

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
The Cleveland Electric Illuminating)
Company for Approval of an Electric) Case No. 93-678-EL-AEC
Service Agreement with National City)
Center.)

In the Matter of the Application of)
The Cleveland Electric Illuminating)
Company for Approval of an Electric) Case No. 93-843-EL-AEC
Service Agreement with Euclid Clinic)
d/b/a University Mednet.)

In the Matter of the Application of)
The Cleveland Electric Illuminating)
Company for Approval of an Electric) Case No. 93-1160-EL-AEC
Service Agreement with Gary Masters.)

In the Matter of the Application of)
The Cleveland Electric Illuminating)
Company for Approval of an Electric) Case No. 93-1161-EL-AEC
Service Agreement with Wendy's of)
Buckeye, Inc.)

In the Matter of the Application of)
The Cleveland Electric Illuminating)
Company for Approval of an Electric) Case No. 93-1165-EL-AEC
Service Agreement with T&S Mgmt Inc.)

In the Matter of the Application of)
The Cleveland Electric Illuminating)
Company for Approval of an Electric) Case No. 93-1167-EL-AEC
Service Agreement with Wendy's of)
Downtown.)

In the Matter of the Application of)
The Cleveland Electric Illuminating)
Company for Approval of an Electric) Case No. 93-1859-EL-AEC
Service Agreement with Conrail.)

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Technician AMW Date Processed 4/11/97

In the Matter of the Application of)
The Cleveland Electric Illuminating)
Company for Approval of an Electric) Case No. 94-1236-EL-AEC
Service Agreement with G.R. Osterland)
and Cuyahoga Road Products, Division)
of G.R. Osterland.)

In the Matter of the Application of)
The Cleveland Electric Illuminating)
Company for Approval of an Electric) Case No. 94-1317-EL-AEC
Service Agreement with Visiting Nurse)
Association of Cleveland.)

In the Matter of the Application of)
The Cleveland Electric Illuminating)
Company for Approval of an Electric) Case No. 96-234-EL-AEC
Service Agreement with Cleveland)
Botanical Garden.)

FINDING AND ORDER

The Commission finds:

- (1) The Applicant, The Cleveland Electric Illuminating Company, is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) The Applicant now petitions this Commission for approval of Electric Service Agreements with several of its customers (See Attachment).
- (3) The contracts are competitive response contracts entered into to encourage the retention of the customers' load on the Applicant's system. The Agreements are being considered for approval based on Staff's investigation into the competitive situation in the City of Cleveland as outlined in the Finding and Order in Case No. 95-159-EL-AEC approved by this Commission on March 27, 1997. Nevertheless, in the future the Commission's findings in Case No. 95-159-EL-AEC will control the Commission's decision on special rate contracts in the City of Cleveland.

- (4) The contracts either provide for similar terms and conditions as those contained in the Applicant's Competitive Pilot Program filed under Case Nos. 92-1743-EL-AEC and 93-142-EL-AEC or contain provisions which provide for discounts on non-fuel revenue.
- (5) The filing dates and terms of the Agreements are contained in Attachment 1.
- (6) The Applicant shall be the sole source supplier of all electric power to the facilities. In the event the Applicant is not the sole source supplier of all electrical power, the Customers may be billed for all incentives received as a result of these contracts. The Applicant may pursue other remedies available to it for the Customer's breach, including specific performance, consequential and incidental damages.

We note that some contracts contain a provision reserving to the Applicant the right to pursue remedies other than rebilling including specific performance and consequential and incidental damages. The parties are hereby put on notice that the Commission by approving these contracts is not making any determination on the Applicant's right to seek such recovery outside of the rebilling provision. Nothing in this Entry shall constitute approval of the Applicant's ability to obtain such damages or specific performance.

- (7) The Commission puts the Applicant on notice that should certain regulatory or legislative changes occur in Ohio such that customers have substantially more choices as to the provider of their electric energy in the future, the Commission may consider allowing customers to take a "fresh look" at long term commitments. The Commission will continue to review this issue in the roundtable process.
- (8) The applications should be approved pursuant to Section 4905.31, Revised Code.
- (9) These Agreements are categorized as competitive response Agreements. Any delta revenue resulting from the Agreements shall be borne exclusively by the Applicant.
- (10) Our approval of these contracts does not constitute state action for the purpose of the antitrust laws. It is not our intent to insulate the Applicant or any party to a contract approved by

this Finding and Order from the provisions of any state or federal law which prohibit the restraint of trade.

