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By FAX

Docketing Division
PUCO
180 East Broad Street
Columbus, Ohio 43215

Re: Case Nos. 99-1212-El-ETP, 99-1213-EL-ATA, and 99-1214-EL-AAM

To Docketing:

Please accept this copy of the Reply Brief of Citizen Power and the Ohio Environmental Council in the above-named cases for filing.

I will have the original and twenty-seven copies of the Brief in the above-named cases filed by Monday.

Thank you for your assistance and cooperation.

Sincerely,

William M. Ondrey Gruber

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) Case No. 99-1212-EL-ETP
Toledo Edison Company for Approval for Their)
Transition Plans and for Authorization To Collect)
Transition Revenues.)

In the Matter of the Application of FirstEnergy)
Corp. on Behalf of Ohio Edison Company, The)
Cleveland Electric Illuminating Company and The) Case No. 99-1213-EL-ATA
Toledo Edison Company for Tariff Approval.)

In the Matter of the Application of FirstEnergy)
Corp. on Behalf of Ohio Edison Company, The)
Cleveland Electric Illuminating Company and The) Case No. 99-1214-EL-AAM
Toledo Edison Company for Certain Accounting)
Authority.)

Reply Brief of Citizen Power
and
the Ohio Environmental Council

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Reply Brief of Citizen Power
and
the Ohio Environmental Council

Citizen Power and the Ohio Environmental Council (“Council”) hereby respectfully present to the Public Utilities Commission of Ohio (“Commission”) their joint Reply Brief in these cases.

Introduction

Nothing set forth in the Initial Briefs of the other parties filing briefs has undermined the central thrust of our Initial Brief’s conclusion that the Stipulation and Transition Plan of the Companies are unreasonable and unlawful, and would not help, but would instead work to undermine, the creation of the kind of vigorous competition necessary to fulfill the goals

of the law and policies of the State of Ohio. Section 4928.02 O.R.C. It is also important for the Commission to remember and assert that, despite the Company's claim in its Brief (at p. 6) that the Settlement is full of provisions not within the Commission's authority to order, the Commission actually has a great deal of discretion under the statute to act in order to ensure that the policies of the State are met, including, inter alia, the following:

...ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers...ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies...

Section 4928.02 O.R.C.

Most of the Initial Briefs filed in support of the Stipulation and the Company's Transition Plan do nothing more than to repeat the standard for Commission consideration of a Stipulation, and assert the standard has been met, and that there are significant benefits to consumers in the settlement. We do not dispute that there are benefits in the Stipulation for the settling parties and their constituents. The issues are whether the Company has proven that its Transition Plan is in full compliance with the law and rules, that the settlement is entirely lawful, and that the settlement's benefits outweigh the detriments to consumers and competition.

The Commission should not be swayed by the Company's claim that the Stipulation offers the fastest route to get to a competitive market. Approval of the Stipulation will thwart any chance for the development of a competitive market.

Argument

A. The Stipulation is anticompetitive, unreasonable and unlawful, and the Commission must reject it.

(1) Switching

Nothing in the Initial Briefs changes the fact that counting switches to the affiliate of FirstEnergy and its operating companies in determining whether the Company has reached 20% switching is anti-competitive and violates the spirit and letter of the law. The issue is not addressed in the briefs. No explanation or legal support is provided by the Company or anyone else for this provision of the Stipulation. In fact, the Company states in its Brief (at p. 33) that “FirstEnergy will not be able to provide competitive retail services through a fully separated affiliate.” It is not relevant whether or not the affiliate will compete with other utilities, as counsel for the Company asserted at the Public Hearing in Cleveland on June 2nd. What is important is that a customer “switching” to an affiliate to buy power, particularly in these circumstances, is not an indicator of competition in the market.

The absurdity and danger of counting switches to the Company’s affiliate is demonstrated by the Company’s description of the “corporate separation” that will occur during the market development period (MDP). Even if the corporate separation plan is in full compliance with the law and rules, the lack of substantial corporate separation over the first years after the start of “competition” dictates against allowing a switch by a customer to an affiliate to be viewed as providing or encouraging competition.

