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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of
FirstEnergy Corp. on Behalf of Ohio
Edison Company, The Cleveland
Electric Illuminating Company and
The Toledo Edison Company for
Approval of Their Transition Plans
and for Authorization to Collect
Transition Revenues

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Case No. 99-1212-EL-BTP

In the Matter of the Application of
FirstEnergy Corp. on Behalf of Ohio
Edison Company, The Cleveland
Electric Illuminating Company and
The Toledo Edison Company for
Tariff Approval

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Case No. 99-1213-EL-ATA

In the Matter of the Application of
FirstEnergy Corp. on Behalf of Ohio
Edison Company, The Cleveland
Electric Illuminating Company and
The Toledo Edison Company for
Certain Accounting Authority

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Case No. 99-1214-EL-AAM

**FIRSTENERGY CORP.'S MEMORANDUM CONTRA
THE APPLICATION FOR REHEARING
OF NEIGHBORHOOD ENVIRONMENTAL COALITION
AND WESTERN RESERVE ALLIANCE**

Pursuant to Rule 4901-1-35 of the Ohio Administrative Code, FirstEnergy Corp.,
on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The
Toledo Edison Company, files this memorandum contra the "Brief for Rehearing" filed by
Neighborhood Environmental Coalition and Western Reserve Alliance (together, the

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"Coalition").¹ The Coalition raises three issues, none of which has merit. The rehearing application should be denied in its entirety.

I. The Commission did not err in finding that FirstEnergy's consumer education plan should be approved.

The Coalition finds fault with the Commission's approval of FirstEnergy's consumer education plan, arguing that the testimony of FirstEnergy witness Welsh, which set forth the plan, was either "not part of the record, or if it is, it was unlawfully included in the record." (App. for Reh., p. 5) The Coalition contends that the Commission could not approve FirstEnergy's transition plan because it was incomplete.

What the Coalition fails to consider is that under S.B. 3, the Commission need have a hearing only on "those aspects of the plan that the Commission determines reasonably require a hearing." Section 4928.17(B), Revised Code. The Commission has the authority to approve any aspect of the plan based on the filing alone. Thus, whether or not any party wanted to cross-examine Mr. Welsh, the Commission did not have to have a hearing on the consumer education plan. There was no denial of due process rights.

The Coalition provides a long list of recommendations regarding the organization and operations of the advisory boards. This section of the Coalition's application reads like a brief, not like a rehearing request. In fact, this list of recommendations, in almost the exact same words, was in the Coalition's reply brief (see pp. 9-12). The Coalition does not suggest that the

¹ We note there were several problems with service of the Coalition's rehearing application. The certificate of service on the filed version says that the application was being sent electronically to the parties on August 16, but FirstEnergy received nothing from the Coalition on that date. A version of the application was received electronically on August 17, 2000, the day the application was docketed, but it was garbled and unintelligible. At FirstEnergy's request, another electronic version was sent on August 17, but that was not the version that was actually filed; the sections on the consumer education plan are significantly different. Because service was not properly perfected, the application for rehearing should be stricken, and the arguments to which FirstEnergy responds should not even be considered.

Commission erred in not requiring that the advisory boards be organized in that way. It simply "urge[s] the Commission to adopt these recommendations and integrate[] them into the consumer education plan" (App. for Reh., p. 9) Because the Commission has already considered and rejected the Coalition's proposal, there is no basis for granting rehearing on this matter.

In its Finding and Order approving all of the utilities' consumer education plans on a consolidated basis, the Commission said that it "will continue to maintain its overall supervision of the [consumer education plans] and that [its] authority to direct further development and implementation of the education plans does not end by approving the education plans set forth in the transition plan" (Case No. 99-1658-EL-ETP, et al. (July 19, 2000 Finding and Order, p. 8)) The fact that additional details on the plan need to be worked out among the Advisory Board, the Companies and the Staff does not mean that the plan was incomplete or inadequate. It simply reflects the fact, as acknowledged by the Commission, that "the educational process will continue to be adapted and changed," based on market research and other factors "that would require shifts in the plan." (*Id.*) There is no basis for granting rehearing on the consumer education plan.

