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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 Edison Company for) Case No. 10-176-EL-ATA
Approval of a New Rider and Revision of an)
Existing Rider.)

JOINT POST HEARING BRIEF OF
THE OHIO MANUFACTURERS' ASSOCIATION AND
THE OHIO HOSPITAL ASSOCIATION

I. INTRODUCTION

On February 12, 2010, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively "FirstEnergy") filed an application for authority to revise its current tariffs in order to provide rate relief to certain all-electric customers ("Application"). On March 3, 2010, the Public Utilities Commission of Ohio ("Commission") approved FirstEnergy's application as modified and provided interim rate relief for all-electric residential customers. The Commission further extended the all-electric discount through its Second Entry on Rehearing. Subsequently, the Commission scheduled this matter for hearing.

Pursuant to the schedule established by the Attorney Examiners assigned to this matter, the Ohio Manufacturers' Association ("OMA") and the Ohio Hospital Association ("OHA"), jointly and respectfully submit their post-hearing brief urging the Commission to maintain the status quo and allow the subsidy provided by Rider EDR to run its course without modification.

II. THE OMA AND OHA

A. The OMA.

OMA is the only statewide association exclusively serving manufacturers. It has more than 1,600 Ohio manufacturing companies as members. OMA membership ranges from some of the

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largest corporations in Ohio, both in terms of employment and capital investment, to individual entrepreneurs engaged in experimental and cutting-edge technologies. A substantial number of OMA's members are located in the service territories of FirstEnergy's operating companies.

It is extremely difficult for northern Ohio manufacturers, large or small, to make sales and grow their businesses if they are forced to shoulder the costs of electric service provided to other customer classes (e.g. residential customers). This is especially true when manufacturers' competition may enjoy more favorable electric costs in other areas of Ohio and throughout the United States.

B. The OHA.

The OHA is a private, nonprofit trade association currently with 168 hospitals and 18 healthcare system members (see www.ohanet.org/Members) that have more than 700 electricity accounts statewide. Collectively, OHA members annually spend between \$150 and \$200 million for electric services. A significant amount of that expenditure is for electric service provided by the Companies to the approximately 60 OHA member hospitals in FirstEnergy's service areas.

Hospitals and healthcare systems have a unique profile on the electric grid. Their loads vary from smaller medical office buildings and outpatient centers operating during normal business hours, to traditional hospitals providing inpatient acute care on a 24-hour basis every day of the year. Major hospital facilities must operate around the clock, 365 days each year, thereby requiring that they have a continual supply of electricity from the local utility or on-site generation facilities. These facilities during 2010 provided inpatient care for 1.5 million people, outpatient care for 32.9 million people, and six million emergency room visits (see [www.ohanet.org/Narrative/Ohio Hospital Facts](http://www.ohanet.org/Narrative/Ohio_Hospital_Facts)). In financial terms, Ohio hospitals during 2009 provided \$2.6 billion in net community benefits—including \$999 million in charity care—and

together with Medicare losses and bad debt provided \$4.1 billion that year in total services to Ohioans (see www.ohanet.org/Community-Benefits/).

Every patient's health (and possibly life) is dependent on the availability and quality of the electric service provided by the Ohio electric distribution utilities. Everything from the lighting, heating and cooling of the facilities, to the high technology diagnostic and treatment equipment that are used to treat these patients, electricity is integral to the services provided by OHA-member hospitals. With the very significant cost challenges facing the healthcare industry, and healthcare facilities specifically, now is not the time to exacerbate the very real risk of pushing the economy into a possible "death spiral," thereby endangering hospitals and their ability to serve communities and patients, including the customers of FirstEnergy that currently receive the discounts at issue in this proceeding.

III. THE HISTORY OF ALL-ELECTRIC RATES.

This case is about special electric rates offered to certain residential customers in FirstEnergy's service territories with all-electric homes. Dating back to January 1974, the all-electric residential rates have been revised over the years, but generally can be described as based upon a declining rate block structures whereby the residential customer's rate declined with greater electricity usage.¹

On January 4, 2006, however, the Commission approved FirstEnergy's rate certainty plan, which sought to phase out the all-electric residential rate in the FirstEnergy service territories.² In particular, the rate certainty plan included a provision that certain all-electric residential rate

¹ Staff Investigation and Report Pursuant to the Finding and Order in Case No. 10-176-EL-ATA ("Staff Exhibit 1A"), p. 1.

