ATTORNEYS
MARY E. O'REILLY
MICHAEL C. REGULINSKI
DOUGLAS J. WEBER
MARK R. KEMPIC
PAUL N. EDWARDS
MARY H. BELL

LEGALS
AMY B. McCABE

CENTERIOR ENERGY

OPERATING COMPANIES
CLEVELAND ELECTRIC ILLUMINATING
TOLEDO EDISON

LEGAL SERVICES DEPARTMENT
CORPORATE/REGULATORY PRACTICE AREA

CLEVELAND OFFICE
6200 OAK TREE BLVD.
INDEPENDENCE, OH 44131
PHONE (216) 447-3100
FAX (216) 447-2592

TOLEDO OFFICE
EDISON PLAZA
300 MADISON AVENUE
TOLEDO, OH 43652
FAX (419) 249-5251

October 21, 1996

VIA FACSIMILE (614-466-0313)

Docketing Department
Public Utilities Commission
of Ohio
180 East Broad Street
Columbus, Ohio 43266-0573

Re: PUCO Case No. 96-406-EL-COI

Dear Sir or Madam:

Attached for filing today, Monday, October 21, 1996, are Reply Comments of Centerior Energy Corporation on Behalf of The Cleveland Electric Illuminating Company and Toledo Edison. The original and eleven (11) copies will be provided via overnight delivery for your receipt on Tuesday, October 22, 1996. Please docket as filed on Monday, October 21, 1996, and return one stamped copy to me in the enclosed self-addressed envelope. If you have any questions regarding this matter, please call me at (216) 447-3252.

Thank you for your assistance in this matter.

Sincerely,

Mark Kempic

Mark R. Kempic
Counsel

Enclosure

s/mark/docketng.doc

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Conjunctive Electric Service Guidelines Proposed by Participants of the Commission Roundtable on Competition ion the Electric Industry	))))))	Case No. 96-406-EL-COI

REPLY COMMENTS OF CENTERIOR ENERGY CORPORATION ON BEHALF OF THE CLEVELAND ELECTRIC ILLUMINATING COMPANY & TOLEDO EDISON

Introduction

On June 7, 1996, Centerior Energy, on behalf of The Cleveland Electric Illuminating Company and The Toledo Edison Company ("Centerior") provided its initial comments pursuant to the Commission's May 8, 1996 Entry soliciting the same. Those initial comments addressed the proposed Conjunctive Electric Service Guidelines ("CES Guidelines") as they had existed at that time. On September 27, 1996, Centerior filed its Supplemental Comments pursuant to the Attorney Examiner's September 10, 1996 Entry which solicited the supplemental comments as well as reply comments. Those Supplemental Comments addressed specific questions raised in the Commission's September 5, 1996 Entry, which questions had largely arisen since the initial comments were submitted. Now, after additional discussion, debate and refinement of the issues

surrounding the proposed regulated Conjunctive Electric Service ("CES") and the associated unregulated aggregation services "Aggregation Services", Centerior submits these reply comments.

As a way of introduction, Centerior notes that these proposed CES Guidelines have evolved significantly from the time of their initial conception. While these proposed CES Guidelines are still far from perfect, and the proposed CES Guidelines would be drafted in an entirely different fashion had any one entity proposed them, the fact that the participants have reached this compromise should be given great consideration by the Commission, and the substantive provisions of the CES Guidelines should remain intact.

October 11, 1996 Facsimile Questions

Centerior becomes very concerned when the basic principles underlying the CES Guidelines are raised for re-discussion very late in the process. Only six days prior to the October 17, 1996 plenary roundtable session, three fundamental issues were re-raised for discussion at the plenary roundtable session by a facsimile from the Commission. The first issue raised was whether the customer and the utility should be able to negotiate CES rates that were not revenue neutral. The second issue was whether utilities should be prohibited from marketing aggregation services except through a functionally separated subsidiary during the pilot project. The third and last issue questioned how binding contracts should be between customers and marketers.

Centerior believes that the requirement of revenue-neutrality is so fundamental and essential for the success of the CES Guidelines that to re-question it now calls into question whether the CES Guidelines should continue to be pursued. Revenue-neutrality was one of the first requirements identified by the participants in the process, and the participants continued their involvement in the process understanding that the CES program would be revenue neutral to the utilities. Both from a legal as well as a policy perspective, revenue-neutrality defines and gives life to the CES program. To even suggest at this time that revenue-neutrality element may be redefined is akin to changing the rules at the end of the ninth inning of a baseball game so that the ball club with the least runs wins.

