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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of)
FirstEnergy Corp. on Behalf of Ohio)
Edison Company, The Cleveland)
Electric Illuminating Company and The)
Toledo Edison Company for Approval)
of Their Transition Plans and for)
Authorization to Collect Transition)
Revenues)

Case No. 99-1212-EL-ETP

In the Matter of the Application of)
FirstEnergy Corp. on Behalf of Ohio)
Edison Company, The Cleveland)
Electric Illuminating Company and The)
Toledo Edison Company for Tariff)
Approval)

Case No. 99-1213-EL-ATA

In the Matter of the Application of)
FirstEnergy Corp. on Behalf of Ohio)
Edison Company, The Cleveland)
Electric Illuminating Company and The)
Toledo Edison Company for Certain)
Accounting Authority)

Case No. 99-1214-EL-AAM

MEMORANDUM CONTRA REQUEST FOR LEAVE

Several Marketers¹ have taken the unusual step of filing a Request for Leave to Respond to FirstEnergy's Memorandum Contra to their Applications for Rehearing. Despite the seemingly conciliatory tone of this pleading with its sprinkling of phrases like "in the spirit of compromise" (p. 3), it is nothing of the sort! This is simply another run by the Marketers to attack the provisions of the settlement -- attempting, on rehearing, to obtain various concessions

¹ The group of marketers filing the instant Request for Leave are the same group who filed for rehearing: Enron Energy Services, Inc., Exelon Energy, Mid-Atlantic Power Supply Association ("MAPSA"), NewEnergy Midwest LLC, Strategic LLC, and WPS Energy, Inc.

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which they had not been successful in achieving earlier during settlement negotiations and which they had agreed to forego as part of their agreement to a settlement. As we discussed in our Memorandum Contra to their Applications for Rehearing, we were both shocked and dismayed to find the Marketers engaging in this tactic at all. We are even more appalled now to see that the Marketers have chosen to continue this pursuit by seeking leave to file yet another pleading to press the point and, at that, one outside the contemplation of the rules. FirstEnergy Corp., on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy"), files this Memorandum Contra in opposition and urges the Commission to deny the requested leave and disregard the argument contained therein.

We start with the premise that granting leave to file pleadings beyond those provided for in the rules should be the exception rather than the norm. OAC 4901-1-35, the Commission's rule governing rehearing, expressly provides for the filing of an application for rehearing and a memorandum contra. No subsequent briefing is contemplated. Of course, some development presumably might arise that could not have been foreseen and which could not have been addressed at the time of the Application for Rehearing. In such a circumstance granting leave for a limited opportunity to address such a matter might be warranted. That, however, is not the case here. The Marketers here simply reiterate their same 5 declarative points and positions advanced earlier. We addressed these in our Memorandum Contra and need not here repeat ourselves. The salient point is that there is no argument in the instant pleading which could not have been made earlier -- in fact, the Marketers made those arguments earlier. Leave should not now be granted giving the Marketers opportunity to repeat them yet again.

Despite the Marketers' assertion to the contrary, at any given time the shopping credits are known, and there is no ambiguity regarding the calculation of the future shopping

credits. The mechanism for that calculation is set out in the settlement and is known. The Marketers' proposed response to the purported "ambiguity" is no mere clarification. It is, as we discussed in our Memorandum Contra, a fundamental change to the basis of the bargain in the settlement.

One novel concept by the Marketers arises from their observation that "[i]n all other transition case settlements the actual shopping credits are known numbers." (Response, p. 2) How is that relevant here? The settlements in other transition cases, as with the settlement in this case, was reached by the respective parties based on the factors specific to those cases. The inclusion of a specific provision in the settlement in, for example, Cinergy's case does not in any way bear on whether the same provision must be a part of FirstEnergy's settlement. And if the settling parties signed on to a settlement whose provisions are expressly set out within its four corners, it is surely not required nor appropriate for the Commission now, subsequent to agreement of the parties, to copy a provision out of some other settlement and attempt to paste it into this one.

Irrespective of whether the Marketers characterize the instant pleading as a response to our Memorandum Contra (in which case it is outside of the rules) or an "alternative . . . offered in the spirit of compromise",² it nonetheless is no more than a rehash of the Marketers' inappropriate attempt in the Applications for Rehearing to change the terms of the settlement they agreed to. That issue was joined and addressed in our Memorandum Contra and that is where the briefing should end. Despite the Marketers' claim to the contrary, the requested

² We assume that "compromise" among the parties would be already fully embodied in the settlement agreements they signed.

leave does nothing more than to attempt "merely to extend the debate." (Response, p. 2) The Commission should deny the requested leave as the Marketers' Applications for Rehearing.