² FirstEnergy RSP Case, Case Nos. 05-704-EL-ATA, 05-1125-EL-ATA, 05-1126-EL-AAM, 05-1127-EL-UNC (Opinion and Order dated January 4, 2006).

schedules would no longer be available to new residential customers or new residential premises beginning on January 1, 2007.³

Just several years later, the Commission again addressed the all-electric residential rates in its January 1, 2009 Opinion and Order in FirstEnergy's distribution rate case (Case No. 07-551-EL-AIR). As part of this Opinion and Order, the Commission simplified FirstEnergy's existing rate structure consistent with the SB 3 mandate to unbundle rates. To do so, the Commission approved FirstEnergy's proposed consolidation of 32 different residential distribution rate schedules into a single distribution residential rate schedule.⁴ In order to mitigate the effect of the consolidation upon residential customers, the Commission approved a residential distribution credit of approximately 1.7 cents per kWh for certain residential customers, including customers taking service under all-electric residential rate schedules.⁵ This residential distribution credit is recovered solely from residential customers under Rider RDC.

All-electric rates were next addressed as part of FirstEnergy's initial electric security plan ("ESP") case (Case No. 08-935-EL-SSO *et al.*). In that case, FirstEnergy proposed an Economic Development Rider ("Rider EDR"), which sought to mitigate impacts to customer bills (as a result of the transition from legacy rate design to the ESP rates) through a series of credits and charges. One such charge, known as the Residential Non-Standard Credit Provision, provides a generation credit in the winter months to electric heating customers with "usage above 500 kWh."⁶

³ See FirstEnergy RSP Supplemental Stipulation (November 4, 2005), Case Nos. 05-1125-EL-ATA, 05-1126-EL-AAM, 05-1127-EL-UNC (approved as part of the Commission's January 4, 2006 Opinion and Order). See also page 1 of the March 3, 2010 Finding and Order in the above-captioned proceeding.

⁴ Staff Exhibit 1A, p. 2.

⁵ Rebuttal Testimony of William R. Ridmann ("Company Exhibit 65"), p. 14.

⁶ Company Exhibit 65, p. 14.

On March 25, 2009, the Commission approved FirstEnergy's initial ESP.⁷ Among other things, and in order to create a generation rate structure consistent with the distribution rate structure approved in FirstEnergy's distribution rate case, the Commission approved the consolidation of various residential generation rate schedules into one.⁸ The Commission also approved a residential generation credit of 1.9 cents per kWh for customers who were impacted by the generation rate schedule consolidation.⁹ This residential generation credit, which is available to customers taking service under an all-electric residential rate schedule, is currently not being recovered despite prior Commission approval of such recovery.¹⁰ In total, the distribution and generation credits provided to residential customers affected by the rate schedule consolidations amounted to approximately 3.6 cents per kWh.

During the 2009-2010 winter heating season, and stemming from the single rate schedule now available to residential customers in FirstEnergy's service territories, substantial public concern arose regarding all-electric residential customers' bills, notwithstanding the discounts provided to those customers. As a result, FirstEnergy filed this Application in the above-captioned proceeding.

By its Finding and Order dated March 3, 2010, the Commission approved a modified version of the Application. The Commission found that, until such time as it determined the best long-term solution, additional rate relief should be provided for all-electric residential customers.¹¹ Accordingly, the Commission approved riders granting additional generation credits of 4.2 cents per kWh for Cleveland Electric Illuminating Company all-electric residential customers, 3.9 cents

⁷ FirstEnergy ESP, Case No. 08-935-EL-SSO. (Second Opinion and Order dated March 25, 2009)

⁸ Staff Exhibit 1A, p. 2.

⁹ Company Exhibit 65, p. 14.

¹⁰ Company Exhibit 65, p. 14.

¹¹ See page 3 of the March 3, 2010 Finding and Order in this case.

per kWh (for kWh greater than 1,250 kWh) for Ohio Edison all-electric residential customers, and 1.8 cents per kWh (for kWh greater than 2,000 kWh) for Toledo Edison all-electric residential customers. On April 15, 2010, and as part of its Second Entry on Rehearing, the Commission ordered that the rate relief to all-electric residential customers would remain in place through the next winter heating season, *i.e.*, May 31, 2011.

