

File

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Regulation of the )  
Fuel Component Contained within the )  
Rate Schedules of The Cleveland Electric )  
Illuminating Company and Related )  
Matters. )

Case No. 99-1008-EL-EFC

In the Matter of the Regulation of the )  
Fuel Component Contained within the )  
Rate Schedules of Toledo Edison )  
Company and Related Matters. )

Case No. 99-1007-EL-EFC

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JOINT BRIEF  
OF THE  
OHIO CONSUMERS' COUNSEL  
AND THE  
INDUSTRIAL ENERGY USERS-OHIO

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The Ohio Consumers' Counsel ("OCC") and the Industrial Energy Users-Ohio ("IEU-OH") respectfully file this joint brief in these electric fuel component ("EFC") proceedings of The Cleveland Electric Illuminating Company ("CEI") and Toledo Edison Company ("TE"). Herein, OCC and IEU-OH urge the Public Utilities Commission of Ohio ("Commission") to order CEI and TE to reduce their EFC rates effective March 1, 2000 in compliance with their rate plan, which CEI and TE made and which the Commission approved. There is no merit to CEI and TE's contention that Am. Sub. S.B. 3 froze EFC rates at its effective date or in any way intended to preclude EFC rate changes in the year 2000. Therefore, CEI and TE should honor the provisions of their rate plan and reduce the EFC rates to take effect on March 1, 2000.

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**I. THE FIRSTENERGY RATE PLAN REQUIRES CEI AND TE TO REDUCE THEIR EFC RATES IN THESE PROCEEDINGS.**

The FirstEnergy Corp. rate plan sets forth the calculation of CEI and TE's EFC rates, including the rates to be set in these proceedings. The rate plan also provides explicitly for a reduction to be made to the EFC rates to be set in these proceedings. The rate plan states as follows:

Further, at each Company's first annual adjustment after January 1, 2000, the EFC rate then in effect for the Company shall be reduced to reflect the elimination of Quarto fixed charges, which amounts to \$8.74 million in the case of TE and \$13.96 million in the case of CEI. Such reduction shall be determined by dividing the above-identified dollar amounts by the applicable kWh's for the twelve calendar months immediately preceding the adjustment date. The resulting reduced EFC rate for each Company shall then be used as the basis for the annual GDP adjustment. Notwithstanding anything herein to the contrary, neither Company's EFC rate shall exceed 1.465 cents/kWh through the Plan Period.

*In the Matter of the Application of First Energy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company and Toledo Edison Company for Authority to Continue and Modify Certain Regulatory Accounting Practices and Procedures, to Transfer Jurisdictional Assets, to Establish Fuel Efficiency Procedures, to Freeze and Reduce Electric Rates and to file and Implement Tariffs Not for an Increase in Rates, All in Connection with and Subject to the Merger of Ohio Edison Company and Centerior Energy Corporation, Case No. 96-1211-EL-UNC, Application at 15-16.*

In short, the EFC rates to be set in these proceedings will reflect a reduction as a result of this Quarto provision in the rate plan. CEI and TE wish to continue the higher EFC rates now in effect. Such desire is contrary to the rate plan and detrimental to EFC ratepayers. It must not be allowed. The Commission should order CEI and TE to comply with the provisions of the rate plan and reduce their EFC rates.

**II. AM. SUB. S.B. 3 DID NOT FREEZE EFC RATES AT ITS EFFECTIVE DATE; IN FACT, AM. SUB. S.B. 3 RETAINS EFC RATE AND HEARING PROVISIONS THROUGHOUT THE YEAR 2000.**

CEI and TE claim that Am. Sub. S.B. 3 is "confusing" with regard to changes in EFC rates from the effective date of the legislation to January 1, 2001, the beginning of the market development period. CEI and TE are confused by Section 2, which repeals the EFC hearing and rate statutes, and Section 9, which states that those statutes "as repealed by this act, shall take effect on January 1, 2001." As read by CEI and TE, this language from Section 9 means that the EFC statutes are repealed as of the effective date of the act and then take effect again on January 1, 2001. Not surprisingly, CEI and TE admit that "it is unlikely that the General Assembly intended to repeal the statutes as of October 5, 1999 and reenact those statutes on January 1, 2001." Given the "confusion" CEI and TE argue that the EFC rates in effect on the effective date of the legislation should continue in effect.

