

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Commission's Review)
 of Chapters 4901:1-9, 4901:1-10, 4901:1-21) Case No. 06-653-EL-ORBU
 4901:1-22, 4901:1-23, 4901:1-24 and)
 4901:1-25 of the Ohio Administrative Code)

REPLY COMMENTS OF OHIO HOME BUILDERS, INC.

Ohio Home Builders Association, Inc. ("OHBA") provides its comments in reply to the initial comments filed on August 12, 2008 on the second of three sets of rules proposed by the Staff of the Public Utilities Commission of Ohio ("Commission") to implement the recently passed Amended Substitute Senate Bill 221 ("SB 221"), for the Commission's consideration. OHBA's issues in this matter are limited to line extension issues. The failure of OHBA to specifically address every issue raised in the initial comments of other parties should not be construed as endorsement or agreement with those comments.

OHBA appreciates the work the Commission Staff put into the rules pertaining to line extensions. OHBA also appreciates that the Commission and its Staff are keenly aware of the history and problems that lead OHBA, among others, to file complaints that were ultimately resolved by stipulations in Case No. 01-2708-EL-COI. The current line extension cost recovery mechanisms were intended to be "stop-gap" measures to allow electric distribution utilities ("EDU") a cost recovery mechanism while distribution rates were frozen. OHBA has read the comments of Columbus Southern Power and Ohio Power (collectively "AEP") and the Cleveland Electric Illuminating Company, the Toledo Edison Company and Ohio Edison (collectively "FirstEnergy") and believes that the draft

rules as proposed by Staff are the best, most straight-forward and fair way to resolve residential line extension issues. Nonetheless, OHBA responds specifically to AEP's and FirstEnergy's initial comments herein.¹

I. AEP

AEP argues that a new definition of service laterals should be inserted and should not be included as part of a line extension. As proposed by Staff, a line extension would include the facilities necessary to provide power from the nearest point of origin to the customer's meter. As drafted, this could include a mainline extension from an existing road down a new road constructed to support a new development and the lines that run from the new mainline to customers' homes. AEP's proposed definition of service lateral would exclude the portion of the line from a new mainline to the customers' homes, which is a significant portion of line extension facilities. While AEP indicated that service laterals as it defines them would not be included in line extensions, it is not clear how the costs associated with the "service lateral" would be recovered; presumably from the customer requesting service. Presuming customers would have to pay for service laterals upfront as opposed to service laterals being included in line extensions, AEP's request is unreasonable.

AEP next suggests that the definition of "premium service" include language about tree trimming and right-of-way expenses off the customer's property. While OHBA does not necessarily disagree, additional specificity is required. Further, if the definition of premium service is refined, OHBA suggests that it no longer include underground facilities. As local governments have required electric lines to be installed

¹ It is worth noting that neither Dayton Power and Light Company nor Duke Energy Ohio objected to the proposed line extension language.

underground in virtually all new residential development for some time now, it is an outdated notion that buried lines fit within the definition of "premium service." In reality, buried lines should be considered standard service where required by the local jurisdiction because as a matter of zoning law and subdivision regulations, developers do not have a choice relative to requesting overhead installations in the vast majority of cases. Although there may be a cost differential for the utility in installing underground lines versus overhead lines, utilities charge developers separately for trenching and/or charge other utilities to utilize the electric trench, which makes up for the cost differential. Thus, OHBA recommends that the Commission eliminate underground installation of lines from the definition of premium service where a municipality or local government requires the burying of lines.

AEP argues that because it is administratively inconvenient to set up payment plans with customers when developers request the line extensions, developers should pay any contribution in aid of construction ("CIAC") upfront. OHBA disagrees with AEP's recommendation and urges the Commission to retain the language as proposed by Staff. AEP's suggestion would revert the building process back to the point in time when OHBA filed its complaint inasmuch as the amount of CIAC required upfront, or prior to when an EDU would provide service, would be unknown until EDUs provided estimates. Thus, builders and developers would not know how much to include in their budgets until an estimate is provided by the EDU. Further, AEP's recommendation to require developers to pay upfront effectively shifts the costs from customers and electric distribution utilities ("EDUs") to builders. This is not an appropriate shift of cost responsibility and will work against the State policy set forth in Section 4928.02,

Revised Code, which specifically states that “in carrying out this policy, the commission shall consider rules as they apply to the costs of electric distribution infrastructure, including, but not limited to, line extensions, for the purpose of development in this state.” With the current state of the economy and the building industry in Ohio, the Commission should be particularly sensitive to any shifts of cost responsibility that would inhibit development. Accordingly, AEP’s recommendation should be rejected.

