

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review )  
of Chapter 4901-7, Ohio Administrative ) Case No. 08-558-AU-ORD  
Code, Standard Filing Requirements for )  
Rate Increases Filed Pursuant to Chapter )  
4909, Revised Code. )

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**MEMORANDUM CONTRA FIRSTENERGY'S APPLICATION  
FOR REHEARING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

On May 13, 2010, the Public Utilities Commission of Ohio ("Commission" or "PUCO") issued a Finding and Order ("Order") in this proceeding. In the Order, the Commission revised its standard filing requirements for public utilities seeking to increase the rates that customers pay.

On June 14, 2010, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, "FirstEnergy" or "Company") filed an application for rehearing of the Order. In its application for rehearing, FirstEnergy alleged that the Order is unlawful and unreasonable in three respects.<sup>1</sup> First, FirstEnergy asserts that the Order unlawfully and unreasonably requires applicants to provide significant information regarding unregulated entities, including information regarding a parent holding company's common equity.<sup>2</sup> FirstEnergy would like the PUCO to either delete the requirement or modify it "to exclude any requirements for a

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<sup>1</sup> See FirstEnergy Application at 1.

<sup>2</sup> Id. at 4-8.

utility that is a wholly-owned subsidiary of a holding company to provide such information on a parent consolidated basis.”<sup>3</sup>

Second, FirstEnergy contends that the Order unlawfully and unreasonably requires that, absent a showing of good cause, all schedules be provided to PUCO Staff electronically with links to supporting schedules and work papers.<sup>4</sup> FirstEnergy would like the PUCO to further limit the electronic linkage requirement “to the extent practicable.”<sup>5</sup>

Third, FirstEnergy claims that the Order’s requirement that applicants provide extensive information regarding company management policies, practices, and organization upon the occurrence of a merger or an acquisition is unduly burdensome, unnecessary and unreasonable.<sup>6</sup> FirstEnergy would like the PUCO to require such information at a ten-year interval and to identify any changes to the last plan filing.<sup>7</sup>

The Office of the Ohio Consumers’ Counsel (“OCC”), on behalf of residential utility consumers, submits this Memorandum Contra FirstEnergy’s application for rehearing.<sup>8</sup> FirstEnergy’s argument concerning the equity information that must be provided with an application is inappropriate. Moreover, the argument, if it is to be considered at all, would best be addressed in a waiver request at the time an application is filed. Similarly, FirstEnergy’s claim regarding linked documents is inappropriate and, if it is to be considered at all, would best be part of an attempt to make a “good cause”

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<sup>3</sup> Id. at 4.

<sup>4</sup> Id. at 8-9.

<sup>5</sup> Id. at 9.

<sup>6</sup> Id. at 9-10.

<sup>7</sup> Id.

<sup>8</sup> Ohio Adm. Code 4901-1-35(B). If OCC does not address a specific argument raised by FirstEnergy, that should not be construed as acquiescence to the argument.

showing for special relief from filing requirements. And the PUCO has already considered, and rejected, in the Order FirstEnergy's arguments regarding the filing of management policies, practices and organization. The PUCO should thus deny FirstEnergy's application for rehearing.

## **II. ARGUMENT**

It should be noted that FirstEnergy is the only utility seeking rehearing of these – or any – matters in the Order.<sup>9</sup> Thus it appears that only FirstEnergy is unable (or unwilling) to comply with the rules as adopted in the Order. In addition, much of the Company's application is centered on situations specific, or even unique, to FirstEnergy. The Commission should deny FirstEnergy's claims of error and, in any event, should not abrogate or modify<sup>10</sup> rules of general applicability based on such company-specific arguments.

### **A. The Commission Should Retain The Requirement That Parent Companies File Data On A Consolidated Basis Covering All Subsidiaries.**

In the Entry initiating this proceeding, the PUCO Staff proposed adding a requirement that large utilities provide both "parent company and subsidiary company common equity" in the rate of return portion of an application.<sup>11</sup> In comments filed at the Commission, FirstEnergy's entire discussion of the proposed change was as follows:

This section is a new section in which both parent and subsidiary common equity is to be provided to the Commission. The FE Companies believe that the requirement is overly broad as it does not recognize a holding company scenario in which the holding company

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<sup>9</sup> On June 14, 2010, OCC filed an Application for Rehearing of the Order, but OCC's Application did not seek rehearing of any issues raised by the Companies.

<sup>10</sup> See R.C. 4903.10.