Respectfully submitted,

A handwritten signature in black ink, reading "Arthur E. Korkosz / ita", written over a horizontal line.

Arthur E. Korkosz
Trial Attorney
Stephen L. Feld
Senior Attorney
James W. Burk
Attorney
FirstEnergy Corp.
76 South Main Street
Akron, OH 44308
(330) 384-5849
Fax: (330) 384-3875

CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum Contra Request for Leave was served upon the following via electronic mail this 8th day of September, 2000:

Samuel C. Randazzo, Esq. (P)
Kimberly J. Wile, Esq. (P)
Gretchen J. Hummel, Esq. (P)
McNees, Wallace & Nurick
Fifth Third Center
21 E. State St., Suite 1700
Columbus, OH 43215-4228
Phone: (614) 469-8000
Fax: (614) 469-4653
Email: srandazzo@mwncmh.com,
kwile@mwncmh.com,
ghummel@mwncmh.com
Counsel for Industrial Energy Users - Ohio

Barry Cohen, Esq. (P)
Evelyn R. Robinson, Esq.
David C. Bergmann, Esq.
John Smart, Esq.
Ohio Consumers' Counsel
77 S. High St., 15th Fl.
Columbus, OH 43266-0550
Phone: (614) 466-8574
Fax: (614) 466-9475
Email: cohen@occ.state.oh.us
Counsel for Ohio Consumers' Counsel

M. Howard Petricoff, Esq. (P)
Vorys, Sater, Seymour & Pease LLP
52 E. Gay St., P.O. Box 1008
Columbus, OH 43216-1008
Phone: (614) 464-5414
Fax: (614) 719-4904
Email: mhpetricoff@vssp.com
Counsel for Enron Energy Services, Inc.,
WPS Energy Services, Inc. and NewEnergy
Midwest, LLC

Michael L. Kurtz, Esq. (P)
Boehm, Kurtz & Lowry
2110 CBLD Center
36 E. Seventh St.
Cincinnati, OH 45202
Phone: (513) 421-2255
Fax: (513) 421-2764
Email: mkurtzlaw@aol.com
Counsel for The Kroger Company

Glenn S. Krassen, Esq.
Arter & Hadden LLP
1100 Huntington Building
925 Euclid Ave.
Cleveland, OH 44115-1475
Phone: (216) 696-1100
Fax: (216) 695-2645
Email: gkrassen@arterhadden.com
Counsel for the Cities of Brook Park and
Eastlake, Ohio Schools Council

Langdon D. Bell, Esq. (P)
Bell, Royer & Sanders Co., LPA
33 S. Grant Ave.
Columbus, OH 43215
Phone: (614) 228-0704
Fax: (614) 228-0201
Email: lbell33@aol.com
Counsel for Greater Cleveland Growth
Association

David C. Rinebolt, Esq. (P)
Ohio Partners for Affordable Energy
337 S. Main St., 4th Fl.
Suite 5
P.O. Box 1793
Findlay, OH 45840
Phone: (419) 425-8860
Fax: (419) 425-8862
Email: drinebolt@aol.com
Counsel for Ohio Partners for Affordable Energy

Paul F. Forshay, Esq. (P)
Sutherland Asbill & Brennan LL
1275 Pennsylvania Ave., N.W.
Washington, DC 20004-2415
Phone: (202) 383-0100
Fax: (202) 637-3593
Email: pforshay@sablaw.com,
Counsel for Shell Energy Services Co.,
L.L.C.

Robert P. Mone, Esq.
Scott A. Campbell, Esq.
Thompson Hine & Flory LLP
10 W. Broad St., 7th Fl.
Columbus, OH 43215
Phone: (614) 469-3200
Fax: (614) 469-3361
Email: rmone@thf.com,
scampbell@thf.com
Counsel for Ohio Rural Electric
Cooperatives, Inc. and Buckeye Power, Inc.

James J. Mayer, Esq.
Taft, Stettinius & Hollister LLP
1800 Firstar Tower
425 Walnut St.
Cincinnati, OH 45202-3957
Phone: (513) 357-9326
Fax: (513) 381-0205
Email: mayer@taftlaw.com
Counsel for Unicom Energy, Inc., and
Unicom Energy Services, Inc.

