

file

08

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED DOCKETING DIV
00 MAY -8 PM 3:46

PUCO

In the Matter of the Commission's)
Promulgation of Rules for Certification of)
Providers of Competitive Retail Electric) Case No. 99-1609-EL-ORD
Services Pursuant to Chapter 4928, Revised)
Code)

**MEMORANDUM CONTRA
FIRSTENERGY'S APPLICATION FOR REHEARING**

The Ohio Consumers' Counsel ("OCC") respectfully submits this memorandum
contra the application for rehearing filed in this docket by FirstEnergy Corp.
("FirstEnergy") on April 28, 2000. This application for rehearing should be denied to the
extent and for the reasons set forth below.

- 1. The Commission's prohibition against CRES providers entering into a supply contract with a customer prior to the onset of retail choice is necessary and reasonable under the law.**

FirstEnergy argues that rule 4901:1-24-03 cannot preclude competitive retail electric service ("CRES") providers from entering into agreements or contracts with customers prior to the onset of competition. First, FirstEnergy insists that the Commission can not preclude an activity through a rule prior to the effective date of the rule. Second, FirstEnergy argues that the rule is inconsistent with the language of Ohio Revised Code Section 4928.08(B), which requires that no person may provide a competitive retail electric service on and after the start date of retail competition prior to being certified by the Commission. FirstEnergy's arguments are not valid.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician SW Date Processed 5-9-00

First, the effect of Rule 4901:1-24-03 is not to interfere in activity conducted prior to the effective date of the rule. The effect of Rule 4901:1-24-03 is to void the consequences of such activity following the effective date of the rule. For this reason, Rule 4901:1-24-03 should be retained. Moreover, any contract between a CRES provider prior to the onset of competition and the certification of the CRES provider and a customer would be inconsistent with Ohio Revised Code Section 4928.08(B).

FirstEnergy's second argument is that parties can contract prior to the onset of competition on the basis that the word "provide" as it is used under Ohio Revised Code Section 4928.08(B) excludes contracting. Common use of the term to "provide" includes establishing terms of a contract.¹ Additionally, Rule 4901:1-24-01(A), which sets forth the purpose of the certification rules, prohibits a CRES provider from commencing operations prior to its certification. The contracting of services is an integral part of the operation of the CRES provider and would, therefore, not be valid prior to the CRES provider's certification.

Moreover, as OCC has already stated in its comments, the purpose of certification is to test an applicant's qualifications to provide service. Potential CRES providers should not be binding customers to their service prior to a demonstration that they are competent to provide service.

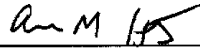
Finally, contracting with consumers prior to the onset of competition and/or certification would create customer confusion, as it could begin before the consumer

¹ Included under the definition of the term "provide" is "to state as a condition, stipulate." *New World Dictionary*, Second College Edition, 1978, pg 1144.

education programs have started and before most customers are aware of their choices. For example, customers may be persuaded to choose the first offer that appears to save them money when it may be inferior to what they can get from other CRES providers. For the above reasons, the present rule should be retained.

Respectfully submitted,

ROBERT S. TONGREN
CONSUMERS' COUNSEL

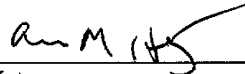


Ann M. Hotz
Dirk Winkler
Assistant Consumers' Counsel
Steven B. Hines
Analytical Specialist
Jim Williams
Compliance Specialist

Ohio Consumers' Counsel
77 South High Street, 15th Floor
Columbus, Ohio 43266-0550
(614) 466-8574 – Phone
(614) 466-9475 – Facsimile

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Ohio Consumers' Counsel's Memorandum Contra Application for Rehearing has been served by first-class mail, postage prepaid, upon the parties listed on the service list below this 8th day of May 2000.