The participants identified revenue neutrality as a required element of the CES guidelines because participants knew that the existing statutory framework would require that each utility would have to go through a rate case for any increase in rates. □4909.18 Ohio Rev. Code. While fixing rates in the rate case proceeding, the Commission must follow the formula carefully prescribed by the General Assembly. *Columbus Southern Power* v. *Pub. Util. Comm.*, (1993), 67 Ohio St.3d 535, at 537. While the General Assembly has delegated authority to the Commission to set just and reasonable rates for public utilities under its jurisdiction, it has done so by providing "a detailed, comprehensive and, as construed by this court, mandatory ratemaking formula under OHIO REV. CODE §4909.15." *Columbus Southern*, at 537. The Commission is *required* to calculate test year revenues, test year expenses, and date certain rate base, and the Commission is then required to fix new rates based on the result:

> "R.C. 4909.15(A) requires the PUCO to make a series of determinations - - the valuation of the utility's property in service as of date certain (R.C. 4909.15[A][1]), a fair and reasonable rate of return on that investment (R.C. 4909.15[A][2]), and the expenses incurred in providing service during the test year (R.C. 4909.15[A][4]). Once those determinations are made, the PUCO is required to "compute the gross *annual* revenues to which the utility is entitled" (emphasis added) under division (B) by adding the dollar return on the company's investment (R.C. 4909.15[a][3]) to the utility's test year expenses. If the charges under the utility's existing tariff are insufficient to generate those revenues, the PUCO is required to fix new rates that will raise the necessary revenue. [quoting R.C. 4909.15(D)]." (67 Ohio St.3d at 538, emphasis in the original).

The statutory formula defines the Commission's jurisdiction, it is detailed and comprehensive, and it is mandatory. For the Commission to now either increase or decrease the gross annual revenues to which the utility is entitled by allowing the CES program to be non-revenue neutral would be to stray from the mandatory statutory formula set forth by the General Assembly. Inasmuch as it would be both fundamentally unfair to the utilities participating in the roundtable process as well as a departure from the mandatory statutory formula to remove the concept of revenue neutrality from the CES Guidelines at this late time, Centerior respectfully submits that the Commission should not modify this provision in the CES Guidelines.

The second issue posed by the Commission in its October 11, 1996 facsimile is whether utilities should be prohibited from marketing aggregations services except through a functionally separate subsidiary. This issue was also the subject of extensive debate and discussion by the participants to the roundtable process and the joint compromise of all of those participants is reflected in the CES Guidelines. Centerior and other commentors provided discussion in their Supplemental Comments concerning this issue, and Centerior reiterates here that the utilities should have a choice as to whether or

not to set up a separate affiliate. The CES program is designed as a two year pilot program, and the creation of a separate affiliate by the parent company, with separate staffing, separate equipment, separate offices, etc. may not be advisable for a two year pilot period. This decision is a business decision that is best left to each utility's management. The language that was included in the CES Guidelines will protect the public from the hazards of competition perceived by some participants, and the language will still permit utilities to retain their ability to make their own business decisions.

Finally, the third issue raised by the October 11, 1996 facsimile questions how binding the contracts signed between customers and affiliate or non-affiliated marketers should be when we may soon be entering into the competitive generation market. Inasmuch as this question pertains solely to the unregulated agreement between the customer and the unregulated aggregator, it should be given no consideration by the Commission because that contract is extrajurisdictional. If a customer wants to sign a long-term agreement with an unregulated aggregator because the customer believes that generation may not become competitive for 15 years (for example), he should be able to do so. If a customer believes that generation will become competitive sooner or later than that, he must be able to enter into a contract to reflect his view of the world. Each contract is just as binding as the other. If the competitive sector is to thrive, it must not be prejudiced from the start with unnecessary regulation.

Participation in CES Must be Voluntary.