Sally W. Bloomfield, Esq. (P)
Elizabeth H. Watts, Esq.
Amy Straker Bartemes, Esq.
Bricker & Eckler LLP
100 S. Third St.
Columbus, OH 43215-4291
Phone: (614) 227-2368
Fax: (614) 227-2390
Email: sbloomfield@bricker.com,
ewatts@bricker.com,
abartemes@bricker.com
Counsel for National Electrical Contractors
Association; Ohio Mechanical Contracting
Industry; Exelon Energy; Mid-Atlantic
Power Supply Association; Columbia
Energy Services Corp.; Columbia Energy
Power Marketing Corp.; Strategic Energy
L.L.C.; Ohio Associated Builders and
Contractors, Inc.; Ohio Manufacturers
Association

Cornell P. Carter, Esq.
William T. Zigli, Esq.
Ivan L. Henderson, Esq.
City of Cleveland Ohio
601 Lakeside Ave., Room 106
Cleveland, OH 44114
Phone: (216) 664-2814
Fax: (216) 664-2663
Email: citylaw@ameritech.net
Counsel for the City of Cleveland

Thomas J. Russell, Esq.
Unicom Corporation
125 Clark St., Room 1535
Chicago, IL 60603
Phone: (312) 394-5157
Fax: (312) 394-3950
Email: thomas.j.russell@ucm.com
Counsel for Unicom Energy, Inc. and
Unicom Energy Services, Inc.

Ellis Jacobs, Esq.
333 W. First St., Suite 500
Dayton, OH 45402
Phone: (937) 228-8088, Ext. 111
Fax: (937) 449-8131
Email: ellis@daytonlegalaid.org
Counsel for The Ashtabula County
Community Action Agency; WSOS
Community Action Commission, Inc.; The
Corporation for Ohio Appalachian
Development

David F. Boehm, Esq. (P)
Boehm, Kurtz & Lowry
2110 CBLD Center
36 E. Seventh St.
Cincinnati, OH 45202
Phone: (513) 421-2255
Fax: (513) 241-2764
Email: dboehmlaw@aol.com
Counsel for AK Steel Corporation

Mr. Robert J. Chet
Local 270, UWUA, AFL-CIO
4205 Chester Ave.
Cleveland, OH 44103
Phone: (216) 881-0004
Fax: (216) 881-1333
Email: local270@ohaficio.org
President of Local 270, Utility Workers
Union of America, AFL-CIO

Craig G. Goodman, Esq.
National Energy Marketers Association
3333 K St., N.W.
Suite 425
Washington, DC 20007
Phone: (202) 333-3288
Fax: (202) 333-3266
Email: cgoodman@energymarketers.com
Counsel for The National Energy Marketers
Association

William M. Ondrey Gruber, Esq.
2714 Leighton Rd.
Shaker Heights, OH 44120
Phone: (216) 371-3570
Fax: (216) 778-7181 (c/o Lynn Gruber)
Email: gruberwl@aol.com
Counsel for Citizen Power

Joseph P. Meissner, Esq.
Legal Aid Society of Cleveland
1223 W. Sixth St.
Cleveland, OH 44113
Phone: (216) 687-1900
Fax: (216) 687-0779
Email: meissnerjoseph@hotmail.com
Counsel for Western Reserve Alliance,
Parkview Areawide Senior Citizens,
Neighborhood Environmental Coalition,
Cleveland Housing Network, and
Consumers League of Ohio

Maureen R. Grady, Esq.
369 S. Roosevelt Ave.
Columbus, OH 43209
Phone: (614) 231-3614
Fax: (614) 464-1135
Email: grady@netset.com
Counsel for Neighborhood Housing Services
of Toledo, Inc.

Richard L. Sites, Esq.
Staff Legal Counsel
OHA: The Association for Hospitals and
Health Systems
155 E. Broad St., 15th Fl.
Columbus, OH 43215-3620
Phone: (614) 221-7614
Fax: (614) 221-4771
Email: ricks@ohanet.org
Counsel for OHA: The Association for
Hospitals and Health Systems adba Ohio
Hospital Association

William L. Wright, Esq.
Assistant Attorney General
Public Utilities Section
180 E. Broad St.
Columbus, OH 43215-3793
Phone: (614) 446-4367
Fax: (614) 644-8764
Email: william.wright@puc.state.oh.us

Henry W. Eckhart, Esq. (P)
50 W. Broad St., Suite 2117
Columbus, OH 43215
Phone: (614) 461-0984
Fax: (614) 221-7401
Email: henryeckhart@aol.com
Counsel for Ohio Public Interest Research
Group; Safe Energy Communications
Council - Ohio; Ohio Citizen Action

