

**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 TO ESTABLISH A PROCEDURAL SCHEDULE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves the Public Utilities Commission of Ohio ("PUCO" or "Commission"), pursuant to Ohio Adm. Code 4901-1-12 and 4901-1-14, to establish a procedural schedule in the above-captioned case. A procedural schedule is needed to help ensure a timely resolution of rate issues that involve what generally has been referred to as service to all-electric customers by the Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company (collectively, "FirstEnergy" or the "Companies").

The reasons for granting OCC's Motion are more fully set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Jeffrey L. Small

Jeffrey L. Small, Counsel of Record

Maureen R. Grady

Christopher J. Allwein

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

614-466-8574 (Telephone)

614-466-9475 (Facsimile)

small@occ.state.oh.us

grady@occ.state.oh.us

allwein@occ.state.oh.us

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On February 12, 2010, the Companies filed an application that proposed to adjust certain residential electric rates that apply to some of the Companies’ approximately 1.9 million residential customers, commonly referred to as “all-electric” customers. On February 25, 2010, the OCC moved the Commission to declare an emergency, to alter residential all-electric rates and to require payment arrangements, to investigate FirstEnergy’s business practices, and to hold a hearing.

Thereafter, the PUCO ordered rate relief for some of FirstEnergy’s all-electric customers.¹ The PUCO stated that the rate relief was an interim and not long-term solution to the issue of FirstEnergy’s rate design.² The PUCO permitted FirstEnergy to modify its accounting to defer incurred purchased power costs equal to the difference between the rates and charges to all-electric customers and the rates and charges that would otherwise apply.³ Further, the PUCO directed its Staff to investigate and file a report regarding the appropriate long-term rates that should be provided to the all-electric

¹ Finding and Order at 3, ¶(10) (March 3, 2010).

² Id. at 3, ¶(12).

³ Id. at 3, ¶(11).

residential customers.⁴ The Commission directed its Staff to report in the docket -- within 90-days of the Finding and Order dated March 3, 2010 -- on a range of options regarding rates, bill impacts, and revenue recovery related to discounts provided to all-electric residential customers.⁵

By means of its First and Second Entries on Rehearing, the Commission clarified its original Finding and Order regarding which residential customers should receive discounts.⁶ The Commission held that “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.”⁷ The PUCO also stated:

[W]e 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.⁸

In its Third Entry on Rehearing dated April 28, 2010, the Commission stated that the discounts provided to designated all-electric customers should “provide winter bill impacts commensurate with FirstEnergy’s December 31, 2008, charges for those customers.”⁹ The Commission extended FirstEnergy’s deadline for filing revised tariffs until May 7, 2010.

⁴ Id. at 3, ¶(12).

⁵ Id. at 4, ¶¶(12) and (13).

⁶ Second Entry on Rehearing at 2, ¶(7) (April 15, 2010).

⁷ Id. at 3, ¶(9).

⁸ Id. at 2, ¶(7).

⁹ Third Entry on Rehearing at 2, ¶(8).

The OCC applied for rehearing regarding the Second Energy on Rehearing, arguing that the “issues raised in this proceeding”¹⁰ should include the marketing practices of the Companies for purposes that are not founded upon contract law and equitable remedies.¹¹ Those purposes include a review of the Companies’ marketing activities for purposes of considering the appropriate means by which the revenue shortfall associated with rate relief for all-electric customers will be handled. The PUCO issued a Fourth Entry on Rehearing on June 9, 2010 that granted the applications for rehearing filed by OCC and others.¹² The PUCO held that “sufficient reason ha[d] been set forth by the parties seeking rehearing to warrant further consideration of the matters specified in the applications for rehearing.”¹³

On August 31, 2010, one of several meetings was held in Northern Ohio at which discounts for FirstEnergy’s all-electric customers was discussed. A news account of that meeting states that a representative of the PUCO indicated there would eventually be an opportunity for consumers to testify at public hearings.¹⁴

II. A PROCEDURAL SCHEDULE SHOULD BE ESTABLISHED TO HELP ENSURE A TIMELY RESOLUTION OF ISSUES RELATED TO FIRSTENERGY’S RESIDENTIAL RATE STRUCTURE.

The Commission should establish a procedural schedule that (1) sets interim deadlines for resolution of this case, including the preparation of a report by the PUCO Staff, (2) affords the public an opportunity, on the record, to comment and provide

¹⁰ Second Entry on Rehearing at 2, ¶(7) (April 15, 2010).