The Company’s “Competitive Unit” will have operating and functional control over all competitive assets, including generation plants, as of January 1, 2001. Company Brief at

p. 33. As the Company's Brief (at p.37) states: "The plan removes the Utility Unit from all operations and control over the output from the generating plants." This clearly establishes that a customer switch to the competitive affiliate is not a switch at all. Not only is the affiliate part of FirstEnergy, as we argued in our Initial Brief, but the "switching" customer will actually be served by the same capacity as before the "switch." Throughout most, if not all, of the first five years of competition the generation plants and other competitive assets will be owned by the operating companies. We are not necessarily arguing that this process should occur faster, but the fact of this situation shows that when a customer "switches" to the Company's affiliate, it will not be a competitive switch.

Throughout this period and beyond, the Support Unit of the Company will provide services to the competitive services of the Company. Company Brief at p. 33. The Company may even use the name of its operating utility companies in the advertising by a retail electric marketing affiliate, though it will include a disclaimer. Company Brief at p. 41. The logo for every FirstEnergy company is virtually the same. Company Brief at p. 42. The common use of employees, facilities, equipment, and benefit plans is not unlawful, under the statute, but once again is indicative of the fact that the affiliate is not a separate entity. Company Brief at p. 42. All these factors, and the fact that the shareholders are the same, as is the top management, demonstrate that competition is not involved when customers switch between affiliates of the same company. The legality of these activities is one matter, but to claim that when a Company operating utility customer switches to an affiliate, that switch should be counted as a switch that enhances competition is ridiculous.

In addition to all of the policy and common sense reasons not to count such switches as part of the 20% standard, allowing this to occur would violate the law. The Commission must ensure, under the law, that an affiliate does “not receive undue preference or advantage” from the non-competitive utility. Section 4928.17 (B) O.R.C. The law also requires the Commission to protect the “public interest in preventing unfair competitive advantage.” Section 4928.17 (A) (2). Counting what amount to internal switches—indications of corporate separation, but not a growing competitive market—encourages an undue preference for the competitive affiliate by the non-competitive utility, and discourages creation of other competitors for that market.

(2) Power availability.

Although under the Supplemental Stipulation there is some opportunity for power suppliers other than the Companies’ affiliates to receive some of the market support generation, as described by the Staff’s Brief (at p. 14), aggregators will not have access to the power scooped up by the affiliates. Joint Exhibit 2, at p. 1. In addition, the power is available to the marketers only if it is all “fully subscribed.”

B. The Company has failed to meet its burden of proving that its Transition Plan meets the requirements of the law, and the Company’s Plan is unreasonable and unlawful.

In its Brief, the Company describes very well the Commission’s responsibility in this case. “The Commission must first make all of the specific determinations set forth in R.C. 4928.34 before approving a utility’s transition plan...supplemented by other required

determinations that are found in other provisions of the Act, including compliance with the Commission's rules for transition plan filings as authorized under R. C. 4928.06 (A)." Company Brief at p. 12 (emphasis added).

It is the Company's burden to prove that it has met the requirements of the law and rules. As demonstrated in our Initial Brief and this Reply, the Company has failed to meet this burden in several critical areas, and thus its Transition Plan and the Stipulation tagged on to it cannot be and should not be approved as now configured.

(1) Corporate Separation

The sale of assets of the Company's distribution utility (i.e. the Utility Unit) to the Company's affiliate (i.e. the Competitive Services Unit), in the manner proposed by the Company, is unlawful and anti-competitive. Company Brief at p.44. The transfer "at the lower of net book or market to reflect the treatment of such asset values in the determination of transition charges" may make sense in order to avoid double collection of revenues. But in order to foster competition and be more reasonable for consumers, it would be better to lower transition charges by the offsetting revenues gained from an open market sale of the Company's assets. In fact, the Company's planned sale of assets to its affiliate does not ensure compliance with the policies of the State and requirements of the law, but rather it actually provides for undue preference for its affiliate. Company Brief at p. 44.

It is the policy of the State, and a requirement of the law, that the Company, and through its decisions the Commission, "ensure diversity of electricity supplies and suppliers...encourage...market access for cost-effective supply -...side retail electric

service...ensure effective competition in the provision of retail electric service by avoiding

anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service...” Section 49228.02 O.R.C. More specifically, Section 4928.17 (A) (3) O.R.C. prohibits a utility from extending “any undue preference or advantage to any affiliate ...without compensation based upon fully loaded embedded costs charged to the affiliate.”

Section 4928.17 O.R.C. requires the Company to file a corporate separation plan that is consistent with the policy, as to competitive objective, specified in Section 4928.02. The plan must achieve the following main objectives: (1) at a minimum, provide for a fully separated affiliate of the Company, including separate accounting requirements and code of conduct, that will offer retail service, and (2) the plan must ensure that undue preferences will not be extended to any affiliate of the Company, and it must prevent an affiliate from otherwise receiving unfair competitive advantage in order to prevent market power abuse by the Company.

