

**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. 10-176-EL-ATA
Edison Company for Approval of a New)
Rider and Revision of an Existing Rider.)

**MOTION FOR ORDER DIRECTING FIRSTENERGY TO FILE
REPLACEMENT TARIFFS THAT COMPLY WITH THE
COMMISSION’S ORDER
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”), on behalf of residential utility customers, moves the Public Utilities Commission of Ohio (“PUCO” or “Commission”) for an order directing Ohio Edison Company (“OE”), the Cleveland Electric Illuminating Company (“CEI”), and the Toledo Edison Company (“TE”, collectively with OE and CEI, “FirstEnergy” or the “Companies”) to file and implement tariffs to replace those filed by the Companies on March 17, 2010. The PUCO intended that tariffs would be filed that would provide interim rate relief to all-electric customers, but the filed tariffs fail to satisfy the requirements set out in the Commission’s Order dated March 3, 2010.

The OCC’s motion (“Motion”) should be granted, as further explained in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

FirstEnergy filed its Application on February 12, 2010. FirstEnergy proposed adjustment of residential electric rates for certain of the Companies' approximately 1.9 million residential customers who were previously billed according to non-standard residential rates for all-electric service.

The OCC, the state agency that represents Ohio's residential utility consumers, moved to intervene in this case on February 23, 2010. The OCC's submitted motions on February 25, 2010 ("OCC's Motions"), and (among other matters) identified the customers who should receive rate adjustments as well as the method according to which the rate adjustments should be calculated.

The Commission issued its Finding and Order ("Order") on March 3, 2010. The Order addresses a few main points, including discounted rates "for the all-electric residential subscribers."¹

¹ Order at 3, ¶(10).

On March 17, 2010, FirstEnergy filed new residential tariffs. The tariffs do not provide the rate relief ordered by the Commission on March 3, 2010. FirstEnergy should be ordered to file replacement tariffs that comply with the Commission's Order.

II. ARGUMENT

A) The Commission Ordered Rate Relief For Customers Who Previously Received Certain Discounts, But FirstEnergy's Tariff Filing Fails To Include Customers Who Previously Received Discounted Rates Associated With Electric Water Heating.

The Order uses the term "all-electric residential customers" for those customers who should receive reduced rates, which is the phrase commonly used to describe customers formerly served by the Companies according to tariffs that discounted charges for larger usage blocks associated with the presence of certain electricity-using equipment.² The "all-electric" terminology was used, for instance, in the OCC's Motions to designate this set of residential customers.³ These are the customers who were provided rate relief in the Order.

FirstEnergy's definition of "all-electric residential customers," as revealed in the tariff filing on March 17, 2010, generally provides additional credits to customers who have been receiving credits for both their distribution and generation service. However, FirstEnergy excluded customers who should have received additional credits. Customers who previously received discounted service for the presence of electric water heaters in

² Id. at 3, ¶(11). The term "all-electric customers" was used in the OCC's Motions. OCC's Motions at footnote 1 (February 23, 2010). The OCC defined that term as customers formerly served according to FirstEnergy's tariffs that were designed in connection with the installation of certain equipment associated with high usage of electricity. Id. Rates were accordingly discounted for higher usage blocks of electricity.

³ Id.

their residences did not receive any additional credit.⁴ The complete list of the formerly discounted categories is shown in the tariffs attached to the OCC's Motions.⁵ While all three distribution companies had non-standard tariffs, OE customers were also provided discounted rates under the "Special Provisions" section of the standard residential rates.⁶ All customers who would qualify under these tariff provisions should have been provided rate relief, as ordered by the Commission.

FirstEnergy's tariffs filed on March 17, 2010 do not comply with the Commission's Order regarding the customers who should receive the additional credits. Water heating customers were excluded by FirstEnergy from receiving additional credits that provide rate relief. These residential customers have been excluded from credits, but they were included in the set of customers identified for rate relief in the Commission's Order. FirstEnergy should be ordered to immediately submit complying tariffs and provide the additional rate relief.

