

**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.)

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC") seeks rehearing¹ of the Finding and Order ("Order") issued by the Public Utilities Commission of Ohio ("PUCO" or "Commission") on May 25, 2011. The Order follows an application ("Application") filed by Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy" or "Companies") on February 12, 2010.

The Commission erred in its Order in the following particulars:

- A. The Commission Erred by Failing to Recognize the Lower Cost of Serving Customers Who Heat Using Electricity.
- B. The Commission Erred by Failing to Protect Electric Heating Customers From Paying Unreasonable Rates as FirstEnergy's Volumetric Riders Increase.
- C. The Commission Erred by Failing to Provide an Orderly Approach to Rate Gradualism that Avoids Rate Shock.
- D. The Commission Erred, in Violation of R.C. 4903.09, by Ordering a Four-Month Reduction in the Number of Heating Months for Purposes of Applying the Residential Generation Credit Without Record Support.

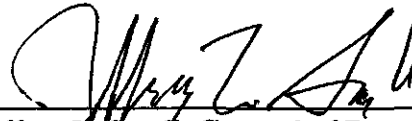
¹ This filing is submitted pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35(A).

- E. The Commission Erred by Failing to Order the Development of Specific Materials to Educate Customers and by Failing to Involve the OCC in the Development of the Educational Materials.
- F. The Commission Erred by Approving Carrying Charges on Deferrals, and also by Approving the Method by Which Any Carrying Charges on Deferrals are Set.
- G. The Commission Erred by Limiting Contributions that Support the New Rates for Electric Heating Residential Customers, in Violation of the PUCO's Rule Regarding Reasonable Arrangements.

The reasons for granting this Request for Clarification are set forth in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On February 12, 2010, the Application was filed in this case by the Ohio Edison Company (“OE”), the Cleveland Electric Illuminating Company (“CEI”), and the Toledo Edison Company (“TE”, collectively with OE and CEI, “FirstEnergy” or the “Companies”). The Application proposed that the Public Utilities Commission of Ohio (“PUCO” or “Commission”) adjust certain residential electric rates that were applicable to some of the Companies’ approximately 1.9 million residential customers who were previously served according to non-standard residential rates (i.e. “all-electric” customers).

On February 25, 2010, the OCC responded to FirstEnergy’s Application by filing a Motion for Declaration of an Emergency and Motion to Alter Residential All-Electric Rates (“Motion Regarding Emergency”). The OCC asked the Commission to recognize that customers in all three service areas served by FirstEnergy, not just those served by OE and CEI, were affected by changes to all-electric rates.² The burden of rates relates to

² OCC Motion Regarding Emergency at 4-5 (February 25, 2010) and Application, proposed Original Sheet 123 (one each for OE and CEI) (“Rider RGC”).

the equipment installed at the residential customer's location (e.g. electric space heating systems). On the subject of rates, the OCC requested the following:

FirstEnergy's approach should be replaced by the restoration of the relationship between the standard residential distribution rates and each non-standard residential distribution rate that existed prior to elimination of the non-standard rates (i.e. as of January 22, 2009 for OE and TE and as of April 30, 2009 for CEI). The discounted relationship between the standard residential generation rates and each non-standard residential generation rate that existed prior to elimination of the discounted rates (i.e. as of May 31, 2009) should also be restored.³

The OCC also asked the Commission to recognize that FirstEnergy has removed from the roll of those eligible to receive separate rate treatment the customers located at residences where the separate rates applied but the customer account changed for some reason.⁴

The Commission issued a Finding and Order on March 3, 2010, recognizing the "substantial public concern expressed regarding certain all-electric residential customers' bills" and ordered FirstEnergy to "file tariffs for the all-electric residential subscribers that will provide bill impacts commensurate with FirstEnergy's December 31, 2008, charges for those customers."⁵ The "substantial public concern" was expressed in public meetings⁶ conducted in areas served by FirstEnergy, in media accounts of the controversy, and also in the many letters filed with the Commission after the initiation of the above-captioned case. The Commission also stated that until a "long-term solution to

³ Id. at 7 (February 25, 2010).

