

File:

RECEIVED

JUN 7 1996

DOCKETING DIVISION
Public Utilities Commission of Ohio

8 ✓

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)
Ohio Edison Company For Approval of) Case No. 96-436-EL-ATA
Experimental Real Time Pricing)

REPLY MEMORANDUM OF
INDUSTRIAL ENERGY USERS-OHIO

Samuel C. Randazzo, Esq.
Richard P. Rosenberry, Esq.
Denise Cleary Clayton, Esq.
EMENS, KEGLER, BROWN, HILL & RITTER
A Legal Professional Association
65 East State Street, Suite 1800
Columbus, OH 43215-4294
Telephone: (614) 462-5400
Telecopier: (614) 464-2634

June 7, 1996

Attorneys for Industrial Energy Users-Ohio

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 Anna M. Mc Date Processed June 10 1996

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
Ohio Edison Company for Approval of) Case No. 96-436-EL-ATA
Experimental Real Time Pricing)

**REPLY MEMORANDUM OF
INDUSTRIAL ENERGY USERS-OHIO**

On June 3, 1996, Ohio Edison Company ("Ohio Edison" or "Company") filed a Memorandum Contra opposing the intervention of Industrial Energy Users-Ohio ("IEU-OH") in this case and amending its application based on discussions held between IEU-OH and Ohio Edison. For the reasons set forth below, IEU-OH submits that its Motion to Intervene should be granted.

Before addressing Ohio Edison's Memorandum Contra, some background information is necessary. Subsequent to the filing of the Motion to Intervene, Ohio Edison suggested that the parties discuss IEU-OH's concerns about the proposed Real Time Pricing ("RTP") tariff. On Thursday, May 30, 1996, IEU-OH and Ohio Edison had two discussions about the proposed tariff. At that time, IEU-OH and Ohio Edison reached agreement in principle on two of IEU-OH's concerns with the RTP tariff. Due to the filing date for Ohio Edison's Memorandum Contra, however, the parties did not have an opportunity to discuss language revising the tariff to address the two concerns. Thus, until the filing of the Amended Application by Ohio Edison, IEU-OH did not have an opportunity to review the newly-revised terms. In addition,

notwithstanding the parties' discussions, areas of disagreement remain. The areas of agreement and IEU-OH's remaining concerns with the tariff are addressed in the order in which Ohio Edison discussed them in its Memorandum Contra.

CHANGES TO "ADDER"

In the RTP tariff as filed, Ohio Edison developed a series of formulae used to calculate the billings for those taking service under the RTP tariff. *See*, Original Sheet No. 70, pages 2-4. Included among the formulae is one used to determine the hourly real time price, and one component of the Hourly RTP formula is an "Adder." In its original filing, Ohio Edison proposed that it would have the right to make discretionary adjustments to the Adder, within a range of -0.8¢/kWh and $+0.8\text{¢/kWh}$. The tariff as filed did not explain the purpose of the Adder, or the circumstances in which Ohio Edison would seek to adjust it up or down. One of IEU-OH's concerns¹ was the breadth of the discretion accorded the Company to make Adder rate changes in the tariff as filed. In its Revised Original Sheet No. 72, page 4, attached to the Memorandum Contra, Ohio Edison made its ability to make adjustments to the "Adder" subject to Commission approval.²

¹ See, IEU-OH's Motion to Intervene at 1-2.

² Although Ohio Edison suggested in its Memorandum Contra (at 2) that "If at the time of any future filing, IEU-OH, or any customer, believes that the proposed change to the Adder is not warranted, it would be free to challenge such change at that time", it is likely that Ohio Edison would oppose intervention in such a future proceeding. Thus, the ability to present such a challenge is likely to be a hollow opportunity given the Commission's traditional practice of denying intervention in tariff proceedings. Should the Commission decide to grant approval of Ohio Edison's application, IEU-OH recommends the Commission remedy the customers' likely hollow opportunity by ordering that any such filing by Ohio Edison for an increase to the Adder be made pursuant to an application under Section 4909.18, Revised Code.

