

FILE

15
RECEIVED-DOCKETING DIV
2011 APR 12 PM 3:51
PUCO

**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.)

**REPLY BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Michael DeWine
Ohio Attorney General

William L. Wright, Section Chief
Public Utilities Section

John H. Jones
Thomas G. Lindgren
Assistant Attorneys General
180 East Broad Street, 6th floor
Columbus, Ohio 43215-3739
Telephone: (614) 466-4396
Facsimile: (614) 644-8764
john.jones@puc.state.oh.us
thomas.lindgren@puc.state.oh.us

**Counsel for the Staff of the
Public Utilities Commission of Ohio**

April 12, 2011

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business
Technician Sm Date Processed APR 12 2011

TABLE OF CONTENTS

INTRODUCTION.....	1
ARGUMENT	3
I. The Commission should not adopt FirstEnergy's proposal.....	3
II. The Commission should not adopt OCC's proposal.....	4
III. CKAP'S arguments have no merit and should be rejected.....	8
IV. FirstEnergy should collect deferrals and carrying charges.....	10
CONCLUSION	11
PROOF OF SERVICE	12

**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.)	

**REPLY BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

INTRODUCTION

Staff's proposal is the best long-term solution to the electric heating issue because it best mitigates the rate impact of a gradual reduction, and eventual elimination, of the generation credit (RGC) for electric heating customers. The Commission authorized the RGC to provide temporary rate relief to all-electric heating customers until a long-term solution could be implemented. But its effect has increased the discount rate far beyond what the all-electric customers were already enjoying prior to March 2010, and for most it is better than what they enjoyed up until December 2008, in relation to the rate paid by standard service customers.

Included among the all-electric customers receiving this relief, which originated from this docket, are customers who don't primarily heat with electric and anyone who is a successor to a residential account as a customer. Staff's proposal stretches the phase-out of the RGC over a longer period of time than FirstEnergy's proposal would. In com-

paring the two plans, the all-electric heating customers would lose the RGC after three years under FirstEnergy's proposal rather than in year five under Staff's proposal.

And, unlike OCC's proposal to continue the RGC indefinitely so that all-electric heating customers will forever maintain an unsubstantiated 35% rate discount relationship in relation to the rates paid by other standard service customers, Staff eliminates the RGC in year five of its proposal. But Staff's proposed long-term solution still preserves a rate discount for all-electric heating customers by recommending that the RDC and EDC remain in effect. Among the three proposals presented in this case, Staff recommends its proposal to the Commission because Staff's plan best represents all of the essential rate-making principles and, therefore, it provides the most appropriate long-term solution for mitigating rates to all-electric customers of FirstEnergy.

OCC argues that two regulatory principles should be applied in determining the appropriate long-term rate setting for this case, being: 1) the cost of service principal; and 2) the principle of rate gradualism.¹ Staff agrees with OCC that the principle of rate gradualism should be applied for this determination, but disagrees with OCC that a historical cost of service analysis must also apply here. OCC witness Mr. Yankel fails to recognize that under FirstEnergy's current cost structure special electric heating rates for all-electric customers no longer provide a broader benefit to all customers. Generation costs are now market based. Mr. Yankel, who admits that he does not know how genera-

¹ *In re FirstEnergy*, Case No. 10-176-EL-ATA (Initial Post-Hearing Brief of the Office of the Ohio Consumers' Counsel at 11) (March 28, 2011).

tion rates are currently set,² concluded that it is less costly to serve an all-electric heating customer than a standard residential customer, but he offers no evidence to support his position using FirstEnergy's current cost structure.

The regulatory scheme in the law has changed significantly in the past decade, as a result of the enactments of S.B. 3 and S.B. 221. No longer is generation regulated. No longer is generation owned by FirstEnergy. No longer can FirstEnergy's rate design encourage the consumption of electricity. Unlike before the law changed, energy efficiency and conservation are now both established state policy under R.C. 4928.02. Because of all these material changes in regulatory utility law and policy, the previous level of discounts that were once available to all-electric heating customers no longer can be justified. Accordingly, Staff has presented the best plan to adjust for these changes, but yet mitigate the impact these changes would otherwise have and still preserve a reasonable rate discount for the all-electric customers who primarily heat with electric.