In warning against the extension of undue preference by the Company, the law mentions various items as the subject of that preference "including but not limited to utility resources such as trucks, tools, office equipment, office space, supplies, customer and marketing information, advertising, billing and mailing systems, personnel and training, without compensation based on fully embedded cost being charged to the affiliate." Section 4928.17 O.R.C. The Company goes even further, conferring a preference on its retail marketing affiliate with respect to generation.

The Company wants to transfer all of its generation to its competitive affiliate not at fully embedded cost as Section 4928.17 requires, but at a price that is the "lower of net book or

market." Company Brief at p. 44. We know, of course, that means the transfer will be at a market price, imputed by the Company, since, in simple terms, the Company will already be collecting the difference between book and market in the "stranded costs" it seeks to recover in its transition plan. This, by the way, is one reason the stranded costs the Company claims are so large. The larger the "stranded costs" the Company collects from native load customers, the lower is the price it can charge its competitive affiliate for the capacity it is transferring. That, in turn, allows the competitive affiliate to charge a lower price to retail customers in the new market to maximize the number of "switches" (to itself!) so it can reach the statutory goal of 20%.

This transfer of all of the Company's generation to its competitive unit at a market price, is anticompetitive by means of a blatant conferring of undue preference, as specifically prohibited by the statute. The Commission must not approve it.

(2) Independent Transmission Plan

No brief except the Company's even discusses the issue of the lack of a complying

independent transmission plan in the Company's Transition Plan, and all briefs fail to demonstrate that the Company's plan is in compliance with the law. Section 4928.12 O.R.C. It is very telling that the Staff's Brief simply repeats the Stipulation's transmission "benefits", while it totally neglects to address the Staff's own conclusion that Company's Transmission Plan does not meet the requirements of the law or Commission rules: "the PUCO Staff is satisfied with the FERC Order in identifying deficient aspects of the Alliance RTO configuration and methods of business

operation...if altered properly, could also satisfy the requirements laid forth in Section 4928.12, Revised Code, and the clarifying rules.” S.R. at p. 44 (emphasis added.)

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Section 4928.12 (A) O.R.C. is clear: "Except as otherwise provided in Sections 4928.31 to 4928.40 of the Revised Code, no entity shall own or control transmission facilities as defined under federal law and located in this state on or after the starting date of competitive retail electric service unless that entity is a member of, and transfers control of those facilities to, one or more qualifying transmission entities, as described in Division (B) of this Section, that are operational." The reason for imposing such a requirement by law is also clear. A vigorous and lasting competitive market for retail electric service must be created to restrain prices once deregulation fully takes hold. Section 4928.02 O.R.C. But without open and nondiscriminatory access to transmission sufficient to provide for alternative suppliers capable of price competition (i.e., those that have similar costs and access to resources), no such competition will develop in retail markets.

No one any longer doubts that the only way to achieve such transmission access is by requiring current transmission owners to transfer ownership and control to an RTO capable of assuring such access on a basis, and with a scope of operation, that is consonant with regional markets. The requirements in the law were imposed with the goal of helping to create competition with transmission access in mind. It is also important to require that the transfer of ownership and control, and most particularly the opening of the transmission system, be accomplished as early as possible, at or before the opening of retail markets to competition.

Competition is a fragile thing, particularly in an industry where such economies
of

scale impose size requirements on its participants, limiting the number of possible competitors.

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The first few years when customers first get to shop for alternatives are vital in determining the nature and scope of that competition. Unchecked market power exercised by transmission owners to limit entry during this period will do great damage to the chances for competition to thrive.

One of the nine specifications that must be met for an RTO to qualify under the law (Section 4928.12 (B) (5) O.R.C.), shows that the Ohio Legislature understands the importance of this point. A qualifying transmission entity must achieve "the objectives of an open and competitive electric generation marketplace, elimination of barriers to market entry, and preclusion of control of bottleneck electric transmission facilities in the provision of retail electric service." It is no exaggeration to say, that the transfer of ownership of control of transmission facilities to a "qualifying" and operational RTO, and the concomitant opening of nondiscriminatory market access, is an indispensable prerequisite to the development of the kind of competition necessary to restrain prices in a deregulated market.