Ann M. Hotz
Assistant Consumers' Counsel

SERVICE LIST

BRUCE J WESTON
AARP
169 W HUBBARD AVE
COLUMBUS OH 43215

WILLIAM R FORRESTER
AEP
1 RIVERSIDE PLAZA
COLUMBUS OH 43215

MARVIN I RESNIK
AEP
1 RIVERSIDE PLAZA
COLUMBUS OH 43215

PAULA GLUNTZ
ARTER & HADDEN
10 W BROAD ST SUITE 2100
COLUMBUS OH 43215

PAUL A COLBERT
CG&E
155 E BROAD ST 21ST FL
COLUMBUS OH 43215

MICHAEL D DORTCH
CG&E
65 E STATE ST SUITE 2100
COLUMBUS OH 43215

BEVERLY E JONES
CONSOLIDATED NATURAL GAS
625 LIBERTY AVE
PITTSBURG PA 15222-3199

VAUGHN R FLASHER
CONSOLIDATED NATURAL GAS
176 E STATE ST
COLUMBUS OH 43215

GARY A JEFFERIES
CONSOLIDATED NATURAL GAS
ONE CHATHAM CENTER SUITE 700
PITTSBURG PA 15219

ATHAN VINOLUS
DP&L
PO BOX 8825
DAYTON OH 45401

MARY W CHRISTENSEN
DPL INC
77 E NATIONWIDE BLVD 2ND FL
COLUMBUS OH 43215

SALLY W BLOOMFIELD
DUKE ENERGY NORTH AMERICA
100 S THIRD ST
COLUMBUS OH 43215

DANIEL V GULINO
ENERGY PLUS CO
TWO NORTH NINTH ST
ALLENTOWN PA 18101

JANINE L MIGDEN
ENRON
400 METRO PLACE N
DUBLIN OH 43217

HOWARD PETRICOFF
ENRON
52 E GAY ST
COLUMBUS OH 43215

R SCOTT BROWN
EXELON ENERGY
HORIZON ENERGY CO
2600 MONROE BLVVD
NORRISTOWN PA 19403

JAMES W BURK
FIRSTENERGY
76 S MAIN ST
AKRON OH 44308

DAVID W RUBIN
GREATER CLEVELAND GROWTH ASSOC
200 TOWER CITY CTR
50 PUBLIC SQUARE
CLEVELAND OH 44113-2291

LANGDON D BELL
GREATER CLEVELAND GROWTH
ASSOCIATION
33 S GRANT ST
COLUMBUS OH 43215

JASON S GIFFORD
GREEN MOUNTAIN.COM CO
55 GREEN MOUNTAIN DR
SOUTH BURLINGTON VT 05407

NICHOLAS GRECO
IBEW AFL-CIO
67376 N GRADE RD
ST CLAIRSVILLE OH 43950

JANINE MOON
INDUSTRIAL ENERGY USERS-OHIO
778 NORTHWEST BLVD
COLUMBUS OH 43212

SAM RANDAZZO
INDUSTRIAL ENERGY USERS-OHIO
21 E STATE ST
STE 1700
COLUMBUS OH 43215

KEVIN MURRAY
INDUSTRIAL ENERGY USERS-OHIO
21 E STATE ST
SUITE 1700
COLUMBUS OH 43215

MICHAEL KURTZ
KROGER CO
2110 CBLD CTR
36 E SEVENTH ST
CINCINNATI OH 45202

FLORRIS FORTUNE
LOCAL 175 UWUA
2307 EMBURY PARK
DAYTON OH 45414

BOB FRONEK
LOCAL 270 UWUA AFL-CIO
4205 CHESTER AVE
CLEVELAND OH 44103

ED GOOD
LOCAL 350 UWUA AFL-CIO
56080 MATTS LANE
SHADYSIDE OH 43947

FRANK KELLY
LOCAL UNION 1347 IBEW AFL-CIO
4100 COLERAIN AVE
CINCINNATI OH 45223

BRAD BOETZ
LOCAL UNION 1413 IBEW AFL-CIO
PO BOX 122