ARGUMENT

I. The Commission should not adopt FirstEnergy's proposal.

FirstEnergy argues in its brief that Staff's proposal should not be adopted by the Commission because: 1) while Staff and FirstEnergy share many of the same goals between their proposals, FirstEnergy's proposal achieves those goals at a lower cost; and 2) no justification exists for Staff's proposal to have the all-electric heating rates stay with the property. FirstEnergy is correct that Staff's proposal would cost more than

² Tr. Vol. I at 224-225, 250-251, 228-229.

FirstEnergy's proposal. But the tradeoff is that all-electric heating customers would have a five-year phase-out under Staff's proposal as opposed to a three-year phase-out under FirstEnergy's proposal. Staff believes the extra time under its proposal, when weighing and balancing both time and money, provides the best overall arrangement for mitigating the rate impact in the long-run for the all-electric heating customers.

The justification Staff relies on for its proposal to have the rate stay with the residence for the duration of its proposal is a prior Commission order. In the Second Entry on Rehearing filed in this docket on April 15, 2010, the Commission expressly clarified that its March 3, 2010, Finding and Order provided rate relief, as well, to any other residential customer who is the successor account to a customer who had previously qualified under the "all-electric" rate schedules.³ Staff simply proposed what the Commission previously ordered in this docket. Even if the Commission had not previously ordered it, Staff believes its recommendation, in this regard, is still reasonable and should be adopted by the Commission.

II. The Commission should not adopt OCC's proposal.

In its brief, OCC incorrectly interprets the testimony of Staff witness Robert Fortney in regard to rate adjustments not being made for generation and other things scheduled to take effect during the 2011/2012 winter heating season.⁴ OCC was attempt-

³ *In re FirstEnergy*, Case No. 10-176-EL-ATA (Second Entry on Rehearing at 2) (April 15, 2010).

⁴ *In re FirstEnergy*, Case No. 10-176-EL-ATA (Initial Post-Hearing Brief of the Office of the Ohio Consumers' Counsel at 8) (March 28, 2011).

ing to describe Mr. Fortney's testimony from its cross examination of him that referred to his pre-filed testimony of "customers frozen at current levels."⁵ Mr. Fortney actually testified that the RGC would need to be calculated the first year based on adjustments accounting for the following items: the change in the RDD as of May 2011, the new ESP generation rate in effect as of June 2011 as a result of the last auction(s), and the periodic reconciliation of any riders and rider replacements.⁶ The RGC would remain 100% after making those adjustments for its calculation in the first year to account for the new rate impacts.

OCC next mistakenly stated that Staff's "proposal would also remove the existing RDC credit for customers formerly served on electric water heater tariffs."⁷ What Mr. Fortney actually said was eliminate water heating only EDR discounts.⁸ Staff made this recommendation because those customers heat their water, but not their homes, with electricity, so they should not be eligible for the EDR discount. The net effect of making electric water heating customers ineligible for the EDR discount decreases the rates of commercial customers by the same amount because they subsidize this discount. The

⁵ *In re FirstEnergy*, Case No. 10-176-EL-ATA (Initial Post-Hearing Brief of the Office of the Ohio Consumers' Counsel at 8, n. 26) (March 28, 2011).

⁶ Tr. Vol. II at 476-481, 488-489.

⁷ *In re FirstEnergy*, Case No. 10-176-EL-ATA (Initial Post-Hearing Brief of the Office of the Ohio Consumers' Counsel at 8) (March 28, 2011).

⁸ *In re FirstEnergy*, Case No. 10-176-EL-ATA (Prefiled Testimony of Robert B. Fortney (Staff Ex. 1) at 4) (January 24, 2011).

fact that Staff's recommendation has this effect should not distract from Staff's main point.

