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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

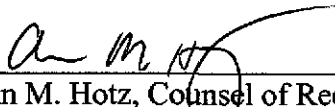
In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company, and the Toledo) Case No. 07-1003-EL-ATA
Edison Company for Authority to Modify) Case No. 07-1004-EL-AAM
Certain Accounting Practices and for)
Tariff Approvals.)

**MOTION FOR STAFF REPORT OF INVESTIGATION AND HEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Now comes the Office of the Ohio Consumers' Counsel ("OCC"), pursuant to Ohio Adm. Code 4901-1-12 and 4901-1-28(E), and files this motion for an investigation and hearing with the Public Utilities Commission of Ohio ("Commission" or "PUCO") in the above-captioned application where the FirstEnergy utilities are seeking to collect an average of more than \$50 from each of their consumers over a one-year period (based on typical electricity usage of 750 kWh per month). The reasons for OCC's request for a Commission staff report of investigation and a hearing are set forth in the attached memorandum in support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company (collectively “FirstEnergy” or “Companies”) have applied for PUCO approval to charge during the fourth quarter of 2007 Ohio Edison customers a new additional rates from .0051283 per kWh to .0068856 per kWh, Cleveland Electric Illuminating customers an additional new rates from .0050710 per kWh to .0067806 per kWh and Toledo Edison an additional new rates from .0049168 per kWh to .0064997 per kWh for fuel costs. That equates over the course of one year to new charges of \$57.34 for an Ohio Edison residential consumer, \$56.48 for a Cleveland Electric Illuminating residential consumer and \$54.37 for a Toledo Edison residential consumer with typical annual usage of 750 kWh per month.

FirstEnergy’s application (“Application”) fails to meet the same due process requirements that the Commission required in the fuel recovery mechanisms it approved in the rate stabilization plan (“RSP”) and rate certainty plan (“RCP”). Those requirements are for an investigation and hearing on the justness, reasonableness and

prudence of the fuel costs. OCC files this motion for a hearing and an investigation to ensure that the 1.9 million residential consumers who pay electric rate to FirstEnergy will be charged only just and reasonable rates as required under R.C. 4928.02(A) and 4909.18.

FirstEnergy filed the Application to establish its fuel cost recovery mechanism on September 10, 2007, in this docket. FirstEnergy filed the Application in response to the Ohio Supreme Court's remand of its Rate Certainty Plan ("RCP") to the Commission.¹ In *Elyria Foundry*, the Court found that FirstEnergy's RCP was in violation of R.C. 4928.02(G) because it allowed FirstEnergy to recover generation costs through distribution charges and allowed generation revenues to offset distribution expenses.² In its order, the Court remanded the case to the Commission to correct this prohibited portion of the RCP plan.

In response, FirstEnergy filed its Application, requesting to implement a recovery mechanism, other than the one the Court prohibited, to collect certain increased fuel costs deferred during the 2006-2008 time period "as previously approved in Case Nos. 03-2144-EL-ATA, *et seq.* and 05-1125-EL-ATA, *et seq.*"³ In Case No. 03-2144-EL-ATA, *et seq.*, the RSP case, the Commission permitted FirstEnergy to file:

An application for an adjustment* * *limited to increases in the cost of fuel (including the cost of emission allowances consumed, lime, stabilizers and other additives and fuel disposal) using 2002, as proposed by FirstEnergy, as a reference year, in addition to adjustments for taxes for which the Commission has already provided.* * *To provide equity to the adjustment process, the

¹ *Elyria Foundry Company v. Public Utilities Commission of Ohio*, ("Elyria Foundry"), 114 Ohio St.3d 305 (August 29, 2007).

² *Id.* at 16 and 18.

³ Application at 1.

Commission also finds that any increases approved as a result of filing an application would be subject to adjustments downward...⁴

Subsequently, FirstEnergy proposed a different plan for recovering fuel-related generation costs in Case Nos. 05-1125-EL-ATA, *et seq.*, the RCP. The Commission approved the RCP set forth in a stipulation that provided:

The Companies' increased fuel costs of up to \$75 million, \$77 million and \$79 million in 2006, 2007 and 2008, respectively, (as compared to the 2002 baseline as approved in Case No. 03-2144-EL-ATA, *et seq.*) will be recovered from all Ohio Edison and Toledo Edison distribution and transmission customers through a fuel recovery mechanism. The fuel recovery mechanism will be set at a level approximately equal to the reduction in the RTC rate level arising from 1) the extension of the amortization period described in Paragraph 2, above; and 2) the reduction in the Extended RTC amount from the application of the cost of removal regulatory liability to the deferred shopping incentive balances described in Paragraph 3, above. If the actual increased fuel costs in 2006, 2007, and 2008 are less than the fuel recovery mechanism revenues collected in 2006, 2007, and 2008, respectively, then the amount of the Distribution Deferrals described in Paragraph 8, below, for that year will be reduced by the amount of the difference between the fuel recovery mechanism revenues collected to recover Base Fuel Costs and the actual increased fuel costs. If the actual increased fuel costs in 2006, 2007, and 2008 are greater than the fuel recovery mechanism revenues collected in 2006, 2007, and 2008, respectively, then the difference will be deferred by the Companies and recovered commencing with the distribution rate case with new rates first effective on or after January 1, 2009 ("Fuel Deferrals"). * * * The increased fuel costs in 2007 (calculated by using nine months' actual and three months' projected costs) may be used in the competitive bid process in 2008. * * * This Stipulation does not preclude the Signatory Parties from challenging the reasonableness of the level of a particular type of expenditure included in the deferrals.⁵

⁴ *In the Matter of the Applications of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Continue and Modify Certain Regulatory Accounting Practices and Procedures, for Tariff Approvals and to Establish Rates and Other Charges Including Regulatory Transition Charges Following the Market Development Period*, Case No. 03-2144-EL-ATA, Entry on Rehearing (August 4, 2004) at 3.

⁵ Stipulation and Recommendation (September 9, 2005) at 8, 9 and 11.

Opposing parties filed an appeal of the Commission's approval of the RCP, to the Ohio Supreme Court. As mentioned above, the Court prohibited the fuel cost recovery mechanism and remanded it to the PUCO to establish a mechanism that the Court would approve. FirstEnergy's Application contains its proposed mechanism for fuel cost recovery. But its Application does not include the investigation and hearing requirements that the Commission previously established in both the RSP and the RCP. To meet those requirements the Commission must order a staff investigation and report of that investigation, along with a hearing.

Therefore, the OCC files its Motion for a staff report of investigation and a hearing in response to the stipulation in Case No. 05-1125-EL-ATA ("RCP Stipulation").

II. MOTION FOR A STAFF REPORT OF INVESTIGATION AND HEARING

Whether, FirstEnergy intends its Application to be an appropriate filing under the RSP case or the RCP case, FirstEnergy's Application does not meet the requirements established under either of the fuel recovery plans. Under both the RSP adjustment mechanism and the RCP deferral mechanism, the Commission required that before FirstEnergy could properly recover the additional generation costs, the requested amounts would be subject to an investigation and hearing before the costs could be collected.

Therefore, the Commission should direct the Staff to conduct an investigation of the Companies' application and file a report of the findings and recommendations of that investigation in the public docket. Additionally, the Commission should set this matter for hearing.

Because the application for fuel cost recovery is an application for a retail standard service offer required under R.C. 4928.14(A), such offer “shall be filed with the public utilities commission under section R.C. 4909.18.” Under R.C. 4909.18:

If it appears to the Commission that the application may be unjust or unreasonable, the commission shall set the matter for hearing and shall give notice of such hearing by sending written notice of the date set for the hearing.

At hearings held pursuant to R.C. 4909.18:

The burden of proof to show that the proposals in the application are just and reasonable shall be upon the public utility.

In addition, the Commission must order an investigation of these rates and hold a hearing on the rates to ensure that they are reasonably priced rates under R.C. 4928.02(A).

FirstEnergy seemed to recognize this requirement because in its first application with the Commission for an increase in fuel costs for the years 2006-2008, in the RSP, FirstEnergy stated that any increases in generation charges such as fuel would require a hearing, sufficient justification by the Companies and commission approval.⁶ The Commission adopted that proposal in its Entry on Rehearing.⁷

After the Commission’s approval of the RSP fuel adjustment clause, FirstEnergy filed an application for an increase under that fuel adjustment clause.⁸ But before that

⁶ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison company for Authority to Continue And Modify Certain Regulatory Accounting Practices and Procedures, for Tariff Approvals and to Establish Rates and Other Charges Including Regulatory Transition Charges Following the Market Development Period.*, Case No. 03-2144-EL-ATA et al., (“RSP Case”), Application (October 21, 2007) at 2, ¶ 5(a).