In its Initial Brief, the Company says it will satisfy the requirements of Section 4928.12 at some future date by transferring control, operation, and ultimately ownership of its transmission facilities to the Alliance RTO. Company Brief at p. 94. It wants the Commission to approve its plan now, including specifically the fact that it is transferring its facilities to the Alliance (notwithstanding vague references to working with other RTOs). Company Brief at p. 107. But it is beyond dispute that the Company's plan is deficient; it fails to meet the standards for a transmission plan set out by Section 4928.12. Nor does the Company offer any specific

information about how the plan's deficiencies will be corrected, beyond simply vague assurances that they will be.

The Company's strategy is set out in its Brief---the Company wants it both ways. The Company wants its Transmission Plan approved by the Commission, but realizing that the Commission may find that difficult, since the Plan clearly does not comply with the requirements of Section 4928.12 O.R.C., it really wants an order under Sections 4928.35 and 4928.34 (A) (13) O.R.C. giving it more time, or a conditional approval—but never asks for a deferral under these sections. Company Brief at p. 98. The Company's request views the statutory provisions like a cafeteria where it can pick and choose parts of different related provisions to put together a satisfactory meal for the Commission to approve.

It is important to look at each component of the Company's tray full of requests separately. First, the Company is requesting that the Commission approve its Transmission Plan as presented in its filing and testimony. The Company acknowledges that State law prohibits it from owning or controlling transmission facilities on or after January 1, 2001, unless it is a member of and transfers control of its transmission facilities to a "qualifying" transmission entity (i.e. an RTO or ISO approved by FERC). Company Brief at p. 92. Moreover, the law requires that it must be an "operational" RTO. Section 4928.12 (A) O.R.C. The Company argues that if it belongs to an RTO approved by FERC, then that would put it in compliance with State law. Company Brief at p. 93. The reverse is also true, that if the RTO is not approved by FERC, it is also not in compliance with Ohio law.

Second, its Plan is to transfer control and “ultimately” ownership of its facilities to

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the Alliance RTO. Company Brief at p. 94. For now, however, the Company wants its Plan, and the transfer of control and ownership of its facilities to the Alliance RTO contained in the Plan, approved by the Commission, even though the Plan does not comply with Section 4928.12 O.R.C. The Alliance RTO is not operational. As recently as May 18, 2000, the FERC “rejected in part the Alliance compliance filing and application for rehearing...” Company Brief at p. 96. The Company “believes” that they will be able comply with the FERC and Ohio requirements “as set forth in R.C. 4928.12” by January 1, 2001. Company Brief at pp. 96 and 97. “Furthermore, the Alliance RTO’s revised pricing proposal and scope and configuration proposal were not included” in its February filing at FERC. It “expects” to file these “this summer.” Company Brief at pp. 96-97. Thus, the Company’s “Plan” is not even complete before the Commission or FERC.

The deficiencies of the Alliance proposal, as the Company and the other member companies presented it to the FERC, are well known. The Commission, too, as a party to that filing knows them first hand. The Company has so far had three chances at the FERC to correct those deficiencies and fashion a plan that will actually open up the transmission of Alliance members: in their initial filing, in their request for rehearing of FERC's initial order, and in their compliance filing to that initial order. Yet major deficiencies remain, many of them essentially still unaddressed by the Company in a substantive way. The Company provides no basis for optimism that the Alliance deficiencies will be corrected any time soon in such a way as to satisfy statutory

requirements for the transfer of transmission to a qualifying RTO.

The Company's Brief discusses the statutory requirements and how it will meet

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them by ignoring the nine specifications in the statute (Section 4928.12 (B)) that are to be used to determine if an RTO to which transmission is to be transferred is "qualified. Instead, the

Company substitutes four objectives, which include only some of the statutory requirements, that it claims are "shared" by federal and state authorities, and which are "designed to achieve the same key objectives for transmission in the development of competitive wholesale and retail energy markets" Company Brief at p. 93. But in offering a transmission plan, the Company is bound to meet the requirements of the statute, not those of a self-serving list it devises on its own.

The Company's list does include some of the specifications in the statute, but it leaves out three of the most important ones: (1) that a proposed RTO be operational, which requires FERC approval, (2) that the RTO governance be independent of transmission users, and (3) that the RTO be able to achieve the basic objectives for RTOs, including the elimination of barriers to entry and the preclusion of control over "bottleneck" transmission facilities.

