

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 Nos. 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 and providing interim rate relief for all-electric residential customers. 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 its Second Entry on Rehearing (April 15 Entry) in this proceeding. On April 2, 2010, FirstEnergy also 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 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 Energy Users-Ohio (IEU-Ohio) and

OCC each filed applications for rehearing regarding the April 15 Entry. In the Fourth Entry on Rehearing in this proceeding, issued on June 9, 2010, the Commission granted these applications for rehearing for further consideration of the matters specified in the applications for rehearing. On November 10, 2010, in Fifth Entry on Rehearing in this proceeding, the Commission granted, in part, and denied, in part, the applications for rehearing filed by FirstEnergy and OCC, and denied the application for rehearing filed by IEU-Ohio.

- (4) On June 2, 2010, Sue Steigerwald, Citizens for Keeping the All-Electric Promise (CKAP), Joan Heginbotham, and Bob Schmitt Homes, Inc. (Bob Schmitt Homes)(collectively, movants) filed a motion to intervene.
- (5) FirstEnergy filed a memorandum contra movants' motion to intervene on June 17, 2010. OCC filed a reply to FirstEnergy's memorandum contra on June 24, 2010. FirstEnergy responded by filing a surreply on June 30, 2010, while movants and OCC filed motions to strike FirstEnergy's surreply on July 16, 2010. FirstEnergy filed a memorandum contra movants and OCC's motions to strike on August 2, 2010.
- (6) By entry issued on October 8, 2010, this case was set for an evidentiary hearing on November 29, 2010.
- (7) Under consideration in this entry is movants' motion to intervene and the filings associated with it. Rule 4901-1-11(A)(1) and (2), Ohio Administrative Code (O.A.C.), provide that, upon the filing of a timely motion, a person shall be permitted to intervene in a proceeding upon a showing that either: (a) a statute confers a right to intervene; or (b) the person has a real and substantial interest in the proceeding and the person is so situated that the disposition of the proceeding may impair or impede the person's ability to protect that interest, unless the person's interest is adequately represented by existing parties.
- (8) In deciding whether to permit intervention under Rule 4901-1-11(A)(2), O.A.C., paragraph (B) of that same rule states

that the Commission shall consider the nature and extent of the movant's interest; the legal position advanced by the movant and its probable relation to the merits of the case; whether granting intervention will unduly prolong or delay the proceedings; whether the movant will significantly contribute to full development and equitable resolution of the factual issues; and the extent to which the person's interest is represented by existing parties.

- (9) According to movants' motion to intervene, Ms. Steigerwald is an all-electric homeowner in FirstEnergy's service area who previously qualified for a discount provided by FirstEnergy to all-electric customers, while CKAP is an affiliation of all-electric customers living in FirstEnergy's service area. The motion to intervene further explains that Ms. Heginbotham is an all-electric customer who moved into her residence in FirstEnergy's service area after January 1, 2007, and Bob Schmitt Homes is a residential homebuilder who has previously and is currently building all-electric homes within FirstEnergy's service area. Movants note that, based on the date that she moved into her residence, Ms. Heginbotham is not currently eligible to receive the all-electric discount. In the motion to intervene, movants aver that the value of real estate they own will be negatively impacted if discounted all-electric rates are no longer available. Movants also assert that their interests are not represented by other parties to this proceeding. While recognizing that OCC represents residential customers, movants contend that, as all-electric customers, their interests may diverge from the interests of other residential customers and, therefore, their interests require separate representation. Finally, movants assert that their intervention will not unduly prolong or delay the proceeding, and that they will contribute significantly to the full and equitable resolution of the factual issues in this case.
- (10) In its memorandum contra, FirstEnergy contends that movants' interests are already adequately represented by OCC, on the grounds that movants and OCC share essentially the same interests and objectives. FirstEnergy maintains that movants' sole objective in this matter is to

maximize all-electric discounts for customers of FirstEnergy, by continuing discounts previously offered to all-electric customers and by extending these discounts to new customers. FirstEnergy argues that OCC has repeatedly and vigorously made the same arguments throughout this case. FirstEnergy also maintains that movants and OCC agree that FirstEnergy should bear the financial burden of the new all-electric discounts.

FirstEnergy also suggests that permitting individual residential customers to intervene will unduly prolong and delay this proceeding, especially if intervention by the handful of all-electric customers, such as some of the movants, causes many other all-electric customers to also seek intervention. FirstEnergy notes that the Commission has already taken steps to ensure meaningful participation by interested persons. In addition, FirstEnergy contends that movants will not significantly contribute to the development of factual issues in this proceeding, as movants possess no greater knowledge of relevant facts than any other all-electric customers nor do they offer any special expertise in all-electric discounts or rate design. FirstEnergy maintains that OCC, which is already gathering facts related to the all-electric discounts and which possesses extensive experience in presenting expert testimony on rate matters, is better suited to make a significant contribution to this case. Finally, FirstEnergy contends that intervention should be denied as to Ms. Heginbotham and Bob Schmitt Homes, since neither party is entitled to the all-electric discounts ordered by the Commission in this matter, and, therefore, they lack an interest in this case.