¹¹ OCC Application for Rehearing at 4-8 (May 24, 2010).

¹² Fourth Entry on Rehearing at 2 ¶(9) (June 9, 2010).

¹³Id.

¹⁴ Andy Ouriel, *FirstEnergy, PUCO feel the heat at meeting*, Sandusky Register (September 1, 2010).

information to the Commission regarding FirstEnergy's rate design and regarding the PUCO's Staff's report on that issue, and (3) affords interested parties, including the OCC, the opportunity to present their cases regarding FirstEnergy's residential rate design, bill impacts, and revenue recovery related to discounts provided to all-electric residential customers. Such guideposts along the route to the final resolution of this case would provide the "meaningful opportunity to participate in the resolution of the issues" that the Commission has supported.¹⁵

Precedent exists for the establishment of the requested procedural schedule that would provide the public and parties important input to the resolution of the issues that arise in this case. For example, on October 24, 2001, the Commission initiated an investigation into the line extension policies by several electric utilities after the Commission became more fully aware of the consequences of the PUCO's approval of electric transition plans subsequent to the enactment Sub. Senate Bill 3. Based on complaints received by the PUCO, the Commission issued an entry to obtain additional information "regarding the past and present policies and procedures of AEP, FE, and Mon Power for handling new line extensions."¹⁶ The companies responded to twelve questions and later replied to the comments by the OCC and other interested persons. By an entry dated February 6, 2002, the Commission directed its Staff to prepare and file a staff report of investigation.¹⁷ A hearing was convened on April 26, 2002.

The OCC requests that the Commission establish a procedural schedule in the instant proceeding – including one that provides local public hearings -- to ensure that

¹⁵ Second Entry on Rehearing at 2, ¶(7).

¹⁶ *In re Line Extension Investigation*, Case Nos. 01-2708-EL-COI, et al. at 2, ¶(3) (October 24, 2002).

¹⁷ *Id.*, Entry at 3, ¶8 (February 6, 2002).

persons interested in the all-electric rate issues have both a forum and opportunity to provide the Commission their perspectives.

The need for such a procedural schedule at this time is underscored by prior events related to this case. The public has shown keen interest in the case, as demonstrated by the stream of more than 600 letters filed in this docket (more filed in other dockets that involve FirstEnergy). Also, public meetings that have been held in Northern Ohio have been well attended (e.g. the August 31 meeting in Sandusky sponsored by Saving Our Seniors).

The establishment of a procedural schedule will help ensure that timely progress is made regarding the procedures that are stated in the Commission's entries and orders as well as those procedures that have yet to be announced.

III. CONCLUSION

The Commission should establish a procedural schedule regarding FirstEnergy's all-electric rates, including the treatment of deferrals that may result from the change in those rates. The Commission will benefit from the advice, comments, and recommendations provided by the public, the OCC, and other interested parties. The Commission should grant the OCC's Motion.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Jeffrey L. Small

Jeffrey L. Small, Counsel of Record

Maureen R. Grady

Christopher J. Allwein

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

614-466-8574 (Telephone)

614-466-9475 (Facsimile)

small@occ.state.oh.us

grady@occ.state.oh.us

allwein@occ.state.oh.us

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Establish a Procedural Schedule has been served upon the below-stated counsel, via regular U.S. Mail, postage prepaid, this 8th day of September, 2010.

/s/ Jeffrey L. Small
Jeffrey L. Small

SERVICE LIST

William Wright
Attorney General's Office
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215
William.Wright@puc.state.oh.us

James W. Burk
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
burkj@firstenergycorp.com

Samuel C. Randazzo
Lisa G. McAlister
Joseph M. Clark
McNees Wallace & Nurick LLC
21 E. State St., 17th Fl
Columbus, OH 43215

sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com

Thomas J. O'Brien
Bricker & Eckler LLP
100 S. Third St
Columbus, OH 43215
tobrien@bricker.com

**Attorney for Ohio Hospital Association
and Ohio Manufacturers' Association**

**Attorneys for Industrial Energy Users-
Ohio**

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
ricks@ohanet.org

Attorney for Ohio Hospital Association

Kevin Corcoran
Corcoran & Associates Co. LPA
8501 Woodbridge Ct.
North Ridgeville, OH 44039
kevinocorcoran@yahoo.com

**Attorney for Sue Steigerwald; Citizens
For Keeping the All-Electric Promise
(CKAP); Joan Heginbotham and Bob
Schmitt Homes, Inc.**

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