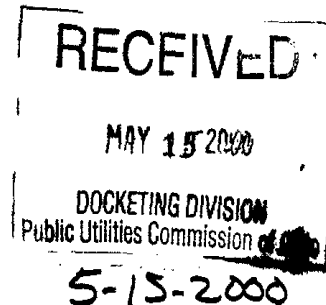


FirstEnergy

10
76 South Main St.
Akron, Ohio 44308

1-800-633-4766

May 15, 2000



Ms. Daisy Crockron
Docketing Division
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43266-5073

**Re: *In the Matter of Promulgation of Competitive Supplier Rules
FirstEnergy Memorandum Contra Applications for Rehearing
Case No. 99-1611-EL-ORD***

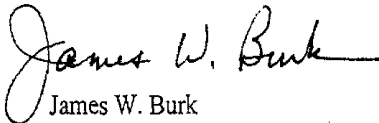
***In the Matter of Promulgation of Amendments to the Electric Service and Safety Rules
FirstEnergy Memorandum Contra Applications for Rehearing
Case No. 99-1613-EL-ORD***

Dear Ms. Crockron:

Enclosed please find the original and 12 copies of the FirstEnergy's Memorandum Contra Applications for Rehearing for the above-referenced cases that were fax filed on Monday, May 15, 2000. Please file-stamp the enclosed documents as having been filed on May 15, 2000. Please return two time-stamped of each filing in the enclosed envelope. Thank you.

Please contact me if you have any questions concerning this matter.

Very truly yours,


James W. Burk
Attorney

JWB:lms
Enclosures

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED
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COMMUNICATIONS
SECTION

In the Matter of the Commission's)
Promulgation of Amendments to the) Case No. 99-1613-EL-ORD
Electric Service and Safety Standards)
Pursuant to Chapter 4928, Revised)
Code)

**FIRSTENERGY CORP.'S MEMORANDUM CONTRA
APPLICATIONS FOR REHEARING**

Pursuant to Rule 4901-1-35(B), Ohio Administrative Code, FirstEnergy Corp., on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company, files this Memorandum Contra to the Applications for Rehearing filed on May 1, 2000 by SEED Ohio, Office of Consumers' Counsel ("OCC"), and Ohio Environmental Council ("OEC").

All three parties addressed the environmental disclosure rule, O.A.C. 4901:1-10-31. The Applications for Rehearing filed by OEC and SEED Ohio address only the environmental disclosure rule.

As a preliminary matter to commenting on the Applications for Rehearings filed in this docket, FirstEnergy continues to oppose the Commission's adoption of a new rule requiring EDU's to make environmental disclosure. The Commission stated in their Order in Case No. 99-1613-EL-ORD that their determination was based solely on the interpretation that R.C. 4928.10(F) requires EDU's to make such disclosures. Upon closer examination, however, the first paragraph of R.C. 4928.10 makes clear that environmental disclosure is only required of those entities providing competitive retail electric service, for which the entity is subject to certification, which does not include EDUs. This Commission has already determined that

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default service and standard offer service provided by EDU's is not competitive retail electric service, and EDU's are not subject to certification to provide such service. O.A.C. 4901:1-24-02(W). *See also* O.A.C. 4901:1-10-19(A) that states a customer may not be disconnected for failure to pay for a competitive retail electric service. But a customer may be disconnected for failing to pay for electric service provided by the EDU. The Commission also stated in its Order in Case No. 99-1611-EL-ORD that: "The proposed rules do not require that that [sic] electric distribution utility be certified to provide the standard offer service to customers." *In Re Minimum Competitive Retail Electric Service Standards*, Case No. 99-1611-EL-ORD, p. 6 (Emphasis added). Therefore, in accord with the express language of the first paragraph of R.C. 4928.10, R.C. 4928.10(F) does not apply to an EDU. Because the first paragraph of R.C. 4928.10 defines which entities must comply with the subsequent paragraphs, EDU's are not required to make the environmental disclosures under R.C. 4928.10(F), and Rule 4901:1-10-31 should be deleted.

The disclosure requirements contained in this rule are well in excess of what is required by R.C. 4928.10(F). FirstEnergy believes that the current rule may have the ironic effect of stifling competition either through confusing customers with too much information or creating hurdles for marketers to participate in the market. R.C. 4928.10(F) requires only that the environmental characteristics and mix of generation be disclosed to a customer before they contract and thereafter four times a year. Rule 31(D)(2), which sets forth very strict pie chart formats, is unnecessary and will be expensive for the EDU and CRES Providers to provide to all customers and may not be compatible with billing systems. The additional pages that will have to be included with bills four times a year will cost hundreds of thousands of dollars in extra printing, paper, and postage costs. As a general matter, the rules should permit

flexibility regarding the format of the information to be provided to customers. Disclosure may be accomplished through a combination of a quarterly notice on the bill that information regarding generation mix and environmental characteristics is available on the CRES Provider's website and upon request from the CRES Provider. OEC's reference to food labeling and fuel economy ratings stickers on new cars may be used as examples that pie charts are unnecessary to communicate information to consumers. Rules 31(D)(3) should be modified to allow more flexibility regarding how disclosure is accomplished. The rules should allow the required information to be disclosed in an alternate format if it clearly conveys the information required by R.C. 4928.10(F).

