

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.)

ENTRY

The attorney examiner 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. On March 8, 2010, the Ohio Consumers' Counsel (OCC) filed an application for rehearing. On April 6, 2010, the Commission granted rehearing for the purpose of further consideration of the matters specified in the application for rehearing. Subsequently, on April 15, 2010, the Commission denied rehearing in the Second Entry on Rehearing (April 15 Entry) in this proceeding.

Further, on April 2, 2010, FirstEnergy filed an application for rehearing regarding the Commission's March 3, 2010, Finding and Order. The Commission granted rehearing on April 28, 2010, in the Third Entry on Rehearing (April 28 Entry) in this proceeding.

On May 14, 2010, FirstEnergy filed an application for rehearing regarding the April 15 Entry. Further, on May 17, 2010, Industrial Energy Users-Ohio (IEU-Ohio) and OCC each filed applications for rehearing regarding the April 15 Entry. On June 9, 2010, the Commission granted rehearing for

the purpose of further consideration of the matters specified in these applications for rehearing.

- (4) Further, on June 30, 2010, OCC filed a motion to compel discovery, requesting that the Commission order FirstEnergy to respond to certain interrogatories and requests for production of documents. On July 15, 2010, the Companies filed a memorandum contra the motion to compel. OCC filed a reply to the memorandum contra on July 26, 2010.
- (5) By entry issued on October 8, 2010, a procedural schedule was established in this matter. Pursuant to the procedural schedule, the deadline for filing motions to intervene was set for November 1, 2010, and the parties were directed to file testimony by November 15, 2010. In addition, the October 8, 2010, entry set this matter for hearing on November 29, 2010.
- (6) On November 8, 2010, the attorney examiner granted OCC's motion to compel and directed FirstEnergy to serve responses to the discovery requests upon OCC within seven days.
- (7) On November 9, 2010, OCC filed a motion to supplement testimony and request for expedited ruling. In its motion, OCC notes that, under the November 8, 2010, entry, the Companies' responses to the discovery requests at issue in that entry are due on November 15, 2010, the same day that testimony is due. OCC states that this timeline fails to satisfy its rights of discovery, provided by Section 4903.082, Revised Code. Accordingly, OCC proposes that the parties be allowed to supplement their testimony, by December 6, 2010, with information gained in response to OCC's discovery requests and that the evidentiary hearing should reconvene to hear any witness whose supplemental testimony is filed in December.
- (8) In the Fifth Entry on Rehearing, issued on November 10, 2010, (November 10 Entry), the Commission, *inter alia*, granted rehearing, in part, on FirstEnergy and OCC's applications for rehearing to clarify the scope of the Commission's decision in the April 15 Entry. The Commission stated that it will exercise jurisdiction over FirstEnergy's rates and marketing practices, pursuant to Section 4928.02(I), Revised Code, and Rule 4901:1-10-24(D), O.A.C., and indicated that the parties are not precluded from conducting discovery regarding these issues

nor from presenting evidence during the hearing, provided that such evidence is otherwise properly admissible in Commission proceedings. However, the Commission reiterated that it lacks jurisdiction to hear "pure contract" claims, including claims based on reliance or promissory estoppel or claims seeking equitable remedies.

- (9) On November 12, 2010, FirstEnergy filed a motion for continuance of the deadline for submission of pre-filed testimony and the commencement of the hearing. FirstEnergy requests that the deadline for submission of pre-filed testimony be extended to January 7, 2011, and that the hearing continued until January 27, 2011. FirstEnergy requests an expedited ruling on its motion and argues that OCC's motion to supplement testimony and request for expedited ruling should be denied. FirstEnergy represents that all parties to this proceeding have indicated that they do not object to the issuance of an expedited ruling on FirstEnergy's motion for continuance.

FirstEnergy argues that, because the November 10 Entry introduced additional issues regarding the Companies' past marketing practices into this case less than three weeks before the scheduled hearing date and three business days before the pre-filed testimony was due, good cause exists for extension of the deadline for submission of pre-filed testimony and for continuance of the commencement of the hearing. FirstEnergy asserts that it and the other parties must be allowed time to test the factual allegations regarding the Companies' past marketing practices and to prepare responsive testimony. FirstEnergy notes that, under the current procedural schedule, responses to any discovery it serves regarding these allegations would not be due until after the start of the hearing. FirstEnergy asserts that its requested extension would allow all parties a fair opportunity to take discovery and prepare testimony regarding these newly-discovered issues, as well as to discuss settlement. FirstEnergy further argues that its proposed schedule is simpler and fairer for all parties than OCC's proposed bifurcation of the hearing in this matter and, accordingly, OCC's motion to supplement testimony should be denied.

- (10) The attorney examiner finds that FirstEnergy's motion for continuance of the deadline for submission of pre-filed testimony and the commencement of the hearing is reasonable and should be granted. Accordingly, the deadline for submission of pre-filed testimony should be extended to January 7, 2011. The attorney examiner further finds that, because the Companies have already published notice of the November 29, 2010, hearing date, the hearing in this matter should commence on that date and then be continued until January 27, 2011.
- (11) Having granted FirstEnergy's motion for continuance, the attorney examiner finds that the concerns raised by OCC in its motion to supplement testimony have been addressed as the deadline for filing testimony has been extended. OCC's motion to supplement testimony is, therefore, denied as moot.


It is, therefore,

ORDERED, That FirstEnergy's motion for continuance of the deadline for submission of pre-filed testimony and the commencement of the hearing be granted, as set forth in finding (10). It is, further,

ORDERED, That OCC's motion to supplement testimony be denied, in accordance with finding (11). It is, further,

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

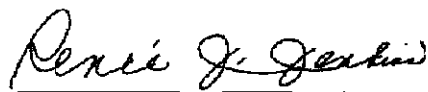
THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Henry H. Phillips-Gary
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Renee J. Jenkins
Secretary