<sup>11</sup> See Entry (May 7, 2008), Appendix A at II-2 (135).

may include holdings in unregulated entities. The filing deals with the application of the public utility and not its parent holding company. The information requested at the holding company level is irrelevant to the resolution of the utility's filing and in some instances includes information beyond the jurisdiction of this Commission. The FE Companies recommend that this proposed addition be rejected or at least modified to exclude such a requirement for utilities that are wholly owned subsidiaries of holding companies.<sup>12</sup>

The Company did not address the issue in reply comments. The Commission adopted the PUCO Staff's proposal almost verbatim, in Chapter II, Section D(D).<sup>13</sup>

In its rehearing application, the Company asked the Commission to delete the requirement or to exclude from the requirement utilities that are wholly-owned subsidiaries of holding companies.<sup>14</sup> Most of FirstEnergy's argument on rehearing is a mere rehash of its comments. First, the Company claims that "[t]his requirement will impose unduly burdensome obligations on utilities with parent companies having multiple in-state and out-of-state unregulated operations and multiple out-of-state regulated operations."<sup>15</sup> This is similar to the argument in its comments regarding unregulated entities.

Next, FirstEnergy reiterates the jurisdictional argument from its comments: "Although the Commission's jurisdiction extends to the records and accounts of an Ohio public utility's holding company, this jurisdiction extends only insofar as those records and accounts relate to the Ohio utility's costs of operating in Ohio. Because Section D

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<sup>12</sup> FirstEnergy Comments (July 15, 2008) at 6-7.

<sup>13</sup> See Order, Appendix A at 115 (requiring large utilities to "[p]rovide parent company and subsidiary companies' common equity").

<sup>14</sup> FirstEnergy Application at 8.

<sup>15</sup> Id. at 5-6.

requires much more than this, it exceeds the Commission's jurisdiction."<sup>16</sup> Then, FirstEnergy resurrects the relevance argument from its comments.<sup>17</sup>

The Commission considered these arguments in the Order and rejected them.<sup>18</sup> The Commission should reject them here as well.

The only possible new issue raised by FirstEnergy deals with how the equity information may be interpreted. FirstEnergy argues that requiring applicants to provide equity information regarding the parent company and other subsidiaries "appears to assume that all of the common equity balances of subsidiary companies will add up to the parent company's common equity balance."<sup>19</sup> The Company states that "[t]his is an incorrect assumption due to dividends, eliminations, etc. at the parent company level."<sup>20</sup>

In addition, the Company argues that consideration of parent company equity may be misleading:

[T]he cost of capital and rate of return of a holding company with multiple regulated and unregulated affiliates can be substantially different from that of the regulated applicant performing a specific service function. Cost of capital is the expected return investors require based on the perceived risks of investing in the regulated utility. Thus, calculating cost of capital based on holding company data, particularly when that data bears little or no relationship to the risks of investing in a regulated utility, can be extremely misleading.<sup>21</sup>

These arguments concerning the interpretation of equity information, however, do not justify deleting or modifying the filing requirements, as the Company claims.

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<sup>16</sup> Id. at 6 (citation omitted).

<sup>17</sup> Id. at 6-7.

<sup>18</sup> See Order at 31, finding (40).

<sup>19</sup> FirstEnergy Application at 7.

<sup>20</sup> Id.

<sup>21</sup> Id. at 7-8.

In the Order, the Commission determined that “the equity information of the entire corporate structure is important in our determination of the appropriate cost of capital in rate cases.”<sup>22</sup> The Commission should not deprive itself of this needed information *in all cases* based on the problems perceived by *one* utility. Further, requiring parties to obtain equity information of the entire corporate structure through discovery, as suggested by FirstEnergy,<sup>23</sup> would lead to unnecessary delay, such as from quibbling by the applicant in various objections that it might interpose.

The Commission should deny FirstEnergy’s attempt to remove needed equity information from the standard filing requirements, and should retain the rule. Utilities may seek a “good cause” waiver of the requirement as allowed under Chapter II(A)(4)(a) of the filing requirements. The applicant utility would thus have the burden to show that the information is irrelevant to the proceeding, or would lead to incorrect assumptions or misleading conclusions regarding the equity information. If an applicant files for such a waiver, other interested persons should have an opportunity to make recommendations to the PUCO.