Notwithstanding the resolution of this initial difficulty with the tariff as filed, IEU-OH also noted in its Memorandum In Support of the Motion to Intervene that:

... It is not readily apparent from this language which specific costs the adder is designed to recover, nor how an adjustment to the adder would be determined. ...

The proposed tariff provides no clues as to the mysterious nature of these seemingly unidentifiable costs which the Company requires the "discretion" to recover. The fact that the initial marginal transmission cost will be set at zero and that future marginal cost calculations may change suggests to IEU-OH that the "adder" proposed in the real time tariffs is not needed to provide the service nor does the adder reflect the cost of providing the service. IEU-OH submits the adder language included in the proposed tariff likely serves one purpose only; that is, to bolster a future claim by Ohio Edison that this Commission has approved a mechanism for and collection of stranded costs, transition costs, uneconomic assets, deferred taxes and stranded benefits.³

Id. at 2-3. During the discussions held with Ohio Edison, the Company advised IEU-OH that the purpose of the Adder was to adjust the prices paid by customers participating in the real time pricing pilot, irrespective of the formula pricing proposed in the tariff that uses the "Access Charge," in order to "achieve bill neutrality with the customer's standard tariff/contract if no change in electricity usage pattern occurs." The Adder provides Ohio Edison with the flexibility to control revenues received from customers participating in the pilot regardless of how the customer attempts to respond to "hourly price signals." Ohio Edison advised IEU-OH that without such flexibility, customers electing to participate in the real time pricing pilot might forego other economic development incentives⁴ the Company might otherwise offer. Ohio Edison also stated that the purpose of the Adder is to minimize possible revenue loss from other

³ This list is not meant to be all-inclusive, and if past actions by Ohio Edison are representative, it is probably a safe conclusion that it is not. Stranded benefits warranted explicit inclusion in this list due to the unique up or down description of the Adder.

⁴ Irrespective of the merits of the "Adder" mechanism proposed in the tariff, IEU-OH understands the rationale that downward pricing flexibility might be used to provide an economic development incentive. However, use of the "Adder" to raise prices as an economic development incentive would appear to be an oxymoron.

economic development tools, such as economic development contracts, and to keep the RTP pilot program on an equal par with those other economic development programs (such as the SAED contracts). These observations led IEU-OH to conclude that concern about the Adder not reflecting the cost to provide service under the RTP tariff was indeed on the mark and well founded.

In its description of the RTP program, Ohio Edison noted that:

The experimental Real Time Pricing Program is intended to test customer response to hourly price signals which reflect Ohio Edison Company's (OEC) marginal operating costs to supply electrical energy. Further, OEC expects to gain experience with developing and sending this type of price information, in determining customer response to price signals. This RTP Program should also aid OEC in preparing for a competitive electric market by giving the Company the ability to test the appropriateness [sic] of certain pricing and charges, with the thought that they will be further refined as more information is gathered. This voluntary program offers customers an opportunity to manage their electricity costs by increasing their consumption during periods of lower prices or decreasing it during periods of higher prices. ...

Application, Exhibit C-1, page 1. However, the effect of the Adder is to allow Ohio Edison to control the revenues received from customers irrespective of how the customers respond to price signals. Moreover, the explanation given by Ohio Edison for the need to adjust the RTP through changes to the Adder means that the price really will have little, if anything, to do with the Company's marginal operating costs.

For the reasons set forth above, therefore, IEU-OH still has significant concerns about the structure of the RTP formula, and in particular the Adder, which have not rendered IEU-OH's objection "moot" as suggested by Ohio Edison.

CUSTOMER CONSUMPTION DATA

As Ohio Edison noted in its Memorandum Contra, the parties agreed in principle to a change in the proposed service agreement which would make clear that customers will have access to and the ability to disseminate as they deem appropriate their own consumption data. Having reviewed the revised Section 8 in the proposed Service Agreement (at 4), IEU-OH finds the revision appropriate to accomplish the parties' intent.

AGGREGATION OF LOAD

In the "Availability" section of its proposed RTP tariffs, the Company would prohibit aggregation of loads or services. *See, e.g.,* Exhibit B, Original Sheet No. 70, page 1. IEU-OH took exception to this aspect of the tariffs. *See, IEU-OH Motion at 6.* Notwithstanding the parties' discussions, they remain in disagreement over the availability of aggregation to participants in the RTP program.