⁴ Id. at 5 (February 25, 2010). See, e.g., id. (OE Tariff No. 11, "Applicable to any customer . . . who on January 22, 2009 took service from the Company under one of the following rates schedules"; CEI Tariff No. 13, "April 30, 2009"; TE Tariff No. 11, "January 22, 2009"). Generation credits for customers are based upon eligibility for the distribution credits. See, e.g., OE, CEI, and TE Tariff No. 11, 13, and 8, respectively, Original Sheet 116 ("Rider EDR").

⁵ Finding and Order at 3 (March 3, 2010).

⁶ The public meetings were not organized or sponsored by the PUCO, and should not be confused with the later-held local public hearings conducted by the PUCO.

this issue” was determined, the Companies would be entitled to “defer the difference between the rates and charges to be charged to the all-electric residential customers as the result of the Commission’s order . . . and the rates and charges that would otherwise be charged to those customers.”⁷ The PUCO Staff was ordered to file a “report with the results of its investigation in this docket within 90 days.”⁸

Revised residential tariffs in response to the Commission’s Entry dated March 3, 2010 were filed by FirstEnergy on March 17, 2010, which in the case of CEI provided rate relief through a Residential Generation Credit Rider (“RGC Rider”) for “any customer taking service under Rates Schedule RS who on April 30, 2009 took service from the Company under one of the . . . [all-electric] rate schedules.”⁹ The dates for “taking service” were January 22, 2009 for customers of OE and TE.¹⁰ The Commission continued to consider the OCC’s March 8 Motion for Clarification in an Entry on Rehearing dated April 6, 2010. On April 15, 2010, however, the PUCO “clarif[ied] that the Finding and Order [on March 3] applie[d] to all residential customer who had previously been billed under the ‘all-electric’ rate schedules . . . as well as to any other residential customer who is the successor account [holder] to a customer who had previously qualified under the ‘all-electric’ rate schedules”¹¹

⁷ Finding and Order at 3 (March 3, 2010). The Commission later clarified that the Companies were authorized to defer certain costs. Third Entry on Rehearing at 2 (April 28, 2010).

⁸ Id. at 4, ¶13.

⁹ Rider RGC, Residential Generation Credit Rider (CEI) (March 17, 2010).

¹⁰ Rider RGC, Residential Generation Credit Rider (OE and TE) (March 17, 2010).

¹¹ Second Entry on Rehearing at 2, ¶(7) (April 15, 2010).

II. ARGUMENT

A. The Commission Erred by Failing to Recognize the Lower Cost of Serving Customers Who Heat Using Electricity.

The Order assumes that generation rates for FirstEnergy's customers should be equalized and that the RGC (the discount for all-electric service) should entirely disappear. In reaching its decision, the Commission incorrectly relied upon "significant restructuring of the electric industry by the General Assembly in SB 3 and SB 221."¹² The Commission relies upon faulty analysis presented by FirstEnergy, repeating the Companies' claim that their "generation costs are the same for all customers."¹³ But cost-causation principles and the fundamental economics of providing electricity service to Ohioans do not change with the passage of legislation, including enactment of S.B. 221 in 2008 that is partly the focus of FirstEnergy Witness Ridmann.¹⁴

FirstEnergy's testimony focused on the Companies' generation procurement situation and did not recognize important cost differences between customers having different demand profiles. FirstEnergy Witness Ridmann, for example, compares rates to "the cost of generation service."¹⁵ Mr. Ridmann incorrectly focused on the Companies' power acquisition process (cost of acquisition), which is by contract with successful bidders in generation supply auctions,¹⁶ rather than the cost of serving customers having different load profiles (i.e. the true cost of service). For example, changing the contractual agreement in connection with an auction process so that the acquisition of

¹² Order at 19.

¹³ Id.

¹⁴ FirstEnergy Ex. 1 at 13 (Ridmann).

¹⁵ Id.

¹⁶ Tr. Vol. I at 148-149 (Ridmann) (February 16, 2011).

generation resources is no longer a constant cents per kilowatt-hour would require re-stating the cost of acquisition, but would not change the enduring cost of serving customers based upon the time pattern of their usage.

After the passage of S.B. 221, the Commission has previously distinguished between the contractual cost of acquiring wholesale generation supply and the cost of service that should be considered in developing appropriate retail pricing for customers.

