") June 9 memorandum contra the Companies' request to suspend this proceeding should be rejected. OCC provides as support for its motion that: (1) the ESP proceeding will only establish a plan and a procedure for determining the prudence of fuel costs, it will not audit or determine the prudence of the fuel costs; (2) the General Assembly did not contemplate that the ESP proceedings would review the prudence of costs incurred prior to the ESP submissions; and (3) the time and efforts of the parties should not be lost through the Companies' motion to suspend this proceeding.

¹ See 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 Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan, Case No. 08-935-EL-SSO, filed July 31, 2008

Contrary to OCC's assertions, the deferred fuel costs associated with the Companies' proposed recovery mechanism have always been subject to full review and discovery by Staff and all participating parties. Nothing in the Companies' filed ESP suggests that discovery or cross-examination is limited related to the fuel deferral recovery issue. Regarding OCC's assertions of what the General Assembly intended, the Companies note that R.C. 4928.143, the ESP statute, provides broad discretion and a more flexible approach which can address not only *the supply of generation as part of an SSO, but also allow for the inclusion of various provisions* in an overall package to address the broad range of concerns contemplated within the scope of Am. Sub. S.B. 221. Indeed the introductory phrase "Notwithstanding any other provision of Title XLIX of the Revised Code to the contrary" preceding the remaining language of R.C. § 4928.143(B), makes clear the legislative intent to authorize the Commission to approve arrangements that capture a broad range of beneficial expedients within the scope of an ESP. Similarly, the fact that the list of potential ESP provisions enumerated in R.C. § 4928.143(B)(2) is prefaced by "without limitation" also demonstrates the considerable breadth of authority intended to be granted to the Commission. Lastly, the time and efforts of parties in this proceeding will not be lost by suspending this proceeding and addressing and resolving the issue of deferred fuel costs in the ESP proceeding. While there has been discovery conducted in this proceeding, there has been no testimony filed, no evidentiary hearing and no briefing of the issues, nor would it be efficient to do so given all that will occur as part of the ESP.

Administrative efficiency dictates that there should not be dual proceedings, thereby creating unnecessary redundancy, on the same issue at the same time. With this motion, the Companies request that the procedural schedule previously established in this proceeding be suspended in its entirety. Granting such request will permit the issue of recovery of deferred fuel

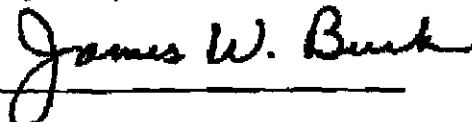
costs to be considered and resolved in a single proceeding. This will avoid having the same issue under consideration in two separate, simultaneous proceedings. Further, it will allow the Commission, the Companies, and all intervenors to focus their time and resources on a single case, the ESP, which will address and resolve a host of issues within the same proceeding including the recovery of deferred fuel costs. This approach is preferable to the alternative of dealing with identical issues on a piecemeal basis scattered across different dockets. Granting the Companies' request will result in avoiding duplicative proceedings and provide the most administratively efficient process to address and resolve the issues pending in this proceeding.

If resolution of the recovery of deferred fuel costs issue is not reached in the ESP, then the suspension of this matter may be lifted, and this proceeding may then be reinstated at that time to finalize the issue.

The Companies are also requesting the Commission to rule on this matter on an expedited basis, given that the Companies' direct testimony under the Commission's June 11 Entry is otherwise required to be filed by August 29, 2008, the Companies' need to know as soon as possible whether to undertake the effort to complete such testimony. The Companies served this request by email on all parties to the proceeding, asking each party to respond whether they had any objections to the motion. While OCC objects to an expedited ruling, given the compressed time schedule, responses from all the parties have not been received at the time this motion was filed with the Commission.

For the reasons set forth above, the Companies respectfully request that the procedural schedule as set forth in the Commission's June 11, 2008 Entry be suspended and that such motion be granted on an expedited basis, and for all other relief just and proper in the premise.

Respectfully submitted,



James W. Burk, Counsel of Record
Senior Attorney

Mark A. Hayden
Attorney

FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
(330) 384-5861

Fax: (330) 384-3875

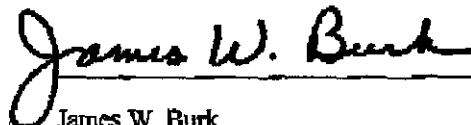
Email: burkj@firstenergycorp.com

haydenm@firstenergycorp.com

On behalf of Ohio Edison Company,
The Cleveland Electric Illuminating Company,
and The Toledo Edison Company

CERTIFICATE OF SERVICE

This is to certify that the foregoing Motion to Suspend Proceedings has been served upon the parties listed below by electronic mail transmission and by U.S. Mail, postage prepaid, this 8th day of August, 2008.



James W. Burk

John Bentine
Mark S. Yurick
Chester, Wilcox & Saxbe LLP
65 E. State St., Suite 1000
Columbus, OH 43215-7197
jbentine@cwslaw.com
myurick@cwslaw.com

David Fein
Senior Regulatory Counsel
Constellation NewEnergy, Inc.
550 West Washington Blvd., Suite 300
Chicago, IL 60661
David.fein@constellation.com

Ann A Hotz
Office of Ohio Consumers' Counsel
10 W. Broad Street, 18th Floor
Columbus, OH 43215
hotz@occ.state.oh.us

Michael L. Kurtz
Boehm, Kurtz & Lowry
36 E. 7th St., Ste. 1510
Cincinnati, OH 45202
mkurtz@BKLlawfirm.com

Samuel C. Randazzo
Joseph M. Clark
McNees, Wallace & Nurick
21 E. State St., 17th Floor
Columbus, OH 43215
sam@mwnemh.com
jclark@mwnemh.com

David C. Rinebolt
Colleen L. Mooney
231 West Lima Street
P.O. Box 1793

Findlay, OH 45839-1793
drinebolt@aol.com
cmooney2@columbus.rr.com

Garret A. Stone
Michael K. Lavonga
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson St.
8th Floor, West Tower
Washington, D.C. 20007
gas@bbrslaw.com
mkl@bbrslaw.com

M. Howard Petricoff (0008287)
Stephen M. Howard (0022421)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vssp.com
smhoward@vssp.com