

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
The Cleveland Electric Illuminating)
Company for Approval of an Electric) Case No. 97-50-EL-AEC
Service Agreement with Cleveland)
Track Material.)

FINDING AND ORDER

The Commission finds:

- (1) The Applicant, The Cleveland Electric Illuminating 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 15, 1997, the Applicant filed an application to petition this Commission for approval of an Electric Service Agreement with Cleveland Track Material (Customer).
- (3) The contract is a competitive response contract entered into to encourage the retention of the customer's load on the Applicant's system. The Agreement is being considered for approval based on Staff's investigation into the competitive situation in the City of Cleveland as outlined in the Finding and Order in Case No. 95-159-EL-AEC approved by this Commission on March 27, 1997. Nevertheless, in the future the Commission's findings in Case No. 95-159-EL-AEC will control the Commission's decision on special rate contracts in the City of Cleveland.
- (4) The contract provides a 35% discount to the customer's non-fuel revenue of the customer's monthly bill.
- (5) The Agreement is for a period of seven years beginning February 1997.
- (6) The Applicant shall be the sole source supplier of all electric power to the facilities. In the event the Applicant is not the sole source supplier of all electrical power, the Customers 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 contain 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 this contract 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.

- (7) 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.
- (8) The applications should be approved pursuant to Section 4905.31, Revised Code.
- (9) The Agreement is categorized as a competitive response Agreement. Any delta revenue resulting from the Agreement shall be borne exclusively by the Applicant.
- (10) Our approval of the 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 a 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 billing at the appropriate tariff rates and the billing at the contract rates, and the number of jobs believed to have been created and/or saved due to the Agreement. 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 the contract does not constitute state action for the purpose of antitrust laws. It is, further,

ORDERED, That a copy of this Finding and Order be served upon the Applicant, the 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

DLH:sm