CEI and TE's proposed interpretation of Section 9 is illogical and without support, as CEI and TE themselves admit. Contrary to CEI and TE's argument, the legislation is not confusing at all. Section 2 repeals the EFC statutes, and Section 9 (like Sections 3, 4, 5, 6, 7, and 8) sets the effective date of the repeal. Section 9 clearly means that the repeal of the EFC statutes, as provided in Section 2, is effective on January 1, 2001. Therefore, EFC hearings and rate changes will continue throughout the year 2000.

The Commission has already acted as such. Even after the effective date of Am. Sub. S.B. 3, the Commission scheduled EFC audits and hearings for the year 2000. *In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Ohio Power Company, Columbus Southern Power Company, The Cincinnati Gas & Electric Company, and The Dayton Power and Light Company, and*

*Related Matters*, Case Nos. 99-101-EL-EFC, 99-102-EL-EFC, 99-103-EL-EFC, and 99-105-EL-EFC, Finding and Order (October 21, 1999). The audit report in Case No. 99-101-EL-EFC is to be filed February 25, 2000, and the hearing is scheduled to begin March 21, 2000. *Ohio Power Company*, Case No. 99-101-EL-EFC, Entry (January 28, 2000). The Commission has clearly already acted with the intention to change EFC rates during the year 2000.

CEI and TE refer to recent Commission orders in the EFC cases of The Dayton Power and Light Company ("DP&L") and Cincinnati Gas & Electric Company ("CG&E"). Those orders do not support CEI and TE, but only serve to undermine their argument. In both *CG&E* and *DP&L*, further EFC rate revisions were avoided only through stipulations and recommendations of the parties to those cases. *CG&E*, Case No. 99-103-EL-EFC, Finding and Order (December 21, 1999) and *DP&L*, Case No. 99-105-EL-EFC, Finding and Order (January 27, 2000). There are no such stipulations and recommendations here.

CEI and TE also claim that the EFC statutes were repealed as of the effective date of Am. Sub. S.B. 3 because other rate provisions in the legislation are keyed to that date. However, many provisions are also keyed to January 1, 2001, the starting date of the market development period and competitive retail electric service. Section 4928.01(A)(17), Revised Code. Whereas rates are capped at the level of rates as of the effective date of the statute, the rates are capped only at the time of the beginning of the market development period. Section 4928.34(A)(6), Revised Code.

CEI and TE argue that because fuel rates are capped during the market development period at their level as of the effective date of the legislation, there would be

"little point" in adjusting the EFC rates for a brief period, only to have them return to the rates as of the effective date of the legislation. CEI and TE opine that the General Assembly could not have intended "rate changes that would be effective for a matter of only several months."

Again, this argument is illogical. EFC rates change every six months. Section 4905.301, Revised Code. Pursuant to the rate plan, the CEI and TE EFC rates to be effective March 1, 2000, will be in effect for ten months, a time far longer than the six-month period that EFC rates are generally in effect. Moreover, the use of the EFC rate as of the effective date of the legislation for purposes of unbundling will affect the rate cap as of the beginning of the market development period, but does not mean a "return" to an EFC rate. Pursuant to Section 9 of Am. Sub. S.B. 3, as of the beginning of the market development period, there will no longer be an EFC rate.


CEI and TE also claim that EFC rate changes should be avoided due to the strained resources of the Commission, the electric utilities, and other interested parties who are occupied with the transition plan filings. Again, this argument is without merit. CEI and TE have already filed the 30-day data including the new EFC rates to be effective March 1, 2000. CEI and TE's efforts to prevent the EFC rate reductions required under the rate plan have unnecessarily caused this distraction.

### III. CONCLUSION

Pursuant to the FirstEnergy rate plan, the EFC rates of CEI and TE must be reduced effective March 1, 2000. Am. Sub. S.B. 3 did not freeze EFC rates as of its effective date, but only repealed the EFC hearing and rate statutes as of January 1, 2001.

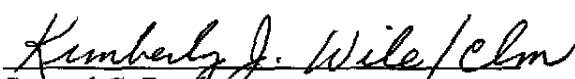
Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that copies of this Joint Brief have been served by first class mail, postage prepaid, or hand delivered to the following parties of record this 17th day of February 2000.

  
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