

BEFORE

FILE

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 ) Case No. 99-1212-EL-ETP  
Cleveland Electric Illuminating Company and ) Case No. 99-1213-EL-ATA  
The Toledo Edison Company for Approval for ) Case No. 99-1214-EL-AAM  
Their Transition Plans and for Authorization )  
To Collect Transition Revenues. )

In the Matter of the Application of The Cincinnati ) Case No. 99-1658-EL-ETP  
Gas & Electric Company For Approval of its ) Case No. 99-1659-EL-ETP  
Electric Transition Plan Approval of Tariff Changes ) Case No. 99-1660-EL-ATA  
And New Tariffs, Authority to Modify Current ) Case No. 99-1661-EL-AAM  
Accounting Procedures, and Approval To Transfer ) Case No. 99-1662-EL-AAM  
Its Generating Assets to an Exempt Wholesale ) Case No. 99-1663-EL-UNC  
Generator. )

In the Matter of the Application of the Dayton )  
Power & Light Company for Approval of its )  
Transition Plan, for The Opportunity to Receive ) Case No. 99-1687-EL-ETP  
Transition Revenues, for Approval to Change ) Case No. 99-1688-EL-AAM  
Accounting Methods, and Approval to Amend its ) Case No. 99-1689-EL-ATA  
Tariff. )

In the Matter of the Applications of Columbus )  
Southern Power Company and Ohio Power ) Case No. 99-1729-EL-ETP  
Company for Approval of Their Electric Transition ) Case No. 99-1730-EL-ETP  
Plans and for Receipt of Transition Revenues. )

In the Matter of the Application of Monongahela )  
Power Company dba Allegheny Power for ) Case No. 00-02-EL-ETP  
Approval of an Electric Transition Plan. )

MEMORANDUM CONTRA THE  
MOTION TO DISAPPROVE

On August 4, 2000, the Industrial Energy Users-Ohio ("IEU-OH") filed a motion  
requesting that the Public Utilities Commission of Ohio ("Commission") disapprove the  
applications for approval of the Universal Service Fund ("USF") riders and the Energy

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Efficiency Revolving Loan Fund ("EEF") riders as proposed by the Ohio Department of Development ("ODOD"). In its motion, IEU-OH complains that ODOD has not explained its determination of the USF and EEF riders. IEU-OH questions the bases and support for the details of the riders. IEU-OH states that it is pursuing an informal resolution of these matters with ODOD but wishes to preserve its right to pursue issues related to the USF and EEF riders if IEU-OH determines that the riders adversely affect its interests and if the informal discussions with ODOD fail.

IEU-OH is a signatory party to the stipulations and recommendations filed in all the above-captioned electric transition plan ("ETP") cases. In the case of Ohio Edison Company ("OE"), Cleveland Electric Illuminating Company ("CEI") and Toledo Edison Company ("TE"), the stipulation spells out the amount of the USF riders. *Ohio Edison Company, Cleveland Electric Illuminating Company and Toledo Edison Company*, Case Nos. 99-1212-EL-ETP, 99-1213-EL-ATA, 99-1214-EL-AAM, Joint Ex. 1 at 17. In the case of Cincinnati Gas & Electric Company ("CG&E"), the stipulation states:

The Universal Service Rider and the Energy Efficiency Revolving Loan Fund Rider will be determined by the Ohio Department of Development and approved by the Commission.

*Cincinnati Gas & Electric Company*, Case Nos. 99-1658-EL-ETP, 99-1659-EL-ATA, 99-1660-EL-ATA, 99-1661-EL-AAM, 99-1662-EL-AAM, 99-1663-EL-UNC, Joint Ex. 1 at 15. Similar language is found in the stipulations of Dayton Power and Light Company ("DP&L"), the American Electric Power operating companies, and Monongahela Power Company ("MP"). *Dayton Power and Light Company*, Case Nos. 99-1687-EL-ETP, 99-1688-EL-AAM, 99-1689-EL-ATA, Joint Ex. 1 at 16; *Columbus Southern Power Company (CSP) and Ohio Power Company ("OP")*, Case Nos. 99-1729-

EL-ETP and 99-1730-EL-ETP, Joint Ex. 1 at 11; *Monongahela Power Company*, Case No. 00-02-EL-ETP, Joint Ex. 1 at 11.

In its motion, IEU-OH does not refer to the stipulations and recommendations in the ETP cases. Although there should be no problem with IEU-OH seeking responses to its questions from ODOD with regard to the detail that ODOD used to develop the USF and EEF riders, IEU-OH, as a signatory party to the stipulations in the ETP cases, is bound by those stipulations. In the case of the CG&E, DP&L, CSP, OP and MP stipulations, the language is clear that ODOD will determine the USF and EEF riders. IEU-OH's ability to pursue issues that it believes adversely affect it should be limited by the agreements that IEU-OH made in the stipulations.

Although IEU-OH does not raise the matter in its Motion, it is worth noting that Ohio law contemplates that the percentage of income payment plan program component of the low-income assistance programs will be based upon an audit. Section 4928.51(D), Revised Code. Thus, if the rates proposed by ODOD are approved by the Commission, it should be with the understanding that those rates may be revised, if appropriate, based upon the results of the audits.<sup>1</sup>

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<sup>1</sup> It is understandable that such an audit has not been performed to this point given the heavy workload resulting from the disposition of the eight electric transition plan cases during the past several months. Now that stipulations in those cases either have received (in the case of FirstEnergy ) or are pending Commission approval, it is time to move forward with the audit process to ensure that the rate proposed by ODOD is calculated properly.

As a final matter, IEU-OH states as its understanding that the proposed USF riders include an amount of \$6,000,000 annually for consumer education. IEU-OH, while not challenging ODOD's right to establish an education program, alleges that this amount is excessive. IEU-OH does not state what amount it believes would be appropriate, nor does it suggest standards for determining an appropriate amount. While OCC does not object to IEU-OH attempting to determine the manner in which ODOD arrived at the appropriate amount to be spent on consumer education, the statute – and, for the most part, the stipulations signed by IEU-OH – leave ODOD with considerable discretion in this regard. Of course, the amount determined by ODOD to be appropriate for educating low-income consumers under section 4928.56, Revised Code, cannot affect in any way the \$33,000,000 required to be made available for consumer education programs pursuant to section 4928.42, Revised Code.

Respectfully submitted,

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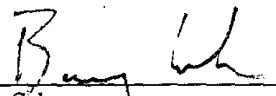


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**CERTIFICATE OF SERVICE**

I hereby certify that copies of this Memorandum Contra have been served by first class mail, postage prepaid, or hand delivered to the following parties of record this 15<sup>th</sup> day of August 2000.

  
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