As the Commission is aware, the FERC has detailed some of the major deficiencies of the Alliance RTO, and the Staff has concurred. See Company Brief at p. 96, and S.R. at p. 44. The Company acknowledges and briefly discusses four of the deficiencies FERC has identified (although it combines them into three in its brief) : (1) the lack of independence in RTO governance, (2) failure to eliminate pancaked rates (which is only one of the rate issues FERC addresses), and (3) the lack of sufficient scope of configuration to provide for competition

on a regional market basis, and (4) the lack of coordination with other utilities and RTOs.

Company

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Brief at p. 96, 97. While there are other issues, for our purposes a discussion of these four is sufficient to show that the Company provides no basis on which to approve its plan.

The Company says that "with the additional guidance provided by FERC", it, along with the other Alliance companies, "believe" they can modify the governance structure "to satisfy both FERC and this Commission as set forth in R.C. 4928.12." Company Brief at p. 96. It does not say what it will do. Its lack of specifics is particularly troubling in the face of its continued determination to retain an ownership share in the for-profit Alliance RTO. Yet the Commission is supposed to say, "OK, your belief that you can correct the problem is good enough for us", and stamp "approved" on the Company's Transmission Plan and Transition Plan.

As to the next two deficiencies, the Company avers that it did not address them in any of its three bites of the apple yet at FERC, but it plans to do so sometime this summer. The Company's assurance of both its willingness and ability to solve these problems is in part disingenuous. Moreover, once again, the Company gives not the slightest hint as to the nature of

its new proposals that it will be filing to correct these two deficiencies. In particular, the lack of regional scope of the Alliance has been an issue from the day several years ago when the Company and the other Alliance utilities dropped out of the Midwest ISO and formed the Alliance. The Commission is apparently just supposed to have faith that their new filing will

magically resolve these issues it has either failed to resolve or failed to address in the past, and grant the Company the approval it seeks. The Commission cannot ignore the law in this way.

The fourth deficiency--lack of coordination with other utilities or RTOs--is the

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only one the Company addressed in its settlement with some of the parties in this case. But again, all it provides are promises to work with others to resolve the problem, plus a further

promise to

unilaterally file a solution if the Alliance itself cannot come up with one. To say these promises are at present empty is to state the obvious.

The Company could have deferred asking Commission approval of its Transmission Plan until it was complete and it could prove compliance with Section 4928.12 O.R.C. The law says that a “Transition Plan also may include a plan for the independent operation of the utility’s transmission facilities.” Section 4928.31(A) (5) (emphasis added.). The Company chose to include a Plan in its Transition filing now before the Commission. The Stipulation incorporates the Transition Plan, and makes as a condition of the Stipulation, that all parts must be approved as filed (or as changed by the Stipulation.)

Although the Company acknowledges the shortcomings of its Transmission Plan, and that it obviously is not in compliance with Ohio law, it insists on pursuing approval of that Plan through its Transition Plan and appended Stipulation. The Company may not receive approval of its Transmission Plan involving membership in, and the sale of its facilities to, an RTO that has not been approved by FERC and is not operational. The alternative contained in

Section 4928.34 (A) (13) O.R.C. does not allow the Commission to approve a company's plan and the sale of its transmission facilities to an RTO. The language stating that the Commission may "for good cause shown" allow a deferral of compliance, simply allows the Commission to put the utility in the same category as a utility that did not include a Transmission Plan in its Transition Plan filing. Sections 4928.34 (A) (13) and 4928.35 (G) O.R.C.

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The Company is now stuck with a Transition Plan that includes a Transmission Plan that cannot be approved by the Commission, jeopardizing the Stipulation like a house of cards. The statute does not provide for conditional approval of a non-complying Transmission Plan.

A third item on the Company's cafeteria tray of proposals, is its request that the Commission approve its Transmission Plan "subject to final approval of the Alliance RTO." Company Brief at p. 98. There is no such animal in the law. Rather, only if the Company had requested and shown good cause why approval of its Transmission Plan should be "deferred", (Section 4928.34 (A) (13)) then the Commission could have issued an order, pursuant to Section 4928.35 (G) O.R.C., requiring membership in a "qualifying" transmission entity or entities at a later date. "Deferral" is not the same as the conditional approval that the Company seeks.

