

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	Case No. 07-551-EL-AIR
Illuminating Company and The Toledo)	Case No. 07-552-EL-ATA
Edison Company for Authority to Increase)	Case No. 07-553-EL-AAM
Rates for Distribution Service, Modify)	Case No. 07-554-EL-UNC
Certain Accounting Practices and for Tariff)	
Approvals.)	

ENTRY ON REHEARING

The Commission finds:

- (1) The Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (FirstEnergy or the Companies) are public utilities as defined by Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (2) On May 8, 2007, FirstEnergy filed a notice of intent to file the above application in this proceeding. On May 30, 2007, the Commission issued an entry establishing the date certain and test period for FirstEnergy's application. On June 7, 2007, FirstEnergy filed its application for an increase in electric distribution rates for modification of accounting practices and for tariff approvals.
- (3) On January 21, 2009, the Commission issued its Opinion and Order in this proceeding.
- (4) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the entry of the order upon the Commission's journal.
- (5) On February 20, 2009, FirstEnergy filed an application for rehearing and request for clarification, alleging that the Opinion and Order was unreasonable and unlawful on the following grounds:

- (a) The Companies ask the Commission to clarify in its order that wholesale sales revenues should not be included in the determination of the ratio used to calculate jurisdictional expense.
- (b) The Companies ask the Commission to clarify in its order and indicate that annualized labor expense should be based upon actual data as of January 2008.
- (c) The Commission's decision to remove 20 percent of the Companies' short-term incentive compensation expense violates Section 4903.09, Revised Code, and is against the manifest weight of the evidence.
- (d) The Commission's failure to apply a full rate of return on the transition tax deferral is unreasonable and unlawful in that it deviates from Commission precedent without explanation.
- (e) The Commission exceeded its statutory authority when it directed the Companies to fund the Community Connections Program.
- (f) The Commission's exclusion of revenue requirements related to General Plant balances violates Sections 4909.15 and 4909.07, Revised Code, and is against the manifest weight of the evidence.
- (g) The Commission's decision failed to properly consider and recognize the Companies' financial risk in its determination of the cost of capital, thus resulting in an unreasonable and unlawful rate of return.
- (h) The Commission's decision to exclude net metering customers from the requirement to pay for a dedicated telephone line is arbitrary and unduly discriminatory and, therefore, unlawful.

- (i) The Commission's denial of up-front payments for line extension costs is unsupported by the law, the evidentiary record, and a prior Commission ruling and is contrary to ratemaking principles and public policy.
- (6) The Ohio Consumers' Counsel (OCC) also filed an application for rehearing on February 20, 2009, alleging that the Opinion and Order was unreasonable and unlawful on the following grounds.
 - (a) The Commission erred in its determination of revenue requirements in connection with the treatment of rate certainty plan (RCP) distribution operation and maintenance (O&M) deferrals and pension and other postretirement employment benefits.
 - (b) The Commission erred in granting FirstEnergy's request for accounting authority to defer storm damage costs.
 - (c) The Commission erred in its determination of measures that must be taken for improvement of The Cleveland Electric Illuminating Company's (CEI) reliability and the consequences for that company's failure to provide its customers reliable electric distribution service.
- (7) On March 2, 2009, FirstEnergy filed a memorandum contra OCC's application for rehearing. Further, the Ohio Home Builders Association filed a memorandum contra FirstEnergy's application for rehearing on March 2, 2009.
- (8) In its first assignment of error, the Companies ask the Commission to clarify in its order that wholesale sales revenues should not be included in the determination of the ratio used to calculate jurisdictional expense. In the alternative, if the Commission intended to include wholesale sales revenues in the ratio, the Companies request the Commission grant rehearing and reconsider the exclusion of such sales based upon the evidence in the record.

The Commission will clarify that wholesales sales revenues should not be included, and were not included, in the determination of the ratio used to calculate jurisdictional expense. Therefore, the Commission finds that the Companies' request for rehearing on this assignment of error is moot and should be denied.

- (9) In its second assignment of error, FirstEnergy asks the Commission to clarify its Opinion and Order and indicate that annualized labor expense should be based on actual data as of January 2008. FirstEnergy notes that Staff based its annualized labor expense calculation on actual employee counts as of August 2007. FirstEnergy claims that this data is not the most recent data in the record, noting that rebuttal testimony presented by FirstEnergy included actual employee counts as of January 2008 (Co. Ex. 4-C).