⁷ RSP Case, Entry on Rehearing (August 4, 2004) at 3.

⁸ *In the Matter of the Joint Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company for Approval of a Generation Charge Adjustment Rider*, Case No. 05-704-EL-ATA, Application (May 27, 2005) at Attachment 1, Exhibit B.

increase was approved, FirstEnergy and other parties filed a stipulation requesting Commission approval for a different recovery mechanism to effectuate the fuel cost increase provision approved in the RSP Case.⁹ With the stipulation filed in another docket, the Company and other parties proposed the rate certainty plan (“RCP”) as an alternative to the RSP. The fuel cost recovery mechanism in the RCP is the mechanism that the Supreme Court prohibited and remanded to the Commission.

In that proposal, FirstEnergy was permitted to recover \$75 million in 2006 rates, \$77 million in 2007 rates and \$79 million in 2008 rates¹⁰ but any generation increase rates above that amount were to be deferred to the next distribution rate case for recovery.¹¹ The Stipulation filed in that case did not “preclude the Signatory Parties from challenging the reasonableness of the level of a particular type of expenditure included in the deferrals.”¹²

Additionally, in approving the RCP Stipulation the Commission noted its own staff’s concern that “staff would need to perform an effective and efficient fuel cost review each year” under the Companies’ RCP proposal to defer fuel costs for future recovery through distribution rates.¹³ The Commission also noted in its Opinion and Order that FirstEnergy’s witness Byrd agreed “So it is our intent that we would provide

⁹*In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Modify Certain Accounting Practices and for Tariff Approval*, Case No. 05-1125-EL-ATA, et seq., Application, Stipulation (Exhibit 1)(September 9, 2005).

¹⁰ Id at 7.

¹¹ Id.

¹² Stipulation and Recommendation (September 9, 2005) at 8, 9 and 11.

¹³ RCP Case, Opinion and Order (November 4, 2006) at 7.

on an annual basis a statement to the Commission with the accounting information documenting the numbers.”¹⁴ In response, the Commission ordered:

The Companies should be required to provide staff with all information needed (including access to source documents) to perform an effective and efficient review of their fuel costs so that the amount of excess increased fuel costs to be capitalized under the revised stipulation can be contemporaneously reviewed. The Companies shall provide this information monthly so that the actual fuel cost increase can be determined, consistent with the methodology of the GCAF filing, for use in establishing both the deferral amount and for use in determining the shopping credits for the following calendar year as discussed below. The result of those reviews will then be available for consideration as part of the reviews conducted in the next distribution rate case of each of the Companies.¹⁵

Based on this Commission order, there was to be Staff review of FirstEnergy’s fuel cost increases conducted on an ongoing basis (i.e. “contemporaneously”) and taken into consideration when recovery was sought through future distribution rates. The Commission re-affirmed this expectation in a December 2006 Order in a fuel-cost related shopping credit proceeding:

The Commission agrees with OCC and First Energy that the reasonableness and eligibility of the fuel costs will be the subject of a later proceeding. * * *(T)he 2006 actual fuel costs have not been audited by Staff. The 2006 actual fuel costs and fuel deferrals will be audited in the next distribution rate case for the FE operating companies for the rates to be effective on or after January 1, 2009.¹⁶

The Company’s Application would allow the Company to recover fuel costs under a fuel cost recovery mechanism, similar to that proposed under the RSP. The

¹⁴ Id, quoting Tr. at 115.

¹⁵ Id.

¹⁶ *In the Matter of the Applications of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a Shopping Credit Adder Rider*, Case No, 06-1335-EL-ATA, Finding and Order (December 20, 2006) at 2.

Company requests recovery of fuel costs through two riders: fuel costs and carrying charges that have been deferred up to September 30, 2007 ("Pre-Remand Fuel Rider") and (2) recovery of fuel costs and carrying charges on a quarterly basis incurred after September 30, 2007 through December 31, 2008 ("Post-Remand Fuel Rider").

The Court's remand has prohibited the Commission from investigating and reviewing the fuel costs in the distribution rate case. Therefore, the Commission must determine an alternative means whereby the investigation and review of fuel costs can be completed. In this case, the Commission should order the Staff to conduct an investigation of the costs in the *Pre-Remand Fuel Rider* and prepare a staff report to be filed under this docket. The Commission should also provide for the hearing that was contemplated in both the RSP and RCP applications to determine if the costs included in the *Pre-Remand Fuel Rider* were prudently incurred and are just and are reasonable.

