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 Edison Company for Approval of a New Rider and Revision of Existing Rider.	)))))	Case No. 10-176-EL-ATA

SECOND ENTRY ON REHEARING

The Commission finds:

(1) Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FirstEnergy or the Companies) are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.

(2) On February 12, 2010, FirstEnergy filed an application in this proceeding to revise its current tariffs in order to provide rate relief to certain "all-electric" customers.

(3) On March 3, 2010, the Commission issued its Finding and Order in this proceeding, approving FirstEnergy's application as modified by the Commission.

(4) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the entry of the order upon the Commission's journal.

(5) On March 8, 2010, the Ohio Consumers' Counsel (OCC) filed a request for clarification and, in the alternative, application for rehearing. In the application for rehearing, OCC alleges that the Finding and Order was unjust and unreasonable on four separate grounds.

(6) On March 18, 2010, FirstEnergy filed a memorandum contra OCC's application for rehearing.

(7) In OCC's first assignment of error, OCC contends that the Commission erred when providing rate relief for "all-electric" customers without specifying that those customers are the

same customers who would benefit from lower rates as proposed by OCC. The Commission will clarify that the Finding and Order applies to all residential customers who had previously been billed under the "all-electric" rate schedules specified in FirstEnergy's application in this proceeding as well as to any other residential customer who is the successor account to a customer who had previously qualified under the "all-electric" rate schedules, notwithstanding the provisions of the stipulation in *In re FirstEnergy*, Case No. 05-1125-EL-ATA, et al.

Further, the Commission expects that, at a minimum, the rate relief will remain in effect through the next winter heating season. With these clarifications and based upon the public interest in this docket, we believe that the 90-day deadline for the Staff investigation to be completed is not advisable. Therefore, we direct Staff to continue its investigation and to develop a process, which ensures that interested parties and stakeholders have a meaningful opportunity to participate in the resolution of the issues raised in this proceeding.

Accordingly, in light of these clarifications, the Commission finds that OCC's first assignment of error is moot. However, the Commission notes that the tariffs submitted by FirstEnergy on March 17, 2010, in this proceeding appear to limit the residential generation credit rider (RGC) to customers who were taking service from the Companies on April 30, 2009, under the "all-electric" rate schedules. The Commission finds that this provision is inconsistent with our clarification and directs the Companies to file revised tariffs, within seven days, which are consistent with the Finding and Order, as clarified by the Commission.

(8) In its second assignment of error, OCC argues that the relationship between residential rate schedules and the "all-electric" rate schedules should be restored concerning customer, kilowatt-hour, and demand charges in distribution and generation rates. Thus, OCC claims, every residential customer would be responsible for unchanged additional charges and riders.

The Commission finds that rehearing on this assignment of error should be denied. In our Finding and Order, the

Commission intended that the rate relief provided to "all-electric" residential customers result in bill impacts which are commensurate with the charges paid by these customers as of December 31, 2008. OCC's proposed changes would not return "all-electric" residential customers to their prior rates and, thus, would undermine the rate relief provided to "all-electric" residential customers by the Finding and Order.

(9) In support of its third assignment of error, OCC argues that an investigation should be conducted regarding alleged promises and inducements made by the Companies to "all-electric" residential customers.

The discounts previously provided to "all-electric" residential customers, which were restored by the Commission in our Finding and Order, were provided pursuant to the terms of FirstEnergy's Commission-approved tariffs. OCC alleges that FirstEnergy made additional promises and inducements, directly or indirectly, to residential customers outside of the express terms of those tariffs. OCC's claims appear to be made under laws governing contracts and equitable remedies. However, the Supreme Court has held that the Commission has no power to determine legal rights and liabilities in cases solely involving contract rights even though a public utility is involved. *Marketing Research Service, Inc., v. Pub. Util. Comm.* (1987), 34 Ohio St.3d 52, 56. Therefore, the adjudication of any alleged agreements, promises, or inducements made by the Companies outside of the express terms of its tariffs, as alleged by OCC, is best suited for a court of general jurisdiction rather than the Commission. Therefore, the Commission finds that rehearing on this assignment of error should be denied.

(10) With respect to OCC's fourth assignment of error, OCC claims that the Commission erred because it failed to grant OCC's motion to intervene in this proceeding. However, the Commission granted intervention to OCC in our Entry on Rehearing dated April 6, 2010. Accordingly, OCC's assignment of error is moot.

It is, therefore,

ORDERED, That the application for rehearing filed by OCC be denied. It is, further,

ORDERED, That, within 7 days, FirstEnergy File, in final form, four complete copies of the tariffs, consistent with this Second Entry on Rehearing. FirstEnergy shall file one copy in its TRF docket (or make such filing electronically as directed in Case No. 06-900-AU-WVR) and one copy in this case docket. The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division of the Commission's Utilities Department. It is, further,

ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date of this Second Entry on Rehearing and the date upon which four complete copies are filed with the Commission. The new tariffs shall be effective for services rendered on or after such effective date. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Valeria A. Lemmie

Steven D. Lesser

Cheryl L. Roberto

GAP/sc

Entered in the Journal

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Reneé J. Jenkins
Secretary