

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Investigation into the)
Development of the Significantly Excessive)
Earnings Test Pursuant to Amended) Case No. 09-786-EL-UNC
Substitute Senate Bill 221 for Electric)
Utilities.)

ENTRY

The Attorney Examiner finds:

- (1) On May 1, 2008, the governor signed into law Amended Substitute Senate Bill No. 221 (SB 221), amending various statutes in Title 49 of the Ohio Revised Code. Among the statutory amendments adopted were changes to Section 4928.14, Revised Code, to establish a standard service offer (SSO). Pursuant to the amended language of Section 4928.14, Revised Code, electric utilities are required to provide consumers with an SSO, consisting of either a market-rate offer (MRO) or an electric security plan (ESP). Pursuant to the directives of Section 4928.142(D)(4), Revised Code, and Section 4928.143(E) and (F), Revised Code, the Commission is required to evaluate the earnings of each electric utility's approved ESP or MRO to determine whether the plan or offer produces significantly excessive earnings for the electric utility.
- (2) After considering the arguments raised in the ESP and/or MRO proceedings of the electric utilities, the Commission concluded that the methodology for determining whether an electric utility has significantly excessive earnings as a result of an approved ESP or MRO should be examined within the framework of a workshop.¹ To carry out the Commission's directives, the Commission directed the staff to conduct a workshop to allow interested stakeholders to present concerns and to discuss and clarify issues raised by the staff. The workshop was held on October 5, 2009. Further, the Commission directed that after the workshop the staff develop

¹ *In re Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 08-935-EL-SSO, Opinion and Order at 64 (December 19, 2008); *In re Columbus Southern Power Company and Ohio Power Company*, Case Nos. 08-917-EL-SSO, et al., Opinion and Order at 68 (March 18, 2009).

and file recommendations for the significantly excessive earnings test (SEET). Staff filed its recommendations on November 18, 2009.

- (3) By entry issued November 19, 2009, interested persons that wished to file comments were directed to do so by December 14, 2009. Initial comments were filed by the following persons: Ohio Consumers Counsel, Ohio Manufacturers' Association, Ohio Hospital Association and Ohio Energy Group (jointly, Customer Parties); Duke Energy Ohio, Inc. (Duke); Ohio Edison Company, The Cleveland Electric Illuminating Company, and Toledo Edison Company (collectively, FirstEnergy); Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively, AEP-Ohio); Citizen Power, Inc. (Citizen); ² and Dayton Power & Light Company (DP&L).
- (4) On December 23, 2009, Customer Parties filed a motion for a five-day extension of the time to file reply comments with a request for an expedited ruling. The request for an extension of time to file reply comments was granted until January 11, 2010.
- (5) Reply comments were filed by Customer Parties (including, Citizen), Duke, FirstEnergy, AEP-Ohio, DP&L, and Ohio Partners for Affordable Energy (OPAE).
- (6) Although there is a full and complete record from which the Commission can make its decision, the attorney examiner finds that a question and answer session before the Commission should be scheduled for April 1, 2010, at 10:00 a.m., at the Commission offices, Hearing Room 11-B, 180 East Broad Street, Columbus, Ohio. The session will be transcribed by a court reporter. The purpose is to provide the Commission with a better understanding of the issues and the opportunity to ask questions regarding the issues in this proceeding. The Commission encourages participants with similar interests to consolidate their responses to the questions posed by the Commission.

The participants will be as follows:

² On January 11, 2010, Citizen filed a request to withdraw its initial comments in this matter and to recognize its support for the initial comments filed by Customer Parties.

- (a) AEP-Ohio
 - (b) FirstEnergy
 - (c) Duke
 - (d) DP&L
 - (e) Customer Parties
 - (f) OP&E
- (7) The list of questions to be posed to the participants will be posted to the Commission's website, under "Announcements," shortly after the issuance of this entry.

It is, therefore,

ORDERED, That the question and answer session be scheduled as set forth in Finding (6). It is, further,

ORDERED, That a copy of this Entry be served upon all commenters and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



By: Greta See
Attorney Examiner

Kelly
/vrm

Entered in the Journal

MAR 16 2010



Renee J. Jenkins
Secretary