The Commission notes that our intent was to use the most recent, reliable evidence in the record regarding the actual employee counts. However, the evidence relied upon by FirstEnergy was presented on rebuttal, and neither the Staff nor other interested parties had had a sufficient opportunity to verify the information presented in the rebuttal testimony (Tr. IX at 117-119). Therefore, in weighing the testimony in the record, the Commission determined that the actual employee count as of August 2007 was the most recent, reliable evidence in the record. Rehearing on this assignment of error should be denied.

- (10) FirstEnergy contends in its third assignment of error that the Commission's decision to remove 20 percent of the Companies' short-term incentive compensation expense violates Section 4903.09, Revised Code, and is against the manifest weight of the evidence.

FirstEnergy claims that Staff presented no evidence in support of the removal of 20 percent of the Companies' short-term incentive compensation expense. However, at the hearing, Staff testified that incentive pay based upon the achievement of financial goals should be the responsibility of shareholders and that 20 percent of the incentive compensation is related to the achievement of financial goals (Staff Ex. 17 at 7). Moreover, the

Companies did not ask the Staff witness any questions regarding this issue on cross-examination (Tr. VII at 81-83). Finally, the Commission was not persuaded by the testimony presented by FirstEnergy that incentive pay based upon the achievement of financial goals aligns the interests of shareholders and customers (Co. Ex. 3-C at 18-19). Based upon the evidence in the record, the Commission finds that the Companies' third assignment of error is without merit; accordingly, rehearing on this assignment of error should be denied.

- (11) In its fourth assignment of error, FirstEnergy argues that the Commission's failure to apply a full rate of return to the transition tax deferral is unreasonable and unlawful in that it deviates from Commission precedent without explanation.

FirstEnergy argues that, because the transition tax deferrals and the rate certainty plan deferrals were created in two separate cases, the Commission incorrectly included the transition tax deferral with the rate certainty plan deferrals. Further, FirstEnergy notes that, although the stipulation in FirstEnergy's electric transition plan proceeding indicated that the embedded cost of debt would be used to capitalize interest on the transition tax deferral, the stipulation was silent as to the rate of return to be applied when the transition tax deferral was placed in rate base. *In re FirstEnergy*, Case No. 99-1212-EL-ETP. FirstEnergy contends that a full rate of return should have been applied to this deferral based upon past Commission precedent.

In the Opinion and Order, the Commission did not include the transition tax deferrals with the distribution deferrals created under the rate certainty plan. In fact, the Commission addressed each deferral separately in the Opinion and Order. Opinion and Order at 10-11, 11-12. Further, based upon the evidence in the record, the Commission adopted the recommendation of Staff that the embedded cost of debt be used as the rate of return to be applied to the transition tax deferral when it was placed in rate base (Staff Ex. 16 at 11-12). FirstEnergy does not identify any testimony in the record which disputes the Staff's recommendation. Further, as the

Opinion and Order notes, this treatment is consistent with, the stipulation approved by the Commission in *In re FirstEnergy*, Case No. 99-1212-EL-ETP, which did not specify that a full rate of return be applied to the deferral when it was placed in rate base. Opinion and Order at 12. Rehearing on this assignment of error should be denied.

- (12) On May 18, 2009, FirstEnergy filed a notice of withdrawal of its fifth assignment of error.
- (13) FirstEnergy claims in its sixth assignment of error that the Commission's exclusion of revenue requirements related to general plant balances violates Sections 4909.15, and 4909.07, Revised Code, and is against the manifest weight of the evidence. The Companies allege that certain general and intangible assets were erroneously excluded from plant in service balances and left on the books of the FirstEnergy Services Company at the time of the filing of the application in this case. FirstEnergy argues that both Ohio law and Commission policy require the inclusion of the assets when establishing just and reasonable rates. FirstEnergy claims that the testimony presented at the hearing demonstrates that the assets were used and useful in rendering public utility service at date certain (Co. Ex. 1-C at 4). Moreover, the Companies contend that the Commission's finding that Staff lacked a sufficient opportunity to audit all assets at issue is against the manifest weight of the evidence. The Companies note that Staff was made aware of the error prior on November 1, 2007, and that Staff had issued additional data requests regarding the assets, both before and after the issuance of the Staff Report (Tr. V. at 189-191, 192).

The Commission finds that FirstEnergy has raised no new arguments on rehearing and that, in the Opinion and Order, the Commission thoroughly addressed the arguments raised by FirstEnergy. Opinion and Order at 7. Accordingly, rehearing on this assignment of error is denied.

- (14) The Companies claim in its seventh assignment of error that the Commission's decision failed to properly consider and recognize the Companies' financial risk in its determination of the cost of capital, resulting in an unreasonable and unlawful

rate of return. FirstEnergy contends that the Opinion and Order conflates the Companies' financial risk with the financial risk of its parent, FirstEnergy Corporation.