In Case No. 08-935-EL-SSO, the Commission stated:

FirstEnergy should work with Staff, and other stakeholders, to develop a means of transitioning FirstEnergy's generation rate schedules to a more appropriate rate structure which takes into consideration of time varying generation costs of serving different customers and classifications of customers with homogenous loads and/or generation cost profiles, considers customer load factor, incorporates seasonal generation cost differentials, and, where adequate metering is available, provides customers with time-differentiated and dynamic pricing options.¹⁷

The recognition of this distinction, and the proper manner in which to consider the costs imposed by individual customers, is implicit in such FirstEnergy activities as its roll-out of smart grid technology in its CEI service area and FirstEnergy's study of rate designs in connection with that project.¹⁸

Regarding Ohio law, State of Ohio policy related to electric service provided for "reasonably priced retail electric service" under R.C. 4928.02(A) both before and after the effective date of S.B. 221.¹⁹ Before enactment of S.B. 221 in 2008, R.C. 4928.02(D) stated Ohio policy in support for "innovation and market access for cost-effective supply

¹⁷ *In re FirstEnergy's ESP I Application*, Case No. No. 08-935-EL-SSO, Opinion and Order at 23, (December 19, 2008).

¹⁸ Tr. Vol. I at 165-166 (Ridmann) (February 16, 2011).

¹⁹ FirstEnergy Witness Ridmann acknowledged the existence of this policy. Tr. Vol. I at 141 (Ridmann) (February 16, 2011).

and *demand-side* retail electric service.”²⁰ That provision’s support for energy efficiency was clarified in 2008 to “include[e] . . . time-differentiated pricing, and implementation of advanced metering infrastructure” over which the Commission stated its concern in Case No. 08-935-EL-SSO (as quoted above).²¹ The legislative prescription has been to charge residential customers *appropriate prices* that recognize their load characteristics, and also promote conservation that recognizes such appropriate pricing.

Rates for residential customers who heat with electricity should be based, in the intermediate to long-run, recognizing the cost of serving these customers. OCC Witness Yankel’s testimony directly addressed the issue of the cost of serving all-electric customers, and supported the existence of a *continuing discount* for customers who use electricity as their primary source energy source for heating irrespective of when the customer established an account with FirstEnergy. Mr. Yankel examined the past history of the Companies’ all-electric rates, including past cost of service studies conducted by the Companies, and testified that it is a “long recognized fact that All-Electric customers tend to be less expensive to serve than standard service customers.”²²

The Commission appears to be critical of OCC Witness Yankel’s testimony because it partly relies upon former cost of service studies.²³ Mr. Yankel’s testimony was

²⁰ Emphasis added.

²¹ S.B. 221 provided greater specificity regarding energy efficiency developments, but R.C. 4905.70 previously recognized the desirability of “programs that will promote and encourage conservation” while recognizing the lower cost of providing electricity to “residences . . . primarily heated by electricity. . . .”

²² OCC Ex. 1 at 37 (Yankel). FirstEnergy Witness Ridmann acknowledged that the Companies do not collect load information that permits cost of service studies that differentiate between the all-electric and standard residential customers. Tr. Vol. I at 153-154 (February 16, 2011) (Ridmann). See also OCC Ex. 2 (the Companies “do not have the requested information”).

²³ Order at 10-11. In addition, Commissioner Centolella orally stated the absence of cost of service testimony at the Commission meeting on May 25, 2011).

prepared and presented using the information available. FirstEnergy Witness Ridmann acknowledged that the Companies do not collect load information that permits cost of service studies that differentiate between the electric heating and standard residential customers.²⁴ Therefore, the Commission has permitted the Companies to set rate structures for residential customers without the PUCO making its own determination. This situation will persist as long as the Commission accepts FirstEnergy's faulty analysis of Ohio's statutes while also failing to direct the FirstEnergy electric distribution utilities to collect information upon which true cost of service may be determined.

B. The Commission Erred by Failing to Protect Electric Heating Customers From Paying Unreasonable Rates as FirstEnergy's Volumetric Riders Increase.