Additionally, R.C. 4928.10(F) does not require that regional average data be included in the disclosure to the customers, contrary to Rule 31(D)(2)(c). This extra requirement should be deleted.

FirstEnergy continues to oppose the requirement for quarterly comparisons between actual and projected generation resource mix and environmental characteristics. R.C. 4928.10(F) requires such comparison only annually and the quarterly comparison may prove unworkable and misleading.

OEC's, OCC's, and SEED Ohio's primary complaint appears to be that the environmental characteristic requirements contained in the rule is unfair and overly broad. Without debating the politics of this issue, the fact is that the law requires the disclosure through a bill insert, not a scientific journal article. The disclosure of information regarding generation mix and environmental characteristics is designed to assist customers regarding the nature of the electric energy being provided. Such disclosure cannot be expected to fully inform customers about every aspect of a particular type of electric generation. That, frankly,

falls on the proponents of such generation in their public education and advertising efforts. Further, the rehearing process should not be used to promote a political agenda or collaterally attack the use of nuclear and coal generation.¹ It is not the state's responsibility to promote the interests of solar and wind power generators. The fact is that wind power does have an impact on wildlife and does occupy tracts of land that could have been used for other purposes. It will be up to the generators of that power to explain the degree of the impact and to convince consumers that such power is superior to coal or natural gas generated electricity.

In its paragraph number 2, SEED Ohio also complains that the rules are unlawful because they do not meet the statutory requirement of actual and verifiable. To the contrary, Rule 31(D)(3)(b) does require an actual comparison to the projection.

FirstEnergy agrees with the OCC that the quarterly notice to be provided to customers regarding their right to opt out of inclusion on the customer list provided to CRES Providers should include the telephone number of the Direct Marketing Association's "do not call list".

FirstEnergy agrees that the list of CRES Providers should indicate which customer classes, i.e., industrial, commercial, or residential, the CRES Provider intends to provide service. This will assist customers with the shopping process and reduce unnecessary calls to the EDU. However, such information should be provided to the Commission by the CRES Provider through the application process. After certification, the Commission should include this information when it advises an EDU that a supplier has been certified to provide service in the

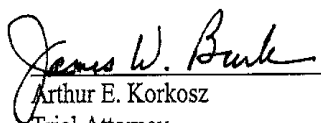
¹ Further, SEED Ohio's comments directed at the wildlife impact of nuclear plants is inaccurate. Through the use of cooling towers, the water placed back into the public waterway does not raise river and coastal water temperatures.

EDU's service territory. The EDU should be relieved of all liability associated with the reporting of which customer classes the CRES Provider intends to serve. The EDU should not be responsible to update which classes the CRES Provider is serving, except at the direction of the Commission, as the Commission would have to certify the supplier for the classes it seeks to serve.

Section III of the OCC's Application for Rehearing seeks to change a rule that was not substantively modified by the Commission as part of this proceeding. Rule 4901:1-10-21 was only modified to delete references to electric service companies. The OCC now requests the Commission to change this rule in a way that the Commission expressly rejected when this rule was originally adopted in Case No. 97-1578-EL-ORD, finding that such a requirement would be unduly burdensome. *Entry on Rehearing*, Case No. 97-1578-EL-ORD at page 5. OCC cannot be permitted to seek rehearing on rules in this proceeding that were not changed as a part of this proceeding. That would be tantamount to reopening the proceeding in Case No. 97-1578-EL-ORD and OCC offers no basis, legal or otherwise, to do so. OCC's arguments were rejected then and they should not even be considered now.

Wherefore, FirstEnergy respectfully requests that the Commission act upon the Applications for Rehearing filed in this docket by the parties set forth above in a manner consistent with FirstEnergy's comments herein. FirstEnergy also requests the Commission to grant FirstEnergy's Application for Rehearing filed in this docket.

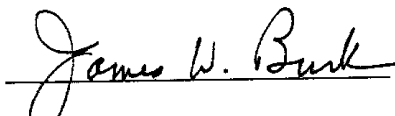
Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of FirstEnergy's Memorandum Contra Applications for Rehearing in Case No. 99-1613-EL-ORD was served by regular U.S. mail this 15th day of May, 2000, upon the parties identified on the attached service list.



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