

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)
Toledo Edison Company for Approval of) Case No.97-99-EL-AEC
an Agreement with Blako Industries.)

FINDING AND ORDER

The Commission finds:

- (1) The Applicant, The Toledo Edison Company, is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) On January 30, 1997 the Applicant petitioned this Commission for approval of an Agreement with Blako Industries (Customer). The Agreement will encourage the Customer to retain and expand its operation in northwest Ohio. The Customer was considering Bowling Green Municipal as an alternative supplier.
- (3) The terms of the Agreement are as follows:
 - (a) Except as provided in the Agreement, electric service to the facility shall be provided under the rates, terms, riders and conditions of the appropriate rate schedule in effect at the time of service.
 - (b) The non-fuel revenue portion of the customer's bill shall be adjusted downward by applying a 30% discount.
 - (c) The Customer agrees that the Applicant shall be its sole supplier of all its electrical requirements. In the event the Applicant is not the sole source supplier of all electrical power, the Customer may be billed for all incentives received as a result of these contracts. The Applicant may pursue other remedies available to it for the Customer's breach, including specific performance, consequential and incidental damages.

We note that this contract contains a provision reserving to the Applicant the right to pursue remedies other than rebilling including specific performance and

consequential and incidental damages. The parties are hereby put on notice that the Commission by approving these contracts is not making any determination on the Applicant's right to seek such recovery outside of the rebilling provision. Nothing in this Entry shall constitute approval of the Applicant's ability to obtain such damages or specific performance.

- (d) The term of the Agreement shall be for seven years.
- (4) The Commission puts the Applicant on notice that should certain regulatory or legislative changes occur in Ohio such that customers have substantially more choices as to the provider of their electric energy in the future, the Commission may consider allowing customers to take a "fresh look" at long term commitments. The Commission will continue to review this issue in the roundtable process.
- (5) The application should be approved as filed pursuant to Section 4905.31, Revised Code.
- (6) This Agreement is categorized as a Competitive Response Agreement. Any delta revenue resulting from the Agreement shall be borne exclusively by the Applicant.
- (7) Our approval of this contract does not constitute state action for the purpose of the antitrust laws. It is not our intent to insulate the Applicant or any party to the contract approved by this Finding and Order from the provisions of any state or federal law which prohibit the restraint of trade.

It is, therefore,

ORDERED, That the Agreement attached to the application is approved and shall become effective pursuant to its terms. Two copies of the Agreement as filed shall be accepted for inclusion in this docket. It is, further,

ORDERED, That the Applicant report to the Energy and Water Division of the Commission's Utilities Department semiannually, in January and July, the results of the Agreement including the increase in load and sales, the total dollar increase in revenue due to the Agreement, the total dollar difference in the separate billings at the applicable rates and at the contract rates, and the number of jobs believed to have been created and/or saved due to the contract. It is, further,

ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule or regulation. It is, further,

ORDERED, That the Commission's approval of this contract does not constitute state action for the purpose of the antitrust laws. It is, further,

ORDERED, That a copy of this Finding and Order be served upon the Applicant, customer and all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Jolynn Barry Butler

Ronda Hartman Fergus

David W. Johnson

Judith A. Jones

MR:sm