

49. 1613-EL-ORD Et. AL 8

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VIA FEDERAL EXPRESS

PUCO

December 27, 2001

Ms. Daisy Crockron
Chief of Docketing
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

Re: Memorandum Contra Applications For Rehearing of
The Ohio Consumers' Counsel and Ohio Partners for Affordable Energy

Dear Ms. Crockron:

Enclosed are an original and nine (9) copies of our pleading as referenced above.

Please file-stamp the two extra copies and return them to the undersigned in the enclosed envelope.

Thank you for your assistance in this matter.

Sincerely,



Arthur E. Korkosz
Senior Attorney

enclosures

cc: Parties of Record

AEK/b

(50779)

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Promulgation of Amendments to Rules for Electric Service and Safety Standards Pursuant to Chapter 4928, Revised Code.))))	Case No. 99-1613-EL-ORD
In the Matter of the Application of The Toledo Edison Company's Inter- connection Service Requirements.)))	Case No. 00-1257-EL-ATA
In the Matter of the Application of Ohio Edison Company's Interconnection Service Requirements.)))	Case No. 00-1258-EL-ATA
In the Matter of the Application of The Cleveland Electric Illuminating Company's Interconnection Service Requirements.)))	Case No. 00-1259-EL-ATA
In the Matter of the Application of The Cincinnati Gas & Electric Company for Approval of its Interconnection Procedures Tariff.)))	Case No. 00-1253-EL-ATA
In the Matter of the Application of the Dayton Power and Light Company for Approval to Establish an Interconnection Service Tariff for DP&L Distribution Service.))))	Case No. 00-1256-EL-ATA
In the Matter of the Application of Columbus Southern Power Company for Approval of Minimum Requirements for Distribution System Interconnection.))))	Case No. 00-1248-EL-ATA
In the Matter of the Application of Ohio Power Company for Approval of Minimum Requirements for Distribution System Interconnection.))))	Case No. 00-1247-EL-ATA
In the Matter of the Application of Monongahela Power Company dba Allegheny Power to Establish an Interconnection Tariff.)))	Case No.00-1337-EL-ATA

**MEMORANDUM CONTRA
APPLICATIONS FOR REHEARING OF
THE OHIO CONSUMERS' COUNSEL AND
OHIO PARTNERS FOR AFFORDABLE ENERGY**

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 by the Ohio Consumers' Counsel ("OCC") and the Ohio Partners for Affordable Energy ("OPAE"). As these two parties have asserted, essentially, the same two issues on rehearing, we address the applications together with respect to the two issues raised.

The first criticism is that the Commission's Finding and Order violates Ohio Revised Code Section 4928.11. Under OCC's and OPAE's theory, the Commission was apparently supposed to develop and articulate detailed technical and administrative requirements in its rules rather than adopt the comprehensive industry standards developed by the IEEE and require the utilities to file tariffs, to be reviewed and approved by the Commission, that comply not only with those standards but with other applicable requirements of law.

The answer to this criticism is twofold. First, the argument is in fact a criticism of and is directed to the Commission's Rules (Ohio Administrative Code §4901:1-22-01 through §4901:1-22-05) approved in the Commission's Finding and Order of April 7, 2000 in Case No. 1613-EL-ORD. If the parties were unhappy with the mechanisms established by the Commission in those rules, the appropriate channel for review was by rehearing of that April 7 Finding and Order with respect to these points. That course, however, was not pursued. Accordingly, the criticism is

both untimely and misplaced on rehearing here. The time is long since past for dissatisfied parties to seek review of the rules promulgated in an earlier Commission Finding and Order.

Second, and as a practical matter, the Commission's rules do implement the mandate of Ohio Revised Code Section 4928.11 by in fact adopting industry developed technical standards and setting out guidelines which "prevent barriers to new technology" and which do not make compliance "unduly burdensome or expensive." The statutory requirement that there be uniformity does not mean that the rules promulgated by the Commission cannot be sufficiently flexible to accommodate the differences both in the types and size of distributed generation equipment as well as the existing differences in the development and operation of the individual utilities' distribution systems. Acting appropriately within its discretion, the Commission has reasonably implemented uniformity through an approach which relies on industry standards developed through the IEEE and requires substantial equivalence to a *pro forma* tariff applicable to all the utilities in the state.

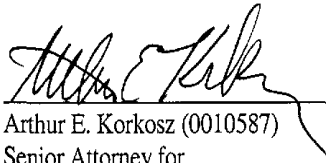
The criticism that the Finding and Order does not require identical fees among the utilities is also misplaced. The statute only requires that the Commission, in its implementation of Section 4928.11, not make compliance with interconnection standards "unduly burdensome or expensive." The Commission's rule assures this result by requiring review of the individual fee structures submitted as part of the utility tariffs for approval.

In their second rehearing criticism of the November 20 Finding and Order, OCC and OP&E claim that the Commission's approach runs afoul of Ohio Revised Code Section 4928.67. Here, both OCC and OP&E miss the point of the statute. The statute seeks to prevent artificial barriers to entry by the placement of "additional" safety or performance standards, testing, or liability insurance requirements which might unduly discourage the development of these

generation resources. Importantly, the statute does not in any way contemplate nor suggest that those entities interconnecting with the utility distribution system be exempt entirely from safety or performance standards, testing, or liability insurance requirements. Rather, it is only excessive burdens imposed in such a way as to prevent or discourage entry which the statute and state policy preclude. The approach to these items approved in the Finding and Order is consistent with the requirements of the statute and is lawful and appropriate.

Upon the foregoing, the Applications for Rehearing filed by OCC and OP&E should be denied.

Respectfully submitted,

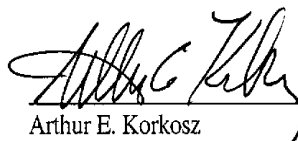


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CERTIFICATE OF SERVICE

I hereby certify that a copy of this MEMORANDUM CONTRA has been served by first class mail, postage prepaid, to the following parties of record this 27th day of December, 2001.



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