To find a long-term solution to the all-electric residential rate issue, the Commission directed its Staff to file a report regarding the appropriate long-term rates that should be provided to all-electric residential customers.¹² In this report, Staff was directed to include a range of options regarding proposed rates and discounts supported by a thorough statistical analysis. This history serves as an integral backdrop to this proceeding and the OMA/OHA's joint brief.

IV. LEGAL ARGUMENT

A. The Commission should consider the arguments of the proponents of a continuation of the all-electric residential discounts in the proper context.

This proceeding has generated much smoke, but no fire. A significant number of the approximately 1,220 letters (many of them form letters) filed in this docket (as of 10:00 a.m. March 28, 2011) and urging the continuation of the all-electric residential discounts, as well the direct advocacy in favor of the continuation of the all-electric residential discounts, comes from the group calling themselves the Citizens for Keeping the All-Electric Promise's ("CKAP"). Notably, CKAP's advocacy in this case has been funded by Ohio's largest builder of all-electric homes (Bob Schmitt Homes, Inc.) (TR Vol. II, pp. 413, 439). Bob Schmitt Homes, Inc., in turn, has incorporated the existence of the all-electric residential discounts into its sales strategies over the years (See e.g. Company Ex. 59). The Commission should cast a jaundiced eye on the record in this case as a consequence.

¹² *Id.* pp 3-4.

B. Financial repercussion associated with the voluntary decision to purchase a residential, all-electric home should not be borne by commercial or industrial customers.

The all-electric discount program was created to promote the consumption of electricity (Company Ex. 2, p. 8), and make the installation of certain all-electric appliances more cost-effective (See., Tr. Vol. II, pp. 390-393, 399). The program was not created as a social welfare program similar to the Percentage of Income Payment Plan program. This is a critically important distinction because it weighs on the relative equities of the case. The customers that have enjoyed the benefits of the all-electric residential discount came to it voluntarily. Like all consumers of energy, they have always faced the prospect that the costs could change. The economic consequences stemming from a voluntary decision to rely upon electricity as a heating source should not be borne by customers who had no involvement or control in that decision in the absence of some compelling justification.

C. The record is devoid of an apples to apples comparison of energy costs.

Glaringly absent from the record in this case is any evidence that all-electric customers will be unduly burdened without the discount or that those residential customers' electric rates would be unreasonable in the absence of a discount. The simple fact that the elimination of the historical discount will produce a disproportionately larger increase on the electric bills of those customers who previously enjoyed a special discount should not form the basis of the Commission's ultimate determination. Such an analysis ignores two important facts. First, non-electric residential heating customers have been suffering the volatility of the global energy markets for decades. Are the customers that have enjoyed the all-electric residential discounts willing to subsidize their neighbor's natural gas costs when those prices spike? Second, and perhaps most importantly, is the overall cost of energy used for heating, whatever its form, that must be taken into consideration in order to put this case in proper perspective. The record in this case includes no analysis comparing

the overall energy costs of a non-all-electric residential customer (gas + electric) to an all-electric residential customer (electric only). The Commission must consider the other half of the equation, and in any event, any disparity should be clearly unreasonable before the Commission considers creating any cross-class subsidies.

D. Rider EDR

As discussed above, Rider EDR currently provides a significant portion of the discounts at issue in this case. The subsidy available to all-electric residential customers in Rider EDR currently is funded by FirstEnergy's commercial and industrial customers (rate schedules GS and GP) that pay the Standard Charge found in Rider EDR. The Standard Charge is very significant, ranging from a low of 0.3261 cents per kWh (Ohio Edison's charge for rate schedule GP) to a high of 0.4606 cents per kWh (Ohio Edison's charge for rate schedule GS). While the Standard Charge funds subsidies other than the all-electric discount, 1.9 cents per kWh of the discount comes from the all-electric residential discount, and is essentially a deadweight tax on GS and GP customers.