The Commission finds that rehearing on this assignment of error should be denied. In the Opinion and Order, the Commission did not conflate the financial risk of the Companies with that of the parent, FirstEnergy Corporation. Instead, the Commission determined that the Companies had not demonstrated that the financial risk of the three electric utilities, The Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company, was sufficiently different from the financial risk of the comparable group to justify an adjustment to the comparable group's estimated return on equity. Further, in its application for rehearing, FirstEnergy did not demonstrate that the Commission's alleged error would actually impact the return on equity adopted by the Commission. In fact, in adopting the Staff's return on equity range, the Commission noted that the analysis performed by both FirstEnergy and OCC did not significantly deviate from the Staff's proposed range for return on equity. Opinion and Order at 21.

- (15) FirstEnergy alleges in its eighth assignment of error that the Commission decision to exclude net metering customers from the requirement to pay for a dedicated telephone line is unlawful. The Companies claim that, because both customers with and without net metering may have virtually identical on-site generation loads, the exclusion of net metering customers is unreasonable, arbitrary, and discriminatory. Instead, the Companies recommend that the Commission place a threshold of 100 KW on the requirement to provide a dedicated telephone line.

The Commission notes that the Companies have provided no basis in the record of this proceeding for the proposed threshold of 100 KW for the requirement that customers provide a dedicated telephone line. Further, we find that our decision on this issue in the Opinion and Order is consistent with the Commission's rules governing net metering contained in Rule 4901:1-10-28, Ohio Administrative Code (O.A.C).

Accordingly, rehearing on this assignment of error should be denied.

- (16) In its ninth assignment of error, the Companies claim that the Commission's denial of up-front payments for line extension costs is not supported by the law, by the evidentiary record, or a prior stipulation approved by the Commission. Moreover, FirstEnergy contends that the rejection of an up-front payment is contrary to ratemaking principles and public policy.

The Commission finds that FirstEnergy has raised no new arguments on rehearing and that we fully addressed these arguments in the Opinion and Order. Opinion and Order at 38-39. Accordingly, rehearing on this assignment of error should be denied.

- (17) In its first assignment of error, OCC argues that the Commission erred in its determination of revenue requirements in connection with the treatment of distribution operation and maintenance deferrals authorized by the stipulation approved by the Commission in FirstEnergy's RCP. *In re FirstEnergy*, Case No. 05-1125-EL-ATA, et al., Opinion and Order (January 4, 2006). OCC also argues that the Commission erred in its determination of revenue requirements for pension and other post retirement employment benefits (OPEB).

With respect to the RCP O&M deferrals, OCC claims that the Staff failed to properly define distribution O&M expenses. Further, OCC claims that the Staff failed to consider the growth in sales by Companies in calculating distribution O&M expenses embedded in rates. OCC argues that it should be self-evident that the amount of distribution O&M expenses embedded in rates is the proportion of the rates that goes to cover a given cost rather than the fixed dollar amount that was incurred many years ago. OCC also claims that plant-related deferral costs should be adjusted downward because post-in-service interest should be calculated on net plant only and because Staff failed to properly consider the effect of property taxes in the distribution O&M deferrals.

Regarding the pension and other post retirement employment benefits, OCC claims that use of the service cost method rather

than the accrual method of determining pension and OPEB expenses violates prior Commission precedents. OCC cites a Commission order in a generic proceeding, in which the Commission indicated its intent to use the accrual method for OPEB expenses for ratemaking purposes. *In re Commission Investigation into the Financial Impact of FASB Statement No. 106*, Case No. 92-1751-AU-COI, Finding and Order (February 25, 1993) at 6.

Finally, OCC argues that the Commission erred in determining that carrying charges for the deferrals be calculated on a gross-of-tax basis. OCC contends that the carrying charges should be calculated on the balance net of taxes because the balance net of taxes represents the Companies actual investment in the deferrals and that actual investment should be the balance on which the return is calculated.

In its memorandum contra OCC's application for rehearing, FirstEnergy claims that, with one exception, OCC did not make any new arguments regarding these issues in its application for rehearing. FirstEnergy notes that OCC claims that the Companies failed to meet its burden of proof when it departed from clear regulatory practice in Ohio. However, FirstEnergy argues that this claim is flawed because the generic proceeding only dealt with OPEB costs, not pension expenses and because the Commission merely stated its intent to be "generally consistent" with accounting standard SFAS 106 in accounting for OPEB costs. Further, FirstEnergy contends that the Companies are in a significantly different situation than at the time of the generic proceeding because the Companies have made voluntary cash contributions to their pension trust funds and have experienced significant increases in OPEB costs (Co. Ex. 4-C at 2-3). Therefore, FirstEnergy contends that it has provided sufficient evidence to justify adoption of the service cost method for calculating pension and OPEB expenses.