The PUCO should protect electric heating customers from paying unreasonable rates as those rates increase as the result of the upward adjustment to FirstEnergy's volumetric riders. State of Ohio policy under R.C. 4928.02(A) provides for "reasonably priced retail electric service." The Order does not address the effect of increasing volumetric riders on the rates paid by FirstEnergy's electric heating residential customers.

OCC Witness Yankel's testimony identified the relationship between electric heating customers and standard residential customers based upon the cost of service principle.²⁵ However, the Order directs a "two-year freeze, [followed by] . . . phase out [of] Rider RGC from its March 31, 2013, level by implementing six equal annual reductions."²⁶ The Commission-ordered "freeze" in the first two winters does not freeze

²⁴ Tr. Vol. I at 153-154 (February 16, 2011) (Ridmann). See also OCC Ex. 2 (the Companies "do not have the requested information," in response to the OCC's discovery request).

²⁵ See, e.g., OCC Ex. 1 at 34 (Yankel) (entire section entitled "Recommendations Going Forward"). See also Tr. Vol. I at 230-231 (February 16, 2011).

²⁶ Order at 20.

rates, and permits increases during the first two winters and also thereafter as the result of increases in numerous volumetric riders that are contained in FirstEnergy's tariffs.²⁷ The likely result is the narrowing of the differential in rates between electric heating customers and standard electric customers that does not reflect the cost-based differential identified by OCC Witness Yankel. Such rates do not provide "reasonably priced retail electric service" as required by R.C. 4928.02(A).

Rates for FirstEnergy's electric heating customers should be adjusted by taking into consideration the cost of serving these customers. The "freeze" ordered by the Commission does not deal with the effect of increasing volumetric riders on the appropriate differential in residential rates that reflects the relative cost of serving these groups of customers.

C. The Commission Erred by Failing to Provide an Orderly Approach to Rate Gradualism that Avoids Rate Shock.

The Commission states that the OCC's proposal "abandons any pretense of gradualism and runs the risk of rate shock in the first year."²⁸ That statement is incorrect. While posing its own ultimate target for long-term electric heating rates for residential customers, as stated above, the OCC supported plans to gradually reduce the RGC that FirstEnergy proposed.²⁹ The rate gradualism principle should play a role in setting rates for electric heating customers.

²⁷ Tr. Vol. II 476-477 (Fortney) (discussion of numerous volumetric riders). The Order suggests that additional attention may be focused on the issue in Case No. 10-3126-EL-UNC. Order at 20. Relying upon the outcome of that Commission-initiated docket is speculative, and the docket does not appear well suited to deal with the many riders that stem from FirstEnergy's electric security plan cases.

²⁸ Order at 18.

²⁹ E.g., OCC Brief at 16-18 ("the FirstEnergy-sponsored testimony provides a short-term rate adjustment procedure that should be used," id. at 17).

The Commission's errant analysis of the "rate shock" issue ignores an important source of the problem: the PUCO's Staff supported initial RGC levels that exceeded those that were needed to deal with the spike in electric heating rates during the 2009/10 winter heating season.³⁰ The Commission ordered sizable rate reductions for electric heating customers in March 2010. The Commission ordered FirstEnergy to "file tariffs for the all-electric residential subscribers that will provide bill impacts commensurate with FirstEnergy's December 31, 2008, charges for those customers."³¹ The discounts ordered by the Commission ran deeper than those proposed by the OCC.³² The discounts for all-electric customers of CEI may have run deeper than was contemplated by the Commission's March order, providing many such customers with lower rates than they had previously experienced.³³ These cases require an approach to mitigating against rate shock, including reactions to increases in rates from very low levels created by the PUCO. In this context, the OCC supported gradual RGC reductions that included changes that began in winter 2011/12.

³⁰ The spike is graphically depicted in Mr. Ridmann's testimony regarding the bill impacts of all-electric rates that increased for winter 2009/10. FirstEnergy Ex. 1, Attachments WRR-3 (nine pages) (Ridmann) (three utilities at varying usage levels).

³¹ Finding and Order at 3, ¶(10) (March 3, 2010).