It is, therefore,

ORDERED, That the Agreements attached to the applications are approved and shall become effective pursuant to their terms. Two copies of the Agreements as filed shall be accepted for inclusion in this docket. It is, further,

ORDERED, That the Applicant report to the Energy and Water Division of the Commission's Utilities Department semiannually, in January and July, the results of the Agreements including the increase in load and sales, the total dollar increase in revenue due to the Agreements, the total dollar difference in the billing at the appropriate tariff rates and the billing at the contract rates, and the number of jobs believed to have been created and/or saved due to the Agreements. Also, Applicant shall provide an analysis of Energy Efficiency Accounts showing the derivation of the balance and a description of projects funded. It is, further,

ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule or regulation. It is, further,

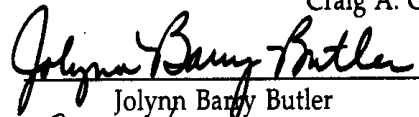
ORDERED, That the Commission's approval of these contracts does not constitute state action for the purpose of antitrust laws. It is, further,

ORDERED, That a copy of this Finding and Order be served upon the Applicant, the Customer and all parties of record.

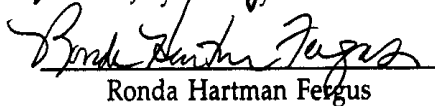
THE PUBLIC UTILITIES COMMISSION OF OHIO



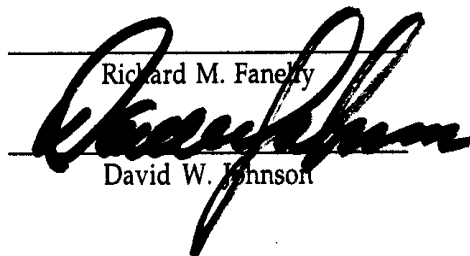
Craig A. Glazer, Chairman



Jolynn Barry Butler



Ronda Hartman Fetgus



Richard M. Fanelly

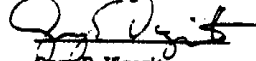
David W. Johnson

DLH:ct

Entered in the Journal

APR 10 1997

A True Copy



Gary E. Vigorito
Secretary

Attachment 1

<u>Case No.</u>	<u>Customer</u>	<u>Date Filed</u>	<u>Term</u>
93-678-EL-AEC	National City Center	4/21/93	5 YRS
93-843-EL-AEC	Euclid Clinic	5/19/93	5 YRS
93-1160-EL-AEC	Gary Masters	7/13/93	5 YRS
93-1161-EL-AEC	Wendy's of Buckeye	7/13/93	5 YRS
93-1165-EL-AEC	T&S Mgmt Inc.	7/13/93	5 YRS
93-1167-EL-AEC	Wendy's Downtown	7/13/93	5 YRS
93-1859-EL-AEC	Conrail	11/10/93	5 YRS
94-1236-EL-AEC	G.R. Osterland	7/20/93	5 YRS
94-1317-EL-AEC	Visiting Nurse Assoc.	8/8/94	5 YRS
96-234-EL-AEC	Cleveland Botanical Garden	3/5/96	6 YRS

SERVICE NOTICE

PAGE 1

CASE NUMBER 96-234-EL-AEC
CASE DESCRIPTION CEI/CLEVELAND BOTANICAL GARDEN
DOCUMENT SIGNED ON April 10, 1997
DATE OF SERVICE APR 11 1997

PERSONS SERVED

PARTIES OF RECORD

ATTORNEYS

APPLICANT

CLEVELAND BOTANICAL GARDEN
EXECUTIVE DIRECTOR
11030 EAST BOULEVARD
CLEVELAND, OH 44106

NONE

APPLICANT

CLEVELAND ELECTRIC ILLUMINATING CO
55 PUBLIC SQUARE
P.O. BOX 5000
CLEVELAND, OH 44101

MARK R. KEMPIC
CENTERIOR ENERGY CORP.
6200 OAK TREE BLVD.
INDEPENDENCE, OH 44131

JOHN P. WACK
CENTERIOR ENERGY
6400 OAKTREE BLVD.
INDEPENDENCE, OH 44131