- (11) In response, movants and OCC initially contend that FirstEnergy's memorandum contra was untimely filed. Movants and OCC point out that the certificate of service attached to the motion to intervene states that FirstEnergy was served by U.S. mail on May 27, 2010. After adding three days to the fifteen day time-period for filing a memorandum contra, pursuant to Rules 4901-1-07(B) and 4901-1-12(B)(1), O.A.C., movants and OCC maintain that FirstEnergy's filing was due by June 14, 2010. Since FirstEnergy filed its

memorandum contra on June 17, 2010, movants and OCC argue that it should be disregarded.

In their reply, movants again assert that their interests are not adequately represented by OCC. Noting that FirstEnergy has argued that other ratepayers are subsidizing the all-electric discount, movants suggest that, if FirstEnergy's contention is correct, OCC, at some point, may not agree to have other ratepayers subsidize the all-electric customers, a stance that would be in direct opposition to movants' interests.

Movants also reassert that Ms. Heginbotham and Bob Schmitt Homes have a real and substantial interest in this matter. Movants state that Ms. Heginbotham purchased an all-electric home after January 1, 2007, so she has been denied the all-electric discount, even though her home was built before the January 1, 2007, deadline. Movants believe Bob Schmitt Homes has a real and substantial interest because the subdivision Bob Schmitt Homes is currently building has been planned and developed as an all-electric subdivision, based on a partnership between Bob Schmitt Homes and FirstEnergy that predates the elimination of the all-electric discount.

- (12) In its surreply, FirstEnergy argues that its memorandum contra should not be considered untimely because movants' motion to intervene was not filed with the Commission until six days after the date of service indicated in the certificate of service. FirstEnergy contends that the date the motion was served cannot be reasonably considered to be the date on which a reply period begins when, as here, a long gap exists between the service and the filing dates. FirstEnergy also contends that, since no party has been prejudiced by the timing of FirstEnergy's filing, the proceedings have not been delayed, and because its filing raises important procedural concerns, good cause exists to waive the time period set forth in Rule 4901-1-12(B)(1), O.A.C., for filing memorandum contra.
- (13) In their motions to strike, movants and OCC argue that FirstEnergy's surreply is not a pleading authorized under

the Commission's rules and that FirstEnergy failed to show good cause as to why it should be permitted to respond to movants' and OCC's reply memoranda. Movants additionally assert that FirstEnergy failed to properly serve movants with the surreply because FirstEnergy served them with an electronic version of the surreply but has yet to provide service by mail, even though movants have not consented to receive pleadings by facsimile or electronic means.

- (14) In its memorandum contra movants' and OCC's motions to strike, FirstEnergy contends that good cause exists for the Commission to consider FirstEnergy's surreply, as the surreply provided FirstEnergy its only opportunity to respond to movants and OCC's arguments that FirstEnergy's memorandum contra movants' motion to intervene was not timely, as movants and OCC did not raise these arguments until after FirstEnergy submitted its memorandum contra. FirstEnergy asserts that movants and OCC failed to show any prejudice arising from the surreply, and challenges movants' claim that FirstEnergy failed to properly serve movants with the surreply.
- (15) The attorney examiner finds that, in its surreply, FirstEnergy showed good cause as to why it should be permitted to respond to movants' and OCC's reply memoranda. Accordingly, the attorney examiner finds that movants' and OCC's motions to strike should be denied.
- (16) After reviewing the parties' filings and the arguments made therein, the attorney examiner finds that movants' motion for intervention is reasonable and should be granted. The attorney examiner finds that intervention by movants in this case is justified by the unique circumstances found in this matter, in which the interests of different residential customer classes may potentially diverge.

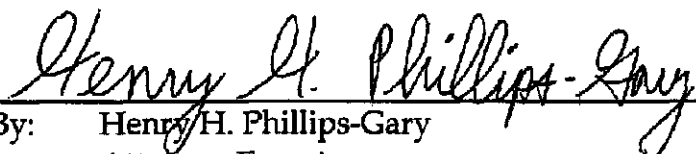
It is, therefore,

ORDERED, That movants' motion to intervene be granted. It is, further,

ORDERED, That movants' and OCC's motions to strike be denied. It is, further,

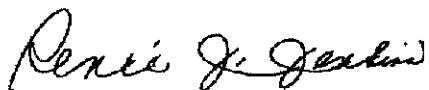
ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Henry H. Phillips-Gary
Attorney Examiner


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Entered in the Journal
NOV 17 2010



Renee J. Jenkins
Secretary