³² On rehearing, the "OCC argue[d] that the relationship between residential rate schedules and the 'all-electric' rate schedules should be restored" Second Entry on Rehearing at 2, ¶(8). The Commission denied the OCC's assignment of error, stating that "OCC's proposed changes would not return 'all-electric' residential customers to their prior rates" Id. at 3, ¶(8).

³³ The "overshoot" for some kilowatt-hour usage levels is graphically depicted in Mr. Ridmann's testimony. The reduction in all-electric rates between December 2008 and April 2010 (also a winter month for tariff purposes) is especially noteworthy for CEI's all-electric customers at higher usage levels. FirstEnergy Ex. 1, Attachment WRR-3, page 2 of 9. Mr. Ridmann's testimony states that "[r]ates paid by most CEI electric heating customers . . . are *less* than they were in December 2008. Id. at 22 (emphasis added). PUCO Staff members directed FirstEnergy regarding the tariffs that they submitted following the Commission's order to reduce the all-electric rates. Tr. Vol. I at 158-159 (Ridmann) (February 16, 2011). The reductions in CEI rates were also the subject of public testimony. Tr. Sandusky at 29 (Bruton) (October 25, 2010).

FirstEnergy Witness Ridmann proposed the adjustment of the Commission-ordered all-electric discounts (i.e. the RGC credits) based upon an annual appraisal of discounts for total bills. Mr. Ridmann explained:

The reduction will be accomplished by comparing the total bill for the winter period from one year to the next with the credit being reduced only to the extent that the maximum increase on a total bill basis, assuming the same usage, for these customers is no greater than twelve percent over the prior year's winter period total bill.³⁴

The annual assessment (i.e. between winter periods) portion of Mr. Ridmann's proposal is similar to the annual "band" assessment proposed by OCC Witness Yankel to evaluate the relationship between electric heat and standard residential customers on a total bill basis.³⁵ The difference between the proposal stated by Mr. Ridmann and that stated by Mr. Yankel is largely the end-state for rates.

The Commission's decision increases rates for electric heating customers in the first two winter seasons, but in a manner that is less predictable (i.e. not analyzed as part of the record) over various kilowatt-hour usage levels. The Order directs a "two-year freeze, [followed by] . . . phase out [of] Rider RGC from its March 31, 2013, level by implementing six equal annual reductions."³⁶ The Order results in increased rates for electric heating customers since they also pay a rider to pay for their discounts -- i.e. the Commission-ordered "freeze" in the first two winters does not freeze rates or freeze the net discount received by electric heating customers. The Commission's form of gradualism, as opposed to that proposed by FirstEnergy and supported by the OCC, does

³⁴ Id. at 34.

³⁵ OCC Ex. 1 at 32-33 (Yankel).

³⁶ Order at 20.

not address differing percentage increases in residential rates that will occur over various usage levels.

Rates for FirstEnergy's electric heating customers should be adjusted by taking into consideration both cost of service and rate gradualism principles. Movement towards appropriate end-state (i.e. cost of service) rates from current levels should be accomplished as recommended by the OCC.

D. The Commission Erred, in Violation of R.C. 4903.09, by Ordering a Four-Month Reduction in the Number of Heating Months for Purposes of Applying the Residential Generation Credit Without Record Support.

The Commission lacks evidentiary support for its reduction of the RGC discount period by four months (April, May, September, and October), and the Order is therefore both unreasonable and in violation of R.C. 4903.09. R.C. 4903.09 states that that commission "shall file, with the records of such [contested] cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrive at, based upon said findings of fact." The Order "limit[s] the RGC discount to billing periods beginning on October 31 and ending on March 31."³⁷ The Commission's support for its decision to eliminate September, October, April and May from the usual winter months stated in FirstEnergy tariffs is a small portion of the transcript.³⁸ However, the portion of the record cited -- Tr. Vol. V at 857-859³⁹ -- only includes a discussion of usage in September and only mentions the months of May and September.

³⁷ Order at 8.

³⁸ The record involves questioning by the Attorney Examiner, who declared that portion of the transcript (i.e. discussing September and May) "way outside the scope of this hearing." Tr. Vol. V at 858.

³⁹ Order at 8.