**B. Firstenergy’s Arguments Against Utilities’ Submission Of Management Policies, Practices And Organization When A Merger Or Acquisition Occurs Provide No Reasons For The Commission To Abrogate Or Modify The Order.**

In the Order, the PUCO required large utilities that have been involved in a merger, or that have acquired or been acquired by another company, to submit a complete filing relating to management policies, practices and organization.<sup>24</sup> This change was

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<sup>22</sup> Order at 30.

<sup>23</sup> FirstEnergy Application at 8.

<sup>24</sup> Order at 16.

based on a recommendation in OCC's Comments.<sup>25</sup> OCC noted that the proposed rule did not include the filing of management organizational information in the event of a merger or acquisition, and thus would allow changes in management policies, practices and organization resulting from mergers and acquisitions to go undetected.<sup>26</sup>

In its reply comments, FirstEnergy argued that OCC's proposal "is unnecessary and unduly burdensome."<sup>27</sup> The Company raised the issue of the "time and resources" needed to meet OCC's recommendation, and claimed that there were "safeguards already in place" that would obtain a picture of the applicant's management structure and function at the time the application is filed.<sup>28</sup> The Commission, nevertheless, concurred with OCC and adopted the requirement.

On rehearing, FirstEnergy again argued that "[c]reating the 'complete set' of information required by the Rule requires substantial time and resources which could be better spent elsewhere."<sup>29</sup> The Company again asserted that the language originally proposed by the PUCO Staff "sufficiently addresses any need for information by requiring applicants to update the management information which changes between filings."<sup>30</sup> The Company asked the Commission to "revert to Staff's proposed language,"<sup>31</sup> which would require such information at a ten-year interval, with identification of any changes to the last plan filing.

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<sup>25</sup> Id. at 15-16.

<sup>26</sup> OCC Comments at 6-7.

<sup>27</sup> FirstEnergy Reply Comments (September 30, 2008) at 3.

<sup>28</sup> Id.

<sup>29</sup> FirstEnergy Application at 9.

<sup>30</sup> Id. at 10.

<sup>31</sup> Id.

The Commission already addressed and rejected these arguments in the Order. FirstEnergy raises no new issues on rehearing,<sup>32</sup> and thus the Commission should deny the Company's application regarding this issue.

As with the equity information requirement, the Company asserts that the managerial information can be obtained through discovery.<sup>33</sup> This proposal contains the irony that while FirstEnergy is asking the PUCO to change the rule to spare applicants' time and resources, the time and resources would just be imposed on both applicants and other interested persons as part of the discovery process. And the PUCO's time and resources would be imposed upon to resolve discovery disputes in the potential circumstance of disagreement between applicants and others. The result would be unnecessary delay, as discussed in Section II.A., above. As mentioned in Section II.A., an applicant utility may seek a "good cause" waiver of the filing requirement, with interested persons having an opportunity to make recommendations to the PUCO.

**C. Firstenergy's Claim Of Error To Eliminate The Requirement For Submitting Information With Electronic Links To Schedules Containing Supporting Data Should Be Denied.**

In its application for rehearing, FirstEnergy asked the Commission to require electronic links to schedules containing supporting data only if "practicable."<sup>34</sup> This

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<sup>32</sup> The Company references Governor Strickland's Executive Order 2008-4S and asserts that the rule is "unnecessary, ineffective, redundant, inefficient, needlessly burdensome, and unnecessary for the purposes of the underlying statute." Id. In the Order, however, the Commission noted that it "considered those matters set forth in the executive order" among other things, and concluded that "Rule 4901-7-01, O.A.C., and Appendix A to the rule should be amended as set forth in the attachment to this finding and order...." Order at 31.

<sup>33</sup> FirstEnergy Application at 10.

<sup>34</sup> See id. at 9.

limitation was originally proposed by the gas companies in their comments,<sup>35</sup> but the Commission rejected the proposal in the Order and instead adopted language that FirstEnergy proposed.<sup>36</sup>

In the Entry initiating this proceeding, the PUCO Staff proposed a rule change that “[s]chedules and workpapers containing numerical data shall be submitted on spreadsheets that contain active formulas and calculations, and must be linked so that changes propagate through the schedules and workpapers.”<sup>37</sup> In their comments, the gas companies noted that electronic links are not always possible because the linked files might not be in their original locations.<sup>38</sup> The gas companies suggested that electronic links to supporting data files be made available “to the extent practicable.”<sup>39</sup>

FirstEnergy, on the other hand, suggested in its comments that the PUCO adopt the following “good cause” exception to the electronic linkage requirement:

All schedules submitted must also be provided to the Staff in an electronic format. The electronic format must use links to retrieve data from related schedules, and, if necessary, relevant working papers that lend themselves to the same. Absent a showing of good cause by applicant, schedules and workpapers containing numerical data readily available from applicant’s computer systems shall be submitted on spreadsheets that contain active formulas and calculations, and must be linked so that changes propagate through the schedules and workpapers.<sup>40</sup>

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<sup>35</sup> Comments of the Ohio Gas Association, the East Ohio Gas Company d/b/a Dominion East Ohio, Columbia Gas of Ohio, Inc., Duke Energy Ohio, Inc., and Vectren Energy Delivery of Ohio, Inc. (July 15, 2008) at 2.

<sup>36</sup> See Order at 13.

<sup>37</sup> Entry at Appendix A, II-8 (19).

<sup>38</sup> See Order at 12-13.

<sup>39</sup> See id. at 12.

<sup>40</sup> FirstEnergy Comments at 2-3 (emphasis in original).

In its Comments, FirstEnergy did not propose that electronic links be provided only if “practicable,” and the Company did not address the gas companies’ proposal in its reply comments.

In the Order, the Commission made electronic linkage a requirement “absent a showing of good cause,” as FirstEnergy recommended in its comments. The Commission adopted the following language for Chapter I(A)(7):

The electronic format must use links to retrieve data from related schedules and, if applicable, relevant working papers. Absent a showing of good cause by the applicant, schedules and work papers containing numerical data shall be submitted on spreadsheets that contain active formulas and calculations, and must be linked so that changes propagate through the schedules and work papers.<sup>41</sup>

The Commission determined that requiring “that good cause must be shown if schedules and work papers do not contain active formulas and calculations, is a reasonable resolution of the concerns raised by FirstEnergy and the gas companies.”<sup>42</sup>

FirstEnergy now seeks rehearing on this issue, and asks the PUCO to adopt the following language: “*To the extent practicable*, the electronic format must use links to retrieve data from related schedules and, of applicable, relevant working papers.”<sup>43</sup> The Company apparently wants this language to be added *in addition to* the “good cause” language FirstEnergy championed in its comments and the PUCO adopted. FirstEnergy’s only arguments for this change are that “electronic linkage is not always possible as a technical matter”<sup>44</sup> and that the “good cause” requirement “does not solve the problem

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<sup>41</sup> Order, Appendix A at 13.

<sup>42</sup> Id. at 13.

<sup>43</sup> FirstEnergy Application at 9 (emphasis in original).

<sup>44</sup> Id. at 8.

raised by the gas companies.”<sup>45</sup> FirstEnergy, however, offers no support for these arguments. The Company merely states that the proposed change to Chapter I(A)(7) is needed “to fully address the gas companies’ criticism....”<sup>46</sup>

The PUCO should deny rehearing on this issue. FirstEnergy’s proposal is not only without basis, it would negate an applicant’s burden to show “good cause” that electronic linkage is not possible, as the rule now requires. Instead, an applicant would need only to claim that electronic linkage is not “practicable,” without showing the impracticability of electronic linkage.

In the Order, the Commission noted that, absent the linkage requirement, PUCO Staff would have to recreate the electronic versions, which would be a needless duplication of work that the applicant would already have done.<sup>47</sup> The Commission decided that it would be reasonable for applicants to bear the burden of showing that electronic linkage of documents is not feasible. This was a reasonable conclusion, and FirstEnergy has offered nothing to show otherwise. The Commission should deny the Company’s application for rehearing on this issue.

### **III. CONCLUSION**

FirstEnergy has provided no justification for the Commission to abrogate or modify the Order, as the Company requests. To promote Ohio regulation in the public interest, the Commission should deny FirstEnergy’s application for rehearing in all respects.

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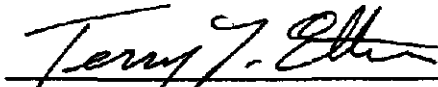
<sup>45</sup> Id. at 9. As noted earlier, the gas companies did not seek rehearing of this issue.

<sup>46</sup> Id.

<sup>47</sup> Order at 13.

Respectfully submitted,

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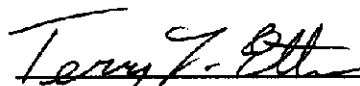
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Memorandum Contra* by the Office of the Ohio Consumers' Counsel was served electronically to the persons listed below on this 24<sup>th</sup> day of June 2010.

  
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