Some commentors suggest that the CES program should be made mandatory by the Commission. As Centerior stated in its initial comments, such an approach would run counter to the goals of an pilot program which is designed to test whether CES will provide a valuable, cost-effective service to the public, or whether it is nothing more than a once good idea that grew beyond its original purpose. As we proceed towards competition, electric utility services should be requested by the customers, and not required by regulation.

Furthermore, as stated in Centerior's Initial Comments, Centerior believes that CES must be a voluntary program. Throughout the roundtable discussions as well as in the formally filed comments, Centerior as well as other participants questioned the Commission's legal authority to mandate the implementation of CES service. Without a formal record and finding that the absence of such a service is unreasonable or unjustly discriminatory, the pertinent provisions of Ohio law do not support making the Commission making the CES mandatory. Centerior's position and the law on this issue remains the same as it was in its Initial Comments.

Utilities Must be Able to Set Reasonable Limits on the Amount of Capacity Subject to CES

The Ohio Council of Retail Merchants ("OCRM") believes that utilities should be required to offer CES to at least 50 customer groups. As stated above, Centerior does not believe that the program should be forced. Similarly, utilities should not be forced to offer the program to any particular number of customer groups. Requiring that the

program be offered to any particular number of customer groups is especially troubling, because it would be possible to have thousands of megawatts in any one customer group. The language proposed by the OCRM would severely hamper a utility's ability to control its system and it should not be considered.

Customers Should Pay for Special Metering

The OCRM also states that it believes that the cost of all special metering and local facilities required for conjunctive electric service should not be borne by the customer. OCRM believes this is discriminatory towards CES customers. Centerior believes that OCRM's suggestion should be discarded. Centerior believes that for a utility to provide special metering and local facilities to CES customers which it would not provide to all of its customers would be discriminatory toward the non-participating customers. Current rates do not cover the cost associated with special metering that is above and beyond standard metering. Therefore, to simply say that the monthly service charge would addresses the cost special metering is incorrect, and would result in the participant in the CES program being given a free ride by all other ratepayers. Several of the Companies' existing tariffs which have been approved by the Commission already include language requiring customers to pay for optional equipment used in special applications because the cost of this optional equipment is not built into the rates. Centerior believes that this approach should be used in this situation as well.

Unbundling is Unnecessary and Inappropriate

Some commentors such as IEU-OH/OMA suggest that the Commissions should use the CES as a reason to unbundle rates and services. Centerior believes that it would be ill-advised to approach a task as gargantuan as unbundling in one fell swoop, especially for a pilot program. In the first place, existing tariffs are the product of many years of constant evolution. When approving changes to tariffs, the Commission follows the principle of gradualism to prevent customers from being shocked by rapid changes in rates, terms conditions or policy, and this same principle must be applied with respect to unbundling. For example, in CEI's most recent rate case, the Company proposed to unbundle the residential rates by providing a separate customer charge and energy charge rather than an energy-only rate. This was nothing more than the unbundling of charges which were collected through the prior rate design. Nevertheless, the unbundling was strongly opposed by various customer groups. If such a limited unbundling was so vehemently opposed by customer groups, it is impossible to predict the outcry resulting from a global unbundling. In order to be understood and accepted unbundling must be a carefully orchestrated process.

Second, pilot programs like CES are done for several purposes. First, the pilot is implement to provide the customer with a new choice of service to see if the service is actually desired by the marketplace. The pilot also serves to provide the participants with information on whether the program works and should be pursued in its current form, or whether it should be modified or discontinued. None of these factors can be predicted before the pilot has been given an opportunity to be tested. Therefore, it simply does not make sense to invest inordinate amounts of time and effort in tasks such as unbundling

which are not necessary for the provision of CES and which will likely result in substantial debate and delay in the CES program.

Cost-of-Service Rate Design of CES Between Rate Cases is Not Practical

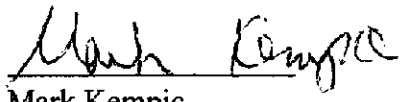
OCRM also states that the Commission adopt a revision which would require that rates for CES be developed to reflect the cost incurred by the utility to serve each customer group. While cost-of-service is the most appropriate manner in which to design rates during a full rate case; such an approach is impractical for CES. Cost of service rate design requires for instance specific costs information for groups and hourly load data for customers, all of which would have to be developed over time and which are not currently available. By its very nature, this information is very time consuming to obtain, and the expense and work in incorporating this information into cost-of-service rate designs for CES is cost-prohibitive. Without this information, cost-of-service designs would be nothing more than pure speculation, and Centerior therefore does not believe it is well-advised or appropriate to attempt cost-of-service design without the information.