The record does not support a reduction in winter months by four months. The maximum reduction in heating months that may be permitted under the record in these cases is comprised of September and May. The PUCO should reinstate the months of October and April as months when customers who heat with electricity receive a discount on their electric service.

E. The Commission Erred by Failing to Order the Development of Specific Materials to Educate Customers and by Failing to Involve the OCC in the Development of the Educational Materials.

The Commission failed to order the development of specific materials to educate customers regarding changes that will result from these cases. The Commission also failed to involve the OCC, the statutory representative of FirstEnergy's residential customers, in the effort to draft and review the educational materials.

Rates should be communicated to customers as clearly as possible, including the new rates that result from these cases for FirstEnergy's service to electrically heated homes. But instead of setting forth requirements for communications with customers, the Commission merely directed that "any educational materials produced by the Companies should be reviewed by staff prior to distribution to the public and that the Companies and Staff explore an online tool to assist electric heating customers to calculate their bills."⁴⁰

Statutory support exists for clear communications, including a "[m]inimum content of customer bills" that includes, "to the maximum extent practicable, separate listing of each service component to enable a customer to recalculate its bill for accuracy" and a "clear explanation on each customer bill, for two consecutive billing periods, of any

⁴⁰ Order at 20.

changes in the rates, terms, and conditions of service.”⁴¹ Unfortunately, PUCO Staff Witness Fortney stated his “indifferen[ce]” regarding the communication of electric heating discounts (i.e. EDR and RGC generation-related credits) to residential customers, and he stated that the PUCO Staff decided at some point not to completely reveal the discounts on customer bills.⁴² Additional input -- in the form of OCC review of communications to residential customers regarding the results of these cases -- is especially necessary under these circumstances.⁴³

The electric heating discounts that were in place during the winter of 2011/12 are the distribution-related RDC as well as the generation-related EDR and RGC.⁴⁴ The RDC and RGC are shown on the appropriate bills for residential customers, while the EDR is not shown.⁴⁵ This gap helps to explain FirstEnergy Witness Ridmann’s effort in his testimony to explain that the credits for FirstEnergy’s electric heating customers were never completely removed.⁴⁶ Electric heating customers have not been able to completely observe their generation-related credits, leading to misunderstanding and mistrust on this subject. The EDR credit should be shown on customer bills to fill the current gap in information provided to residential customers, consistent with Ohio law.

⁴¹ R.C. 4928.10(C) (2) and (5).

⁴² Tr. Vol. II at 494-495 (Fortney) (February 17, 2011).

⁴³ PUCO Staff Witness Fortney stated that Commission approval of a “process to accomplish the exclusion of load management customers who did not heat primarily with electricity” would include “staff and the [C]ompan[ies] and probably the Office of Consumers’ counsel.” Tr. Vol. II at 472 (Fortney) (February 17, 2011).

⁴⁴ FirstEnergy Ex. 1 at 14 (Ridmann).

⁴⁵ Tr. Vol. II at 493-494 (Fortney).

⁴⁶ FirstEnergy Ex. 1 at 14 (Ridmann).

The Commission Order states that the RGC will continue for customers who primarily heat with electricity, and that the customer lists for those who continue to receive the RGC will be reduced according to FirstEnergy's proposal.⁴⁷ FirstEnergy's proposal, revealed in the testimony of FirstEnergy Witness Ridmann, would result in there being approximately 159,000 customers whose homes are electrically heated out of a total of 318,000 customers who previously received the RGC credits.⁴⁸ FirstEnergy Witness Ridmann proposed that customers whose use of electricity for heating is questioned by his test would receive two communications, such as in a postcard, that notified the customer that the use of electric heat is questioned and failure to respond to the communications would result in loss of future RGC credits.⁴⁹ Such communications should be ordered by the Commission and not left to FirstEnergy's decisions regarding whether and how to communicate with its customers.

FirstEnergy's proposed procedure provides some protection against arbitrary removal of customers from the ranks of electric heating customers, but caution should prevail in the administration of the procedure. The PUCO should order separate communications that are not included as billing stuffers. Both the timing and content of the messages should be subject to review and comment by both the PUCO Staff and OCC personnel.⁵⁰

⁴⁷ Order at 8 ("proposed process outlined at the hearing is an appropriate method").