Kerry Bruce, Esq. (P)
Department of Public Utilities
420 Madison Ave., Suite 100
Toledo, OH 43604-1219
Phone: (419) 245-1829
Fax: (419) 245-1853
Email: kerry.bruce@ci.toledo.oh.us
Counsel for the City of Toledo

John W. Bentine, Esq. (P)
Jeffrey L. Small, Esq. (P)
Chester, Willcox & Saxbe LLP
17 S. High St., Suite 900
Columbus, OH 43215
Phone: (614) 221-4000
Fax: (614) 221-4012
Email: jbentine@cwslaw.com,
jsmall@cwslaw.com
Counsel for the Ohio Counsel of Retail
Merchants and for the City of Cleveland;
AMP - Ohio

Julia R. Bates, Esq.
Lucas County Prosecuting Attorney
700 Adams St., Suite 250
Toledo, OH 43624
Phone: (419) 213-4700
Fax: (419) 213-4595
Email: lkeiffer@co.lucas.oh.us
Counsel for the Board of Lucas County
Commissioners

Michael H. Igoe, Esq.
Carlile, Patchen & Murphy LLP
366 E Broad St.
Columbus, OH 43215
Phone: (614) 628-0775
Fax: (614) 221-0216
Email: mhi@cpmlaw.com
Counsel for Ameren Services Company

Gregory K. Lawrence, Esq. (P)
McDermott, Will & Emery
600 Thirteenth St., N.W.
Washington, DC 20005
Phone: (202) 756-8330
Fax: (202) 756-8087
Email: glawrence@mwe.com
Counsel for Shell Energy Services Co.,
L.L.C.

Barth E. Royer, Esq.
Bell, Royer & Sanders Co., LPA
33 S. Grant Ave.
Columbus, OH 43215-3927
Phone: (614) 228-0704
Fax: (614) 228-0201
Email: barthroyer@aol.com
Counsel for Simon Property Group, Inc. and
Simon Property Group, L.P., dba Simon
Real Property Group, L.P.

John R. Doll, Esq.
Logothetis, Pence & Doll
111 W. First St., Suite 1100
Dayton, OH 45402-1156
Phone: (937) 461-5310
Fax: (937) 461-7219
Email: jdoll@logolaw.com
Counsel for Utility Workers Union of
America, AFL-CIO

David H. Williams, Esq.
Law Director
City of Defiance
324 Perry St.
Defiance, OH 43512
Phone: (419) 784-1072
Fax: (419) 782-3223
Email: dhwilliams@msn.com
Counsel for City of Defiance

Cynthia S. Bogorad, Esq.
Scott H. Strauss, Esq.
David B. Lieb, Esq.
Spiegel & McDiarmid
1350 New York Ave., N.W.
Suite 1100
Washington, DC 20005-4798
Phone: (202) 879-4000
Fax: (202) 393-2866
Email: scott.strauss@spiegelmc.com,
david.lieb@spiegelmed.com
Counsel for UWUA

Jodi M. Elsass-Locker, Esq.
Ohio Department of Development
Phone: (614) 644-9605
Fax: (614) 728-4920
Email: jelsass-locker@odod.state.oh.us
Counsel for the Ohio Department of
Development

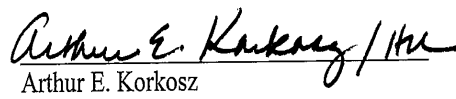
Attorney Examiner Dwight Nodes
Public Utilities Commission of Ohio
180 E. Broad St.
Columbus, OH 43215-3793
Phone: (614) 466-0112
Fax: (614) 728-8373
Email: dwight.nodes@puc.state.oh.us

Attorney Examiner Steven Lesser
Public Utilities Commission of Ohio
180 E. Broad St.
Columbus, OH 43215-3793
Phone: (614) 466-3191
Fax: (614) 728-8373
Email: steven.lessner@puc.state.oh.us

Joyce B. Link, Esq.
Bricker & Eckler LLP
100 S. Third St.
Columbus, OH 43215-4291
Phone: (614) 227-2368
Fax: (614) 227-2390
Email: jlink@bricker.com
Counsel for CNG Retail Services
Corporation

Except for the following which was served via facsimile:

James E. Moan, Esq.
Law Director
City of Sylvania
4930 Holland-Sylvania Rd.
Sylvania, OH 43560
Phone: (419) 882-7200
Fax: (419) 882-7201
Email: NONE
Counsel for City of Sylvania


Arthur E. Korkosz