⁴ Rate schedules in effect on December 31, 2008 show the previous treatment of service to customers having electric water heaters for each of the utilities. OE Tariff No. 11, Original Sheet No. 18 ("Residential Water Heating Service"); CEI Tariff No. 13, Original Sheet No. 12 ("Residential Water Heating"); TE Tariff 8, Original Sheet 15 & 16 ("Residential Hot Water Rate 'R-04' " & "Residential Hot Water Rate 'R-04a' "), available at: https://www.firstenergycorp.com/Residential_and_Business/Customer_Choice/Tariff_Information/Ohio_Tariffs.html . Credits do not appear for these customers on the tariffs filed by FirstEnergy. FirstEnergy's tariff filings (March 17, 2010), OE Tariff No. 11, Sheet No. 123, CEI Tariff No. 13, Sheet No. 123, TE Tariff No. 8.

⁵ See Motions, attached Original Sheet 81 for each of the Companies.

⁶ Id., OE Tariff No. 11 ("Special Provisions").

B) The Commission Ordered Rate Relief For Customers Who Previously Received Certain Discounts, But FirstEnergy's Tariff Filing Fails To Include Customers Who Previously Received Discounted Rates And Who Lost Such Discounts As The Result Of FirstEnergy's Earlier "Grandfathering" Of Rate Reductions.

The Order states that "all-electric residential customers" will receive rate relief, and thereafter states that the rate reductions will depend upon FirstEnergy's charges to those customers as of December 31, 2008. The date was apparently selected to pre-date the initial change in FirstEnergy's tariffs that eliminated the all-electric tariff provisions. The statement of that date in the Order does not define the residential customers who are eligible for rate relief. However, FirstEnergy's filed tariffs only provide additional credits to persons who were "grandfathered" into certain discounts, and do not provide rate relief to all customers who suffered the loss of discounted all-electric rates.

FirstEnergy has removed many customers over time from the roll of those eligible to receive separate, discounted rate treatment. These customers include those located at residences where the separate rates applied but the customer account changed for some reason.⁷ The burden of the elimination of all-electric rates relates to the equipment installed at the residential customer's location (e.g. electric space and water heating systems as well as metering equipment), not simply to instances where no change in the customer account has occurred. These situations are the subject of the Order, and they should correspondingly be the subject of the additional credits.

⁷ FirstEnergy's tariff filings (March 17, 2010), OE Tariff No. 11 ("Applicable to any customer . . . who on January 22, 2009 took service from the Company under one of the following rates schedules"); CEI Tariff No. 13 ("April 30, 2009"); TE Tariff No. 8 ("January 22, 2009").

The Commission's Order provided rate relief for all-electric customers, which includes a customer who has purchased an electric home that was formerly subject to the discounted all-electric rates. The Commission intended rate changes to address the added burden that has been placed on customers having equipment that previously made them eligible for separate, discounted rate treatment (i.e. in addition to those that have not experienced a customer account change at their location).

On their face, FirstEnergy's tariffs do not reflect the words contained in the Commission's Order. FirstEnergy's filed tariffs state that eligibility for the additional credits is determined by the residential customer's status on January 22, 2009 for OE and TE, and the customer's status on April 30, 2009 for CEI.⁸ December 31, 2008, the date used in the Commission's Order,⁹ is not used in the new tariffs. Even in the alternative - i.e. in the event the Commission intended the date December 31, 2008 to define not just the period when bill impacts should be measured but also to define the customers eligible for rate relief -- FirstEnergy's tariffs clearly do not provide the relief ordered by the Commission.

FirstEnergy's tariffs filed on March 17, 2010 do not comply with the Commission's Order regarding the customers who should receive the additional credits. Customers previously excluded from receiving credits are again left without any rate relief. Residential customers have been excluded from credits, but they were included in the set of customers identified for rate relief in the Commission's Order. FirstEnergy

⁸ FirstEnergy's tariff filings (March 18, 2010), Original Sheet 123 for each company.

⁹ Order at 3, ¶(10).

should be ordered to immediately submit complying tariffs and provide the additional rate relief.

III. CONCLUSION

Customers eligible for the rate relief stated in the Commission's Order were excluded by the Companies. The rate changes announced in the Commission's Order were not properly incorporated into the tariffs submitted by FirstEnergy on March 17, 2010. FirstEnergy should be ordered to file and implement replacement tariffs that comply with the Commission's Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's Motion was served upon the persons listed below via first class U.S. Mail, postage prepaid, this 31st day of March 2010.

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Summary: Motion Motion for Order Directing FirstEnergy to File Replacement Tariffs That Comply With the Commission's Order by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Small, Jeffrey L. Mr.