⁴⁸ FirstEnergy Ex. 1 at 38 (Ridmann).

⁴⁹ Id. at 39-40 (Ridmann).

⁵⁰ PUCO Staff Witness Fortney stated that Commission approval of a "process to accomplish the exclusion of load management customers who did not heat primarily with electricity" would include "staff and the [C]ompan[ies] and probably the Office of Consumers' counsel." Tr. Vol. II at 472 (Fortney) (February 17, 2011).

Some customers will undoubtedly miss or misunderstand the messages, and they should be able to reverse their removal from eligibility for RGC credits upon demonstrating the existence of an electric heating source in the home. Upon such a showing, missed credits should be credited back to the customer.⁵¹ These matters should also be ordered by the Commission.

F. The Commission Erred by Approving Carrying Charges on Deferrals, and also by Approving the Method by Which Any Carrying Charges on Deferrals are Set.

The Order fails to recognize the OCC's legal arguments against the award of carrying charges, charges that will increase the burden placed on residential customers. FirstEnergy's application for rehearing on April 2, 2010, regarding the Finding and Order issued by the Commission on March 3, 2010, sought rehearing on two issues, but did *not* seek carrying charges that were not permitted by the Commission when deferrals were first authorized in these cases. The PUCO issued a Second Entry on Rehearing on April 28, 2010 that granted the Companies' Application for Rehearing.⁵² In response to the Commission's Second Entry on Rehearing, FirstEnergy sought rehearing on May 14, 2010 regarding the absence of carrying charges on the costs related to providing the authorized all-electric discounts.⁵³ FirstEnergy argued under the guise of complaining

⁵¹ Upon cross-examination, FirstEnergy Witness Ridmann stated FirstEnergy "would probably make [RGC credits] retroactive." Tr. Vol. I at 170 (Ridmann) (February 16, 2011).

⁵² Second Entry on Rehearing (April 28, 2010).

⁵³ FirstEnergy's Application for Rehearing, Memorandum in Support at 1 (May 14, 2010).

about the Commission expanding the scope of the discounts, even though the Companies claimed they were not challenging the scope of the discounts.⁵⁴

The OCC filed a Memorandum Contra FirstEnergy's application for rehearing noting that, among other things, FirstEnergy failed to comply with the law governing rehearing of Commission decisions, R.C. 4903.10. Under R.C. 4903.10, an application for rehearing must be "filed within thirty days after the entry of the order" that is the subject of the pleading. This statute is mandatory and jurisdictional. The PUCO has no jurisdiction to entertain an application for rehearing filed out of time.⁵⁵ The Companies' Application for Rehearing that argued the carrying charge issue was filed seventy-two days after the Second Entry on Rehearing that authorized the deferrals without carrying charges. The Companies' Application for Rehearing was untimely, and the Commission has no jurisdiction to hear FirstEnergy's arguments regarding the lack of carrying charges.

If the Commission continues to consider permitting carrying charges, then the Commission erred by not consider the unique facts in these cases to determine that FirstEnergy should not be awarded carrying charges. Because the decision to allow carrying charges (i.e. not in this case, but when permitted by Ohio law) is a case-by-case determination, there can be no controlling precedent that presumes one particular

⁵⁴ FirstEnergy Application for Rehearing at 7-13 (May 14, 2010). Despite claiming they are not challenging these issues, the Companies argued that the PUCO failed to explain the reason for doing so, and claimed that the expansion was contrary to prior PUCO orders such as the Rate Certainty Plan Order, the Distribution Rate Case Order, and the Electric Security Plan Order. FirstEnergy's testimony echoes this theme in a further attempt to divert the PUCO's attention from the fact that the Companies failed to seek rehearing regarding carrying charges. FirstEnergy Ex. 1 at 44-45 (Ridmann).