II. FirstEnergy

FirstEnergy argues that the definition of premium service should be expanded to include “any customer request that is in excess of standard construction and requirements necessary to provide electric service to the customer.” OHBA believes that FirstEnergy’s proposed addition invites debate as to what is standard construction. Accordingly, FirstEnergy’s recommendation is too problematic and should be rejected as written.

FirstEnergy opposes the requirement to provide cost estimates and requests that EDUs only be required to provide a general estimate upon request for just the portion in excess of \$5000 or \$2500 as applicable for premium services and only for the portion paid directly to the EDU. OHBA agrees that customers not paying anything should not be entitled to an itemized estimate. However, as currently proposed, “customers” shall be responsible for the incremental cost of premium services prior to the start of construction. More often than not on new construction, there is not a “customer” prior to construction. The builder pays for the services and must know what to include in its budget and whether to use the EDU or a third party. Accordingly, a detailed budget is

critical. Thus, to the extent described above, the Commission should reject FirstEnergy's recommendation.

FirstEnergy argues that third parties should not be permitted to install line extension facilities. While OHBA agrees that additional detail is required and stated so in its initial comments, OHBA believes it would be more cost effective and timely to permit third parties to install at least some portions of line extensions. While OHBA also agrees that the EDUs have ultimate responsibility for the safe operation and maintenance of the system, EDUs themselves hire third parties to perform the work, while still retaining the right of inspection. Thus, while more clarity is necessary regarding installations by third parties, OHBA does not believe this option should be foreclosed.

FirstEnergy argues that the proposed rules would require the EDUs to provide customers unsecured loans for "obligations" for which customers have traditionally borne the responsibility. While it may be true that nonresidential customers have traditionally paid EDUs upfront for line extensions, that is not the case for residential customers. OHBA strongly recommends that the Commission not modify the definition of line extensions and that the line extension costs should be capitalized as rate base and rolled into base rates like other utility investment in plant and equipment. The revenues arising from distribution charges provide just and reasonable compensation for all distribution related costs as a matter of law. More specifically, the equipment used for line extensions (e.g. cables and transformers) and the cost of installation (labor and supervision) during the test year would be part of the standard filing in the rate case for the EDU. Similarly, the revenues needed to support line extensions would be

incorporated into the distribution revenue requirement that will ultimately be approved by the Commission as adequate compensation to the EDU. The Ohio statutory ratemaking process requires the Commission to set a total revenue requirement according to a statutory formula and to permit the establishment of rates to produce the authorized revenues.² Once rates are established by the Commission, the rates are presumed reasonable until they are demonstrated to be unreasonable (too high or too low).³ This is the nature of traditional ratemaking and the demands of the law. As a practical matter, the Commission as a matter of policy does not increase rates outside of a full rate case.

Ohio's ratemaking statutes require the Commission to authorize total revenues that in the aggregate permit a reasonable return on the utility's used and useful property as measured in the test year.⁴ Therefore, setting the recovery of the costs through rate case proceedings is appropriate and avoids the need to adjust rates outside of a rate case.

OHBA recognizes that SB 221 now permits distribution costs to be considered as part of an electric security plan ("ESP") outside of a traditional rate case. However, OHBA agrees with the Ohio Consumers and Environmental Advocates ("OCEA") that single issue ratemaking for distribution service is limited to the context of an ESP. Moreover, FirstEnergy has both a pending distribution rate case and ESP case.

² See Section 4909.15, Revised Code.

³ See the "filed rate" doctrine established in *Montana-Dakota Utilities Co. v. Northwestern Pub. Service Co.*, 341 U.S. 246 (1951); see also *Ohio Power Co.*, 76 P.U.R.4th 121 (1986).

⁴ See Section 4909.15, Revised Code.

Finally, FirstEnergy argues that not requiring upfront cost recovery eliminates the customer incentive to make responsible decisions regarding the facilities needed. While that may be true for nonresidential line extensions as proposed, there are still upfront costs for residential line extensions as discussed herein. Further, builders often do not have much choice as the facilities are specified by local law and zoning requirements. Thus, FirstEnergy's argument is without merit as it pertains to residential line extensions.

IV. CONCLUSION

This case represents an opportunity to simplify, unify and clarify line extension procedures as well as improve the ability of developers to do business in Ohio. Wherefore, for the reasons discussed above, OHBA requests that the Commission incorporate OHBA's suggestions in its initial comments into the proposed rules.

Respectfully submitted,



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