The Commission finds rehearing should be denied. With respect to OCC's arguments that the calculation of pension and OPEB expenses departed from prior regulatory practice, the Commission notes that, in the generic proceeding cited by OCC, we determined that the accrual method *generally* should be used in determining pension and OPEB expenses. However,

the Commission specifically stated that "both the underlying validity of the policy and its application to particular facts may be challenged and are subject to further consideration in individual cases." Case No. 92-1751-AU-COI at 6. Accordingly, the Commission may not apply the accrual method based upon the specific facts and circumstances in any individual rate case. This proceeding represents the first rate case filed by the Companies since the generic proceeding; thus, it is the first opportunity for the Commission to determine whether the accrual method should be applied to FirstEnergy (Tr. I at 30; Co. Ex. 4-C at 2). The Commission weighed the testimony, and relevant cross-examination, of both Staff witness Smith and FirstEnergy witness Kalata against the evidence presented by OCC witness Effron in determining that the accrual method was appropriate for FirstEnergy. The record demonstrates that the Companies have been making voluntary cash payments to their pension trust funds and that OPEB costs have increased significantly in recent years (Co. Ex. 4-C at 2-3; Tr. IX at 108-109). Further, testimony indicates that the service cost method is consistent with cost causation in that current customers will pay the pension expenses earned by current FirstEnergy employees (*id.* at 8). Based upon these factors, the Commission adopted the recommendation of the Staff that the service cost method be used.

Further, the Commission finds that the remaining arguments raised on rehearing by OCC, regarding both the treatment of the deferrals authorized in the RCP stipulation and the calculation of pension and OPEB expenses, were fully considered by the Commission in the Opinion and Order. Accordingly, rehearing on this assignment of error should be denied.

- (18) In its second assignment of error, OCC claims that the Commission erred in granting FirstEnergy's request for accounting authority to defer storm damage costs. OCC argues that Commission precedent dictates that deferral authority requires both exigent circumstances and good cause shown. Case No. 05-1125-EL-ATA, et al., Opinion and Order (January 4, 2006) at 8. OCC alleges that the Companies have

made no demonstration that the proposed deferrals are prudent or necessary in this distribution rate case.

In its memorandum contra, FirstEnergy argues that OCC fails to recognize the testimony of its witness Wagner in support of the request for accounting authority. Mr. Wagner testified that such authority is necessary due to the unpredictable nature of, and volatility in, storm related costs (Co. Ex. 3 at 10-11).

The Commission notes that OCC does not identify any evidence in the record to dispute the testimony of FirstEnergy witness Wagner in support of the request for accounting authority. Moreover, OCC did not ask the Companies' witness any questions regarding this issue on cross-examination (Tr. I at 44-64). Therefore, based upon the uncontroverted evidence in the record in support of the request for accounting authority, the Commission finds that OCC's second assignment of error is without merit and that rehearing on this assignment of error should be denied.

- (19) OCC alleges in its third assignment of error that the Commission erred in its determination of measures that must be taken for improvement of CEI's reliability and the consequences for that company's failure to provide its customers reliable electric distribution service. OCC contends that the repeated failure of CEI to meet its reliability targets warrants the imposition of monetary forfeitures upon CEI and a downward adjustment of the rate of return for CEI.

FirstEnergy states in its memorandum contra that OCC failed to cite any basis for error in the Opinion and Order, other than raising the same argument it presented on brief.

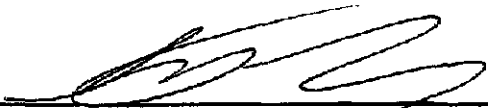
The Commission finds that OCC has raised no new arguments on rehearing and that we fully addressed these arguments in the Opinion and Order. Opinion and Order at 32-36. Accordingly, rehearing on this assignment of error should be denied.

It is, therefore,

ORDERED, That the applications for rehearing filed by FirstEnergy and OCC be denied. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO



Steven D. Lesser, Chairman



Paul A. Centolella

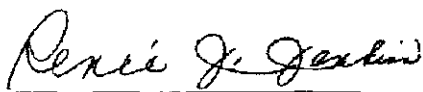
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Entered in the Journal **FEB 02 2011**



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