The Code of Conduct is Unnecessary, But Acceptable as Proposed

Although the issue of the code of conduct has also suffered through more rhetoric than is warranted, Centerior concludes these comments by reiterating that Centerior does not believe that the code of conduct is an essential element for CES or any competitive program. As stated in Centerior's Reply Comments and hereby fully incorporated by reference, utilities are subject to the same laws governing anti-competitive practices as

other companies, and additionally, utilities continue to be heavily regulated. The Commission should rely upon the standard and tested legal avenues rather attempting to craft a procedure for a dealing with a problem that has not yet been shown to exist. The time and effort devoted to addressing this code of conduct would have better served the Commission, the roundtable participants, and most importantly, the public in countless other ways.

Respectfully submitted,



Mark Kempic
Michael Regulinski

Centerior Energy Corporation
6200 Oak Tree Boulevard, Rm. I448
Independence, OH 44131
216.447.3252

Attorneys for the Cleveland Electric
Illuminating Company, and
Toledo Edison

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by hand-delivery or ordinary U.S. mail upon the following parties this 21st day of October, 1996:

Tony Ahern
Buckeye Power
6677 Busch Boulevard
Columbus, OH 43266-0036

Robert Burns
NRRI
1080 Carmack Road
Columbus, OH 43210

Omar Farouq
Ohio Department of Development
77 S. High Street
P. O. Box 1001
Columbus, OH 43266-0101

Kirk Guy/Dick Reid
Dayton Power & Light Company
P. O. Box 8825
Dayton, OH 45401

Barbara Hueter
Ohio Council of Retail Merchants
50 W. Broad Street
Columbus, OH 43215

Lou Jahn/Marvin Resnick
AEP Service Corporation
Riverside Plaza
Columbus, OH 43215

Kathy Kolich/Leila Vespoli
Ohio Edison
76 South Main Street
Akron, OH 44308

David Rinebolt
Ohio Partners for Aff. Energy
P. O. Box 1793
Findlay, OH 45839-1793

Mike Smalz
Ohio State Legal Services
861 N. High Street
Columbus, OH 43215

John Wack
Centerior Energy Corporation
6200 Oak Tree Boulevard
Independence, OH 44131

James Turner
Cinergy Corp.
139 East Fourth Street
Cincinnati, OH 45202

Glenn Krassen
Climaco, Climaco, Seminatore,
Lefkowitz & Garofoli, L.P.A.
Suite 900, The Halle Building
1228 Euclid Avenue
Cleveland, OH 44115

Brady Bancroft
10270 Sylvania-Hetamore Road
Berkey, OH 43504

Barry Cohen
Office of the Consumers' Counsel
77 S. High Street, 15th Floor
Columbus, OH 43266-0550

Denis George
Stand Energy Corporation
Brookwood Bldg., Suite 110
1077 Celestial Street
Cincinnati, OH 45202

Bruce Hotz
Reduced Energy Specialists
7095 B E. Market Street
Warren, OH 44484

Gary Jack
Monongahela Power Company
1310 Fairmont
P. O. Box 1392
Fairmont, WV 26555-1392

James Johnson
Volunteer Energy Corporation
2602 Oakstone Drive
Columbus, OH 43231

Kevin Murray/Sam Randazzo
Emens, Hurd, Kegler & Ritter
Capital Square
65 East State Street
Columbus, OH 43215

Jeffrey L. Small
Chester, Wilcox & Saxbe
17 S. High Street
Columbus, OH 43215

Sheldon A. Taft
Vorys, Sater, Seymour and Pease
52 East Gay Street
Box 1008
Columbus, OH 43215

Christine Ericson
Verner, Liifert, Bernhard,
McPherson and Hand
901 15th Street N.W.
Washington, D.C. 20005-2301

Louis R. Jahn
Southern Energy International
4844 Crazy Horse Lane
Westerville, OH 43081

Robert A. Wilkinson
The Ohio Aggregates Association
20 South Front Street, Suite 200
Columbus, OH 43215

Mark Kempic

Mark R. Kempic, Esq.