Rider EDR is the product of a stipulation to which both OMA and OHA were signatories and which, *in its totality*, produced benefits to the OMA and OHA that made the standard charge of Rider EDR a reasonable quid pro quo. See FirstEnergy ESP (Case No. 10-388-EL-SSO). An absolutely critical portion of the bargain is its duration – Rider EDR and the Standard Charge were premised upon principles of gradualism and the eventual elimination of the Standard Charge. That standard charge is currently set to expire with the other terms and conditions of the three-year ESP stipulation. The OMA and OHA vehemently object to any attempt to change the terms and conditions of the ESP Stipulation. Indeed the Commission recently expressed its reluctance to reopen the FirstEnergy's current ESP in its Opinion and Order approving FirstEnergy's three-year energy efficiency and peak demand reduction programs (Case No. 09-1947-EL-POR et al.). In the March 23, 2011 Opinion and Order Chairman Snitchler commented that the ESP stipulations

“represent a careful balancing of the interests of both the Companies and other stakeholders in these proceedings, and it is not my intent to undermine these stipulations”. Based on the exceedingly thin record in this case, the Commission must not reopen the ESP stipulations and add to the burden already shouldered by the GS and GP customers.

E. The only reliable testimony is that of FirstEnergy witness Ridmann and Staff witness Fortney.

Of the three witnesses in this case providing a recommendation to the Commission about the future of the all-electric residential discounts, both FirstEnergy witness Ridmann (Tr. Vol. I, pp. 184-185) and Staff witness Fortney recommended that, regardless of the outcome, no rate classes other than the residential rate classes should shoulder any portion of the all-electric subsidy beyond that provided by the terms of the ESP Stipulation in Case No. 10-388-EL-SSO. Staff Witness Fortney framed the issue well, testifying that neither he, nor any member of the Staff “could think of any reason whatsoever that a general service customer should pay revenue shortfalls created by the residential class.” (Tr. Vol. II., p. 511).

Only OCC witness Yankel has recommended that the subsidy provided to all-electric customers be funded across all customer classes. (OCC Ex. 1, p. 40). Mr. Yankel’s opinion is that because all-electric residential customers provide system benefits, the discount should be spread across all customers. This suggestion is baseless in light of the fact that FirstEnergy’s generation procurement process (its “cost”) is reflective of the cost to serve the residential class as a whole (Company Ex. 65, p. 18). Logic suggests that this market price already reflects the effects of residential customers’ load profiles. Even if Mr. Yankel’s “system benefits” notion held water, it would be grossly unfair to provide a discount to one set of customers with a particular load profile without extending those benefits to all customers with a similar load profile who ostensibly provide the same system benefits.

F. The reality of generation pricing renders OCC Witness Yankel's testimony inapplicable.

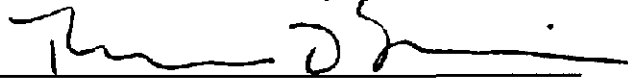
The simple fact of the matter is that the cost structure for electric generation has fundamentally changed since the inception of the discount program in 1974. Since the point at which FirstEnergy divested its fleet of generating facilities, the "cost" of electrical energy became the contract price that FirstEnergy paid for the supply of electrical energy used to satisfy the demands of its retail customers (Tr. Vol. V, p. 865; Company Ex. 65, p. 18). Thus the entire analysis of OCC Witness Yankel (OCC Ex. 1, pp. 19-29) relies on cost of service principles that simply do not apply to the case at hand: FirstEnergy's generation costs are produced by a competitive bidding process that reflect the cost to serve the composite customer class, including the load of the customers receiving the all-electric residential discount (Company Ex. 65, p. 18). Whatever system-wide benefits may have justified the all-electric discount program at its inception clearly ceased to be applicable upon the passage of Senate Bill 3 in 1999.

V. CONCLUSION

The OMA and OHA urge the Commission to maintain the status quo and allow the subsidy provided by Rider EDR to run its course without modification. Such a reasonable conclusion renders moot the baseless claims of OCC witness Yankel, and prevents manufacturers and hospitals from bearing the burden of the all-electric problem beyond their responsibility under the stipulation in FirstEnergy's current ESP. As between the positions of Company witness Ridmann and Staff

witness Fortney, the OMA and OHA take no position at this time. Both positions appear to present reasonable compromises.


Respectfully submitted on behalf of
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing BRIEF of The Ohio Hospital Association and The Ohio Manufacturers' Association was served upon the following parties of record via electronic mail this 28th day of March 2011.



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