Additionally, the Commission should order the Companies to continue to provide Staff with all information needed (including access to source documents) to perform a timely review of FirstEnergy's fuel costs. In response to the remand, under the RCP docket, the Commission should first identify the procedures it intends FirstEnergy to use in filing a quarterly *Post-Remand Rider*. The Commission should secondly establish a process in which the Staff will report on its review of *Post-Remand Rider* costs. Third, the Commission should establish the hearing procedure through which the Commission will determine whether the fuel costs in both the *Pre-Remand* and *Post-Remand* riders were prudently incurred and are just and are reasonable.

Any adjustments to the *Pre-Remand* and *Post-Remand* riders the Commission determines are necessary after the hearing can be made through the same reconciliation

component that FirstEnergy proposes to use to account for differences between projected and actual amounts of fuel costs and revenues received. FirstEnergy itself noted in the Application that the reconciliation component could facilitate differences between the amounts the Companies proposed and those approved by the Commission:

Any variance between the level of fuel costs proposed to be recovered through the Riders and the level ultimately approved for recovery by the Commission will be accounted for through the reconciliation mechanism.¹⁷

Accordingly, FirstEnergy's proposed reconciliation provides for a mechanism through which the Commission could order any true-up for differences between the fuel cost FirstEnergy is requesting and those fuel costs the Commission finds to be just, reasonable and prudently incurred.

But in its proposed procedural schedule, FirstEnergy does not provide for a hearing in which it must demonstrate the justness, reasonableness and the prudence of the fuel costs.¹⁸ FirstEnergy requests that the Commission approve the fuel costs which it will impose upon its captive customers without review. FirstEnergy requests the Commission to approve the fuel costs without the Companies providing in the current proceeding any source documentation for the fuel costs deferred and projected to be incurred. The Companies do not propose to provide any information on how the fuel costs were incurred, how the fuel costs are reasonable, how the fuel costs were calculated, or how the fuel costs were allocated to the FirstEnergy customers subject to these riders. Many questions remain as to how FirstEnergy incurred and calculated the fuel costs it is asking to recover from customers.

¹⁷ Application at 7.

¹⁸ Id. at 9.

For these reasons, FirstEnergy's proposal recommending only a comment period will not suffice in determining the justness, reasonableness and prudence of the fuel costs for which it is requesting recovery. Instead, the Commission should cause an investigation to be made of the facts set forth in the Companies' Application, direct that a report of the investigation be filed and set the matter for hearing. Only through this process can the Commission determine whether the costs FirstEnergy requests to recover are fair, just and reasonable.

III. CONCLUSION


For the reasons stated above and in order to resolve the remand and to meet the due process requirements of the fuel cost recovery mechanisms the Commission should identify specific procedures it will rely upon to determine the reasonableness of rates as required under R.C. 4928.02(A). In order to meet the due process requirements the Commission found necessary in the RSP and RCP approvals involving FirstEnergy's proposed collection of fuel costs from customers, the Commission should protect the 1.9 million customers in FirstEnergy's service area by:

- 1) Specifying the procedures FirstEnergy must follow in making its quarterly filing of the Post-Remand Rider;
- 2) Identifying the process the Staff must follow in the review and reporting of FirstEnergy's quarterly Post-Remand Rider;
- 3) Directing the Staff to investigate and report upon the costs included in the Pre-Remand Rider and establish a similar annual process for future review of future costs;

- 4) Ordering a hearing for the review of the, justness, reasonableness and prudence of the costs in the Pre-Remand Rider now and for future such hearings for the review of the justness, reasonableness and prudence of the Post-Remand Rider amounts;
- 5) Returning to customers through the reconciliation component FirstEnergy proposes the fuel costs (if any) FirstEnergy collects that exceed the fuel costs the Commission finds to be just, reasonable and prudent.
- 6) Requiring FirstEnergy to sustain its burden of proof that the costs are just and reasonable as directed under R.C. 4909.18.

Respectfully submitted,

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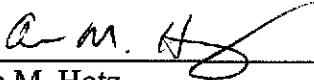


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CERTIFICATE OF SERVICE

I hereby certify that copies of the Office of the Ohio Consumers' Counsel's Motion for Hearing, have been served by Regular U.S. Mail, postage prepaid, to the following persons this 30th day of October, 2007.



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