

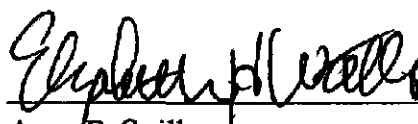
three days shall be added to the allowed time. In the present situation, the application was filed on August 4, 2010. The ten-day period for filing a memorandum contra would end on August 14. However, as that day was a Saturday, the deadline is extended to Monday, August 16, 2010. Three days could also be added, as this application for rehearing was served by mail, making the deadline be August 17, 2010.

The application for rehearing requested that the Commission reconsider the entry that allowed utilities until September 1, 2010, to file their applications under the test for significantly excessive earnings (SEET), set forth in Section 4928.143, Revised Code.

The Customer Parties contend that the Commission's entry is unjust and unlawful both because it allowed the utilities not to file their SEET applications until after the Commission had an opportunity to rule on the pending, substantive application for rehearing and because it did not address the possibility that the payment of interest could ultimately be required.

Duke Energy Ohio respectfully requests that the Commission find that the Customer Parties' claimed grounds for rehearing be denied and that it leave its entry unchanged, as more fully explained in the attached Memorandum in Support.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

(A) SEET Application Filing Deadline

As this Commission is well aware, it is required, under certain circumstances, to determine whether an electric utility's rates result in the utility garnering significantly excessive earnings, as set forth in various provisions of Amended Substitute Senate Bill No. 221 (S.B. 221), Sections 4928.142(D), 4928.143(E), and 4928.143(F), Revised Code. The Commission has worked diligently to establish rules and procedures to enable it to make the required determination, with many parties participating in the process. Initially, the Commission followed its standard processes to promulgate rules, one of which established May 15, 2010, as the date on which the initial SEET applications would be due. Rule 4901:1-35-10, O.A.C.; Case No. 08-777-EL-ORD. Subsequently, the Commission opened the current proceeding, holding a workshop to discuss issues related to the required SEET. Commission Staff then issued recommendations for the Commission's consideration. Parties in this proceeding filed comments and reply comments relating to the Staff recommendations and a question and answer session was scheduled to provide the Commission with an opportunity to inquire further to various issues. In a separate proceeding, one utility requested a waiver of the May 15 deadline on the ground that critical information would not be available by that date. The

Commission granted the waiver and ordered that the new deadline of July 15 be applicable to all electric utilities. The Commission issued its Finding and Order on June 30, 2010, two weeks prior to the new filing deadline.

Duke Energy Ohio, planning to file an application for rehearing with regard to the Finding and Order, requested a brief extension of the deadline so that any amended SEET application it should file will comply with the Commission's requirements as they may ultimately be resolved. Duke Energy Ohio only asked that the filing deadline occur after the Commission rules on its application for rehearing. It is this brief delay that has generated the Customer Parties' current application for rehearing.

The Customer Parties, with much hyperbole, assert that the "utilities have requested delay after delay of their SEET filings." (Customer Parties Application for Rehearing, August 4, 2010, at 6.) In fact, the utilities have requested exactly two extensions. The first request was based on the fact that the third-party reports that the utilities must use to prepare the SEET applications would not be available until after the May 15 deadline established in the governing rule. The Commission correctly agreed that the date should be modified, setting it at July 15. The Customer Parties did not file an application for rehearing of that entry and that Commission's decision is not currently at issue.

The only other "delay" requested by a utility was this motion by Duke Energy Ohio. Rather than "emasculating the protection for customers," as described by the Customer Parties, Duke's request is intended to provide efficiencies in the process, for the utilities, the intervening parties, and the Commission itself.

The Customer Parties claim that ordering the filing of SEET applications "forthwith" – that is, prior to the issuance of an entry on rehearing addressing substantive matters in the Commission's Finding and Order – will "facilitate, not impede, the timely return to customers of . . . significantly excessive earnings in 2009." Evaluation of the situation makes it clear that this is not the case. Three applications for rehearing of the Finding and Order have been filed, both by utilities and by the Customer Parties themselves. If the utilities were required to file their SEET applications prior to resolution of those substantive issues, the applications would have to be prepared in conformity with the current requirements. Any issues with regard to which the Commission grants rehearing would then require the utilities to amend and re-file their applications. The Commission, therefore, would be unable to commence any review of the SEET applications until amended applications were available. This is, of course, no earlier than the review will start under the current schedule. Even if the Commission denies rehearing on all grounds, how much of a delay will occur?

With the earliest application for rehearing of the Finding and Order having been filed on July 26, the Commission is likely to act on August 25. Even if the schedule had not been modified in the Entry under consideration here, the Commission could not begin its review until that decision date. The current schedule requires SEET applications to be filed just one week after August 25. So the intolerable "delay" of which the Customer Parties are complaining is, in practical effect, one week long. It should also be noted that, by the time the Commission is in a position to act on the current application for rehearing by the Customer Parties, the filing deadline may actually be past.

It was entirely just and reasonable, and within the Commission's discretion, to allow the utilities not to file their SEET application until pending applications for rehearing have been addressed. The Customer Parties' assignment of error with regard to the deadline for filing the SEET applications should be denied.

(B) Interest on SEET Refunds

The Customer Parties contend, as they did in the application for rehearing of the Finding and Order, that the Commission's Entry is in error because it does not state that interest will be assessed on any refunds due to customers, if the Commission has not, by the end of 2010, issued its order requiring such refunds.

Recognizing that the law does not require, or even suggest, the imposition of such interest, the Customer Parties compare the timing in this to other types of cases. They then assert that the Commission's failure to impose interest is an error.

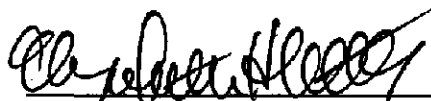
The Customer Parties' contention that the Commission's Entry must be modified to provide for the imposition of interest is incorrect. If the Commission determines that it has the authority to impose interest and that it is appropriate to do so, it will have the opportunity to do so at subsequent times in this proceeding or in the various utilities' individual SEET proceedings. It clearly does not require modification of this Entry for the Commission to impose such interest.

The Customer Parties' second assignment of error should be denied.

Conclusion

For the reasons fully discussed above Duke Energy Ohio respectfully requests the Commission deny the application for rehearing filed by the Customer Parties on August 4, 2010.

Respectfully submitted,


A handwritten signature in black ink, appearing to read "Amy B. Spiller", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following parties,
this 16th day of August 2010, via electronic mail delivery.


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