OCC also takes Staff witness Fortney's testimony out of context on the issue of communicating electric heating discounts on customer bills.⁹ OCC insinuates that Staff is indifferent, at best, on whether all discounts should be listed on customer bills and, at worst, favors not completely revealing them.¹⁰ During cross examination by OCC, Mr. Fortney testified that he was not familiar with the bill format that is used by the Companies to send out their monthly bills to residential customers.¹¹ Mr. Fortney testified that he usually does not get involved in the bill format cases.¹²

OCC continued to cross examine Mr. Fortney on this topic by asking him what line item credits a residential customer could see on their bill and Mr. Fortney answered that he believed customers could see the RDC and RGC, but it was his understanding that the EDR was not broken out on the monthly bill.¹³ In total context, Mr. Fortney's testimony was clear. He does not have an opinion on what credits have to be itemized and shown on customer bills because he is not the member of Staff assigned to address bill

⁹ *In re FirstEnergy*, Case No. 10-176-EL-ATA (Initial Post-Hearing Brief of the Office of the Ohio Consumers' Counsel at 19-20) (March 28, 2011).

¹⁰ *Id.*

¹¹ Tr. Vol. II at 493.

¹² *Id.*

¹³ *Id.* at 493-494.

format issues, nor is he familiar or involved with those issues.¹⁴ In regard to the rest of Staff having an opinion on this topic Mr. Fortney testified he did not know if they had a preference or not.¹⁵ Accordingly, OCC's argument that Staff's position on this topic is incompatible with Ohio law is disingenuous at best and flagrantly misleading at worst. Notwithstanding Staff's proper context argument, Staff has no objection to having a collaborative process between Staff, the Companies, and OCC, to review and comment on whether separate itemized listings are necessary for every credit on customer bills.

As to the procedure proposed by FirstEnergy witness Ridmann to remove customers who should not be eligible for the RGC, because they do not heat primarily with electric, through mailing and receiving responses from customers addressing the question from Company postcards, Staff agrees with OCC that caution should prevail in the administration of the procedure.¹⁶ Staff supports a collaborative between Staff, the Companies, and OCC, to review and comment on the procedure to ensure that no residential customer is removed from receiving the RGC that, otherwise, has demonstrated or can demonstrate their eligibility.¹⁷

¹⁴ Tr. Vol. II at 493-494.

¹⁵ *Id.* at 495.

¹⁶ *In re FirstEnergy*, Case No. 10-176-EL-ATA (Initial Post-Hearing Brief of the Office of the Ohio Consumers' Counsel at 23) (March 28, 2011).

¹⁷ Tr. Vol. II at 472-473.

III. CKAP'S arguments have no merit and should be rejected.

In its brief, CKAP contends that elimination of the discounted rate for all-electric customers will cause "rate shock" for these customers. Staff appreciates that sudden increases in rates can pose hardships for customers. That is why Staff's recommendation, as presented in the testimony of Robert Fortney, incorporates the principle of gradualism.¹⁸ Staff maintains that when significant increases in rates are contemplated, rates should be increased gradually to permit customers to adjust and respond to the changes. Staff therefore recommends that the RGC discount be phased out in the fifth year of its plan.¹⁹ Moreover, Staff recommends that the RDC and EDR credits remain in place for all-electric customers.²⁰ Thus, even after the RGC is phased out, these customers will continue to enjoy a significant discount in comparison to other customers. Staff submits that these measures will significantly mitigate the rate shock foreseen by CKAP.

CKAP also asserts that the uncertainty over rates for all-electric customers has caused home values to decline for these customers. In support of this contention, CKAP points to statements made at local public hearings by homeowners whose homes have declined in value or who have had difficulty selling their homes. There is no way, however, to determine from this anecdotal evidence what portion, if any, of the decline in value can be attributed to the type of heat in these homes.

¹⁸ *In re FirstEnergy*, Case No. 10-176-EL-ATA (Prefiled Testimony of Robert B. Fortney (Staff Ex. 1) at 3) (January 24, 1011).

¹⁹ *Id.*

²⁰ *Id.*

CKAP's only expert witness on property valuation, Mr. Frawley, is not a certified real estate appraiser and has no background in statistical analysis.²¹ Moreover, Mr. Frawley acknowledged that there are multiple errors in the data that he had relied upon in formulating his opinion.²² Significantly, CKAP made no effort in its brief to explain why this data should be considered as reliable. Therefore, the Commission should give little weight to his testimony. However, the Staff does recognize that electric rates may be a concern to home buyers and therefore recommends that the applicable discounts should remain with the property after a sale.²³

CKAP advocates the permanent restoration of all previously available all-electric discounts. Doing so would cause other customers to permanently subsidize a select group of customers. It would also contravene the state's policy in favor of energy conservation. For these reasons, the Commission should reject CKAP's proposal and adopt Staff's proposal, which will mitigate the impact on all-electric customers while moving gradually toward a rate structure that reflects cost-causation.