OAK HARBOR OH 43449

RICHARD W TAYLOR
LOCAL UNION 1466 IBEW AFL-CIO
3345 S HAMILTON RD
COLUMBUS OH 43232

GARY SELLARS
LOCAL UNION 2359 IBEW AFL-CIO
495 TARTON PALCE
LANCASTER OH 43130

LARRY J TScheme
LOCAL UNION 245 IBEW AFL-CIO
705 LIME CITY RD
ROSSFORD OH 43460

GARY JACK
MONONGAHELA POWER
1310 FAIRMONT AVE
FAIRMONT WV 26554

PHIL COLE
OHIO ASSOC OF COMMUNITY ACTION
85 E GAY ST
SUITE 1007
COLUMBUS OH 43215

DAVE DILLAHUNT
OHIO CHEMICAL COUNCIL
17 S HIGH ST
STE 410
COLUMBUS OH 43215

SHARI WEIR
OHIO CITIZENS ACTION
614 W SUPERIOR AVE SUITE 1200
CLEVELAND OH 44113

JOHN W BENTINE
OHIO COUNCIL OF RETAIL MERCHANTS
17 S HIGH ST
STE 900
COLUMBUS OH 43215

JOHN C MANANEY JR
OHIO COUNCIL OF RETAIL MERCHANTS
50 W BROAD ST
SUITE 2020
COLUMBUS OH 43215

JEFF SMALL
OHIO COUNCIL OF RETAIL MERCHANTS
17 S HIGH ST SUITE 900
COLUMBUS OH 43215

WILLIAM M ONDREY GRUBER
OHIO ELECTRIC CONSUMERS NETWORK
2714 LEIGHTON RD
SHAKER HEIGHTS OH 44120

BOB BOLTZ
OHIO ELECTRIC UTILITY INSTITUTE
14 E GAY ST
COLUMBUS OH 43215

ROBERT H SNYDER
OHIO ELECTRIC UTILITY INSTITUTE
175 S THIRD ST
COLUMBUS OH 43215

KURT LEIB
OHIO GROCERS ASSOCIATION
3280 RIVERSIDE DR SUITE 10
COLUMBUS OH 43221

SHELDON A TAFT
OHIO MANUFACTURES ASSOCIATION
PO BOX 1005
COLUMBUS OH 43215

MICHAEL A BEIRNE
OHIO MUNICIPAL ELECTRIC ASSOC.
2600 AIRPORT DR
COLUMBUS OH 43219

DAVID C RINEBOLT
OHIO PARTNERS FOR AFFORDABLE
ENERGY
PO BOX 1793
337 S MAIN ST 4TH FL NO 5
FINDLAY OH 45840

BETH SMITH
OHIO PETROLEUM COUNCIL
88 E BROAD ST
SUITE 1460
COLUMBUS OH 43215

SCOTT A CAMPBELL
OHIO RURAL ELECTRIC COOPERATIVE
10 W BROAD ST SUITE 700
COLUMBUS OH 43215

DAVID BERGER
OHIO RURAL ELECTRIC COOPERATIVE
6677 BUSCH BLVD
COLUMBUS OH 43229

CHRISTINE PATRONIK-HOLDER
SAFE ENERGY COMMUNICATION
COUNCIL
660 CRACKEL RD
AURORA OH 44202

PAUL F FORSHAY
SHELLY ENERGY SERVICES
SUTHERLAND ASBILL & BRENNAN
1275 PENNSYLVANIA AVE NW
WASHINGTON DC

AMY A GOLD
SHELLY ENERGY SERVICES
1221 LAMAR
SUITE 1000
HOUSTON TX 77010

WANDA M SCHILLER
STRATEGIC ENERGY
TWO GATEWAY CENTER
PITTSBURGH PA 15222

DONALD P OPATKA
UWUA AFL-CIO
7559 ANCHOR LANE
NORTHFIELD OH 44067

JOSEPH P MEISSNER
WESTERN RESERVE, NEC, PARKVIEWS
AREAWIDE SENIORS
1223 W 6TH ST
CLEVELAND OH 44113