II. S.B. 3 does not require that transition plans deal with green power.

The Coalition argues that the Commission's Opinion and Order does not fulfill what it contends is the Commission's "obligation to insure that the Stipulation be environmentally sound."² (App. for Reh., p. 12) While FirstEnergy has no objection to suppliers offering "green power," it is not FirstEnergy's or the Commission's responsibility to ensure that there are suppliers offering such options to customers. There is nothing in S.B. 3 that requires such action by the utilities or by the Commission. The Coalition's argument that FirstEnergy

² It is not clear how the Gongwer News Service or "PennFuture" reports appended to the Coalition's application for rehearing are relevant. In any event, the reports are nonrecord evidence on which the Commission cannot rely.

should establish a fund to promote the local production of alternative sources of energy is totally without merit. If customers want green power, they should be willing to pay for it. There is no reason for FirstEnergy to subsidize green power, and certainly nothing in S.B. 3 that requires such a subsidy. The point of S.B. 3, in this context, is that in the restructured environment, customers will have the option to purchase green power, not that electric utilities should encourage those purchases by subsidizing them.

There is nothing in the law that supports the Coalition's claim that the Commission has the obligation to take environmental issues into account in determining whether FirstEnergy's transition plan meets the statutory requirements. Other state and federal agencies are assigned the task of protecting the environment; that is not the Commission's responsibility. Although the Commission may be able to reject a Stipulation when it is not consistent with Ohio law, the fact that the Stipulation filed in this case does not explicitly provide for green power does not make it inconsistent with Ohio law. The Coalition has alleged no error on the Commission's part and thus provides no basis for a rehearing on this issue.

III. Regional Transmission Organization

The Coalition expresses its concern over the fact that FirstEnergy "has yet to turn over its transmission facilities to a Regional Transmission Organization," and its alarm that the Commission "has in no way set clear goals or deadlines for FirstEnergy to encourage [it] into entering a[n] RTO." (App. for Reh., p. 15) No such goals or deadlines are necessary. FirstEnergy is a part of the Alliance RTO that has been conditionally approved by FERC; the testimony presented by FirstEnergy witness Burgess explains FirstEnergy's plan to satisfy the requirements of R.C. 4928.12.

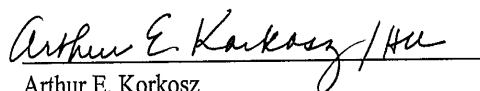
Contrary to the Coalition's assertion, it is certainly not the case that the Commission has "approved a transition plan that is not in line with Ohio law, and without any

safeguard for assuring the . . . public that Ohio law will be followed in the future." (App. for Reh., p. 15) As the Commission stated in the Opinion and Order, it cannot determine whether the Alliance RTO complies with Section 4928.12, Revised Code, until FERC acts on the Alliance filing. Accordingly, it exercised its authority "to defer compliance until an order is issued under division (G) of section 4928.35 of the Revised Code." (Opinion and Order, p. 60, quoting Section 4928.34(A)(13), Revised Code) That provision permits the Commission to order an electric utility to be a member of, and transfer control of transmission facilities to, one or more qualifying transmission entities that are planned to be operational on or before December 31, 2003. The Commission has stated its intent to issue such an order. Thus, there is nothing unlawful or unreasonable about its Opinion and Order with respect to this matter, and the Coalition's application for rehearing on this matter is therefore without merit.

IV. Conclusion

None of the three matters raised by the Coalition suggests an error on the part of the Commission in its Opinion and Order. The Commission should deny the Coalition's application for rehearing in its entirety.

Respectfully submitted,

A handwritten signature in cursive script, reading "Arthur E. Korkosz / Hu", written over a horizontal line.

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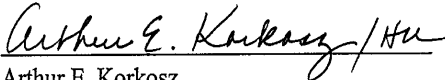
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