²¹ Tr. Vol. II at 243.

²² *Id.* at 301-304.

²³ *In re FirstEnergy*, Case No. 10-176-EL-ATA (Prefiled Testimony of Robert B. Fortney (Staff Ex. 1) at 4) (January 24, 1011).

IV. FirstEnergy should collect deferrals and carrying charges.

OCC argues in its Initial Brief that FirstEnergy should not collect deferrals because the Companies have engaged in unfair and deceptive marketing/sales practices.²⁴ There is no credible evidence in the record to support this claim. The testimony of the six witnesses OCC cites to in its brief from the local public hearings is neither credible nor reliable and, notwithstanding those deficiencies, the testimony does not support OCC's claims.

Witness testimony from a public hearing should not be afforded the same weight as testimony that is subject to the scrutiny of cross examination and the rules of evidence in an evidentiary hearing. Nowhere in the record is there credible and reliable evidence to show that the Companies made promises (through marketing and their tariffs) to electric heating customers and developers of electric homes that rates would never change. The Companies, in the past, advising customers of their eligibility for a discounted rate was not deceptive if the Commission later discontinued the rate. The evidence is overwhelmingly to the contrary.

The Commission said it would address carrying charges when it addresses the recovery of any deferrals.²⁵ OCC argues the Commission was referring to future deferrals, not deferrals already created when the Commission reinstated and extended the initial discounts, when it made this statement but no such qualification or clarification exists

²⁴ *In re FirstEnergy*, Case No. 10-176-EL-ATA (Initial Post-Hearing Brief of the Office of the Ohio Consumers' Counsel at 23) (March 28, 2011).

²⁵ *In re FirstEnergy*, Case No. 10-176-EL-ATA (Fifth Entry on Rehearing at 3) (November 10, 2010).

in the context of the Commission's order.²⁶ OCC fails to offer any compelling reason why FirstEnergy should not be allowed carrying charges for deferring the collection of the difference in rates from March 3, 2010 until the RGC expires or the Companies are made whole. Until such time when they recover the deferrals, the Companies should be compensated for carrying those deferrals in this case.

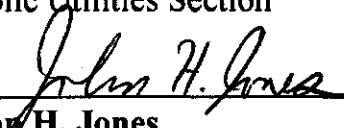
CONCLUSION

For the foregoing reasons, the Commission should adopt Staff's proposal and recommendation.

Respectfully submitted,

Michael DeWine
Ohio Attorney General

William L. Wright, Section Chief
Public Utilities Section


John H. Jones
Thomas G. Lindgren
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215-3793

Phone: 614.466.4396
Fax: 614.644.8764
john.jones@puc.state.oh.us
thomas.lindgren@puc.state.oh.us

²⁶

In re FirstEnergy, Case No. 10-176-EL-ATA (Initial Post-Hearing Brief of the Office of the Ohio Consumers' Counsel at 35, n. 108) (March 28, 2011).

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Reply Brief submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by electronic mail, upon the following parties of record, this 12th day of April, 2011.



John H. Jones

Assistant Attorney General

Parties of Record:

James W. Burk
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308

Jeffrey L. Small
Maureen R. Grady
Christopher J. Allwein
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215

Samuel C. Randazzo
Scott E. Elisar
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45839-1793

David A. Kutik
Jones Day
North Point, 901 Lakeside Avenue
Cleveland, Ohio 44114-1190

Grant W. Garber
Jones Day
P.O. Box 165017
Columbus, Ohio 43216-5017

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, Ohio 43215

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease
LLP
52 E. Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

Kevin Corcoran
Corcoran & Associates, Co., LPA
8501 Woodbridge Court
North Ridgeville, Ohio 44039

Cynthia Fonner Brady
Constellation Energy Resources, LLC
550 West Washington Blvd., Suite 300
Chicago, Illinois 60661