

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Edison Company, The Cleveland Electric	)	Case No. 07-551-EL-AIR
Illuminating Company, and The Toledo	)	Case No. 07-552-EL-ATA
Edison Company for Authority to Increase	)	Case No. 07-553-EL-AAM
Rates for Distribution Service, Modify Certain	)	Case No. 07-554-EL-UNC
Accounting Practices and for Tariff Approvals.	)	

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**INDUSTRIAL ENERGY USERS-OHIO'S  
REPLY TO FIRSTENERGY'S MEMORANDUM CONTRA**

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On June 7, 2007, Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("TE") (collectively, "FE") filed an Application to increase rates for distribution service (hereinafter "Application"). On July 6, 2007, Industrial Energy Users-Ohio ("IEU-Ohio") filed a Motion to Find Application Incomplete ("Motion"); FE filed a Memorandum Contra IEU-Ohio's Motion on July 20, 2007 ("Memo Contra"). In accordance with Rule 4901:1-12(B)(2), Ohio Administrative Code, IEU-Ohio submits its Reply to FE's Memo Contra for the consideration of the Public Utilities Commission of Ohio ("Commission") herein.

FE argues that IEU-Ohio's Motion should be denied inasmuch as there are no ancillary service costs that it seeks to recover in this proceeding.<sup>1</sup> FE reasons that any recovery of ancillary service costs in its distribution rates would be duplicative inasmuch as ancillary service costs are included in its transmission riders.<sup>2</sup> Additionally, FE

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<sup>1</sup> Memo Contra at 2 (July 20, 2007).

<sup>2</sup> *Id.*

claims the issues surrounding ancillary services are substantive matters that can be argued later and that its Application is not deficient.<sup>3</sup> Finally, FE observes that IEU-Ohio did not cite to any specific section of the standard filing requirements ("SFR") that it has failed to satisfy.<sup>4</sup>

First, in response to FE's claim that it recovers all of its respective ancillary service costs through transmission riders approved by the Commission in Case No. 04-1932-EL-ATA,<sup>5</sup> IEU-Ohio submits that FE's claim is irrelevant to the point advanced by IEU-Ohio. In fact, IEU-Ohio presented evidence and arguments in the American Electric Power ("AEP") Integrated Gasification Combined Cycle ("IGCC") proceeding that demonstrated that ancillary service functionality and real-time reliability maintenance responsibility depends on the performance of the regional transmission organizations ("RTO") within Ohio.<sup>6</sup> The Commission found that the ancillary service function was a non-competitive service having a distribution service character and that this character subjected the function to the Commission's traditional regulation.

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<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.*

<sup>5</sup> Memo Contra at 2 (July 20, 2007). *See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Rider for the Collection of RTO Costs and Transmission and Ancillary Service Costs and for Accounting Authority to Modify Their Accounting Procedures*, Case Nos. 04-1932-EL-ATA, *et al.*, Finding and Order at 1 (February 14, 2007).

<sup>6</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Recover Costs Associated with the Ultimate Construction and Operation of an Integrated Gasification Combined Cycle Generating Facility*, Case No. 05-376-EL-UNC, Initial Brief of Industrial Energy Users-Ohio at 46-47 (September 20, 2005) (hereinafter cited as *AEP IGCC Proceeding*). *See also AEP IGCC Proceeding*, Reply Brief of Industrial Energy Users-Ohio at 8-11 (October 11, 2005); *AEP IGCC Proceeding*, Opinion and Order at 18 (April 10, 2006).

The costs recovered by FE under these riders are entirely related to the recovery of transmission and ancillary service-related costs incurred under the Midwest Independent Transmission System Operator ("MISO") Open Access Transmission Tariff and Transmission Energy Markets Tariff. Although FE recovers its ancillary service costs levied by MISO through the transmission riders, the transmission riders were not structured or contemplated to be used to recover ancillary service costs related to the distribution function, as described by the Commission in the AEP IGCC case. In the AEP IGCC proceeding, the Commission made clear that some portions of AEP's generation are necessarily used as distribution ancillary service and that such service is subject to the Commission's regulation as being necessary to support the distribution function.<sup>7</sup> Based on the AEP IGCC decision, and if FE is meeting its distribution service obligations, it must, as a matter of law, be providing distribution ancillary services which involve plant, facilities, expenses, and revenues.

IEU-Ohio agrees with FE that it should not double-recover the cost of providing ancillary services. But, before the amount of revenue which FE should be authorized to collect can be determined, FE has to present the costs and revenues to the Commission so that the risk of double recovery can be managed. FE's warning about the potential for double recovery is a prudent warning, but it supports IEU-Ohio's position regarding the incompleteness of FE's Application. Accordingly, the Commission should issue a deficiency letter and instruct FE to supplement its Application and the related SFRs to show the plant, expenses, and revenues associated with distribution ancillary service.

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<sup>7</sup> *AEP IGCC Proceeding*, Opinion and Order at 17 (April 10, 2006).

FE also faults IEU-Ohio for not identifying which specific SFR schedule FE failed to submit to fully complete its Application. However, the effect of FE's omission of plant, expenses, and revenue associated with distribution ancillary services affects all of the SFRs. The defect in FE's application and SFRs is not one that can be cured through a specific adjustment to a specific SFR schedule. Like the omission of the plant, expenses, and revenue associated with any other distribution function, FE's failure to properly include the plant, expenses, and revenue associated with distribution ancillary services affects the SFR's A, B, C and E schedules. This missing piece, once introduced into the ratemaking equation, will require the schedules of each section to be adjusted to include the previously unaccounted for plant, expenses, and revenues associated with distribution ancillary services.

At this juncture of the case, the Commission should provide guidance to both FE and all interested parties on the appropriate treatment of distribution ancillary services and associated plant, expenses, and revenue. Based on the statement of law adopted by the Commission in the AEP IGCC proceeding, the Commission must: (1) find that FE's Application and the SFRs are deficient; and, (2) rule that the Application must be supplemented before it can be accepted.

For the aforementioned reasons, the Commission should grant IEU-Ohio's Motion and find that FE's Application is incomplete and instruct Commission Staff ("Staff") to issue a deficiency letter to FE stating that the Application is incomplete as filed with the Commission. Since the proposed distribution increases shall not become

effective in any event until January 1, 2009, the relief requested by IEU-Ohio ought to work no prejudice on FE.

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Reply to FirstEnergy Memorandum Contra* was served upon the following parties of record this 27<sup>th</sup> day of July 2007, via electronic transmission, hand-delivery or first class mail, postage prepaid.

  
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