So the Commission has discretion as to whether to grant a deferral. In considering a deferral, however, the Commission must exercise great caution in allowing the retail market to be deregulated, while at the same time granting deferrals for several years (the statute permits deferrals until December 31, 2003 and perhaps beyond) that will allow transmission owners to continue to limit entry and strangle the very competition the Commission

seeks to create. This is a prescription for disaster that Citizen Power has seen all too clearly being acted out in Pennsylvania.

The Pennsylvania Legislature enacted a deregulation statute that made no provision for opening transmission. Therefore, there is no RTO in Western Pennsylvania,

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which has resulted in almost no competition. Suppliers simply cannot economically get to the customers previously served by Allegheny Energy and Duquesne Light to compete for sales. See testimony of David Hughes, Cleveland Public Hearing, June 2, 2000.

The Ohio Legislature had the good sense to address transmission access as an indispensable part of the process of creating competition. The Commission must not render this requirement useless for several years during the market development period by granting deferrals to companies like the Company that permit them to retain control over their transmission facilities and thwart the development of viable competition.

The Commission's order should, at minimum, require the Company to be in compliance with the transmission requirements of Section 4928.12 O.R.C. before its Transition Plan becomes effective. The Staff recommended in its Report that the Commission "should wait" to make a final ruling on the Alliance RTO as a qualifying transmission entity until the Company makes the necessary changes to its Plan for the Alliance and it is approved by the FERC. S.R. at p. 44.

Since the Transition Plan cannot be approved including the Company's

Transmission Plan, and the Stipulation prevents changes to the Transmission Plan's inclusion of the request for its approval, the Commission has no choice but to disapprove of the Transition Plan and Stipulation. The rejection of the Transition Plan will in the end provide the best protection for consumers. At least, the Commission cannot approve the Transmission Plan and request to transfer assets until the Company's Plan is in compliance with the law.

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(3) Consumer Education Plan

No Brief except the Company's deals with the issue of the consumer education plan in any substantive manner. The Company's argument justifying its consumer education plan (at pp. 65 - 69) relies almost entirely on the pre-filed testimony of Company witness Welsh. However, as set forth in our Initial Brief, Mr. Welsh's testimony is not a part of the record in this proceeding because he never took the stand to enter his testimony into the record. Only the testimony of witnesses of the Company who were not asked to appear for cross examination by any intervenor was admitted into the record without the witness appearing and swearing under oath of the veracity of their testimony.

Mr. Welsh was one of the witnesses that Citizen Power wished to cross examine, as set forth in Citizen Power's notification to the Examiner and the Company dated April 24, 2000. Also, Citizen Power reserved the right to present a witness(es) on the consumer education issue. But since the Commission did not allow the issue to be a part of the hearing, the Company's testimony cannot be considered part of the record.

Therefore, we ask the Commission to strike from the Company's Initial Brief all references to Mr. Welsh's testimony, as follows:

- a. the first sentence of the second paragraph on page 65;
- b. the first full paragraph on page 66, through the first full paragraph on page 67;
- c. the continuing paragraph on page 68 starting with "Mr. Welsh explained that..." through the end of the paragraph.

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(4) Net Metering Tariff

Nothing in any of the Initial Briefs undermines our arguments, set forth in our Initial Brief, demonstrating why the Companies' Net Metering Tariffs are unlawful and must be rejected by the Commission, which means that the Stipulation and Transition Plan incorporating the tariffs are unlawful and cannot therefore be approved. The Company simply points to its testimony in the case explaining (but not legally justifying) the Net Metering Tariff terms. Company Brief at p. 30.

Conclusion

Wherefore, this Commission should not and cannot approve the proposed Stipulation. To the extent that approval of the Stipulation would result in approval of provisions and Tariffs that are unlawful, the Commission's approval of the Stipulation would be unlawful. To the extent that approval of the Stipulation would result in an unregulated monopoly and anti-competitive activity, it is unwise and violates the spirit and letter of the law. And to the extent that approval of the Stipulation would result in approval of the Company's recovery from

customers through transition charges of revenue that would not be recoverable even if the restructuring law had not been enacted, it is unlawful.

The Commission should reject the Stipulation and require the parties to return to the bargaining table, or to proceed to hearing so that this Commission can have all the evidence and information before it, to protect consumers and satisfy the requirements of the law.

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Respectfully submitted,

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June 9, 2000

Attorney for Citizen Power and
the Ohio Environmental Council

Certificate of Service

I certify that a copy of this Reply Brief has been sent to the Applicant and all Intervenors by E-mail this 9th day of June, 2000.

William M. Ondrey Gruber