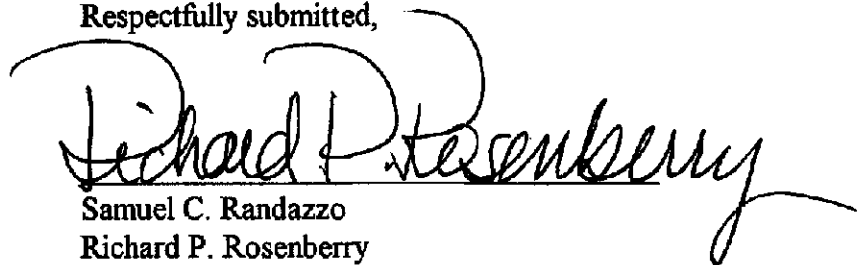
If the RTP is to be beneficial in terms of developing for Ohio Edison's use information relative to customers' price responsiveness in the face of various price signals, certainly one of those signals will be sent to the customers in the form of potential conjunctive billing possibilities. The Commission as part of the Electricity Roundtable process will receive comments and doubtless issue guidelines regarding conjunctive billing, and potentially issue an order directing development of tariff provisions establishing aggregation or conjunctive billing for electric companies. Thus, IEU-OH anticipates that among customers' "real world options" will be the ability to aggregate loads for conjunctive billing purposes. This alone will provide certain price signals to customers. However, layered upon this opportunity should also be the ability of

customers to take into consideration both the conjunctive bill and the RTP price signals when making energy purchasing decisions. Ohio Edison would deny customers this ability or opportunity.⁵

Thus, IEU-OH's concern about the interplay between the RTP and conjunctive billing tariffs remains viable. The RTP tariff should not prohibit the availability of a conjunctive billing opportunity and thereby deny potential savings to customers.⁶ IEU-OH continues to believe that tariff provisions which foreclose and prohibit conjunctive service for any customer are premature and, in effect, a preemptive strike given the status of the Commission's proceeding on conjunctive service guidelines.

For the reasons set forth in both IEU-OH's original Motion to Intervene, and in this Reply Memorandum, IEU-OH submits that its Motion is well founded and should be sustained forthwith.

Respectfully submitted,

A large, stylized handwritten signature in black ink, which appears to read "Richard P. Rosenberry". The signature is written over the typed name and extends to the right.

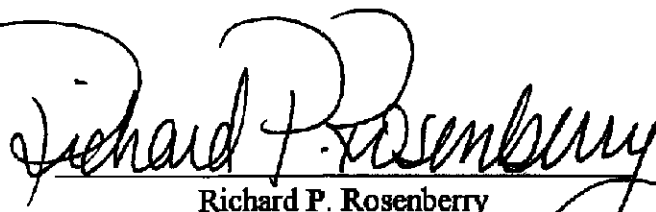
Samuel C. Randazzo
Richard P. Rosenberry
Denise C. Clayton
EMENS, KEGLER, BROWN, HILL & RITTER
65 E. State Street, Suite 1800
Columbus, OH 43215-4294

⁵ It is Ohio Edison's view that "aggregation" means that all of a given customer's bills from various different plants would merely be summed - there would not be any potential or realized benefit associated with the customer qualifying for a different rate schedule as the result of aggregating load from all operating sites.

⁶ Notably, the Company did propose language in its tariff in anticipation of the pending filing of interruptible buy-through tariffs.

CERTIFICATE OF SERVICE

I, Richard P. Rosenberry, certify that a copy of the foregoing Reply Memorandum was served upon the following parties of record this 7th day of June, 1996, via electronic transmission, hand-delivery or ordinary U.S. mail, postage prepaid.

A handwritten signature in cursive script, reading "Richard P. Rosenberry". The signature is written in black ink and is positioned above the printed name.

Richard P. Rosenberry

Leila L. Vespoli
Senior Attorney
Ohio Edison Company
76 South Main Street
Akron, OH 44308

Duane Luckey, Esq.
Senior Assistant Attorney General
Chief, Public Utilities Section
180 East Broad Street
Columbus, OH 43266-0573