⁵⁵ *City of Dover v. Pub. Util. Comm.* (1933), 126 Ohio St. 438, 185 N.E. 833; *Greer v. Pub. Util. Comm.* (1961), 172 Ohio St. 361, 16 O.O.2d 214, 176 N.E.2d 416; *Pollitz v. Pub. Util. Comm.* (1918), 98 Ohio St. 445, 16 OLR 10, 121 N.E. 902.

outcome. The PUCO has stated general principles in its review of requests for deferral accounting and carrying charges. Where the Commission has approved deferred accounting and carrying charges in the past, it has generally done so to avoid the possibility of *significant* financial harm to the utility.⁵⁶ Similarly, the Commission has found that deferrals and carrying charges should be denied where they are not necessary to maintain a utility's financial integrity.⁵⁷ Recently, the Commission denied deferrals where the deferrals would cause the rates customers pay to substantially increase.⁵⁸

In the instant case, FirstEnergy alleges merely that the recovery of carrying charges is necessary to "make the Companies whole."⁵⁹ This position fails to recognize that "making the company whole" has no basis in law. Traditional regulation, before enactment of S.B. 221, afforded utilities the opportunity to earn a fair and reasonable rate of return. There was no guarantee or promise of making whole. Regulation under S.B. 221 does not include a "make whole" guarantee either.⁶⁰ Further, the Companies make no showing that denial of carrying charges will impose a significant financial burden

⁵⁶ See, e.g., *In re Investigation into the Financial Impact of FASB Statement No. 106, "Employers Accounting for Postretirement Benefits Other Than Pensions,"* Case No. 92-1751-AU-COI, Finding and Order at 19 (February 25, 1993); *Cincinnati Gas & Electric Company*, Case No. 92-946-EL-AAM, Entry at 1-2 (October 1, 1992); *Ohio Edison Company*, Case No. 84-188-EL-AAM, Entry at 1-2 (February 2, 1988); *Cleveland Electric Illuminating Company*, Case No. 87-109-EL-AAM et al, Entry at 2 (February 2, 1988); *Ohio Edison Company*, Case No. 87-985-EL-AAM et al, Entry at 2 (October 20, 1987).

⁵⁷ *In re Cincinnati Gas & Electric Co.*, Case No. 90-2017-EL-AAM, Entry (March 14, 1991).

⁵⁸ See, e.g., *In re FirstEnergy's Request for Authority to Modify Certain Accounting Practices and for Tariff Approvals*, Case No. 07-1003-EL-ATA, Finding and Order at 7-8 (January 9, 2008).

⁵⁹ FirstEnergy Ex. 1 at 44.

⁶⁰ The electric security plan standard, set forth in R.C. 4928.143(C)(1) states that the Commission shall approve or modify and approve an electric security plan so long as the plan including any deferrals and any future recovery of deferrals and all other terms and conditions is more favorable in the aggregate as compared to the results of a market rate offer.

upon them⁶¹ or any claim that the carrying charges are necessary to maintain their financial integrity. Thus, arguments for carrying charges (if entertained) should fail in accordance with the principles the PUCO has stated in past cases that involved carrying charges.

If the Commission permits carrying charges, then the Commission erred regarding the method for setting them by ordering carrying charges “without reduction for accumulated deferred income taxes.”⁶²

The deferred expenses create a deferred tax obligation that reduces the Companies’ current tax expense. The Companies will only need to rely on short-term debt borrowed from the capital market to support the net of tax balance of deferred expense until the expense is recovered from customers. If the Companies are permitted to accrue carrying charges on the gross balance, they will be over-collecting the actual carrying costs of these expense balances.

Restricting the carrying charges to a net of tax basis is consistent with the Commission’s ruling on this very issue in a FirstEnergy’s standard service offer case.⁶³ The Commission accepted arguments by the OCC and the PUCO Staff, finding that the calculation of carrying charges on a net of tax basis is in accordance with “sound

⁶¹ If a carrying cost is permitted, in order to minimize the costs that will likely be sought to be recovered from customers, it should be comprised of the following: Debt only, with no cost of equity, and no compounding of the carrying charge rate, on a net of tax basis. See FASB (Financial Accounting Standard Board) 92, which prohibits capitalization of the return on equity other than during construction or as part of a qualified phase-in plan.

⁶² Order at 24.

⁶³ *In re FirstEnergy ESP Case*, Case No. 08-935-EL-SSO. FirstEnergy Witness Ridmann stated that the “deferrals arising from this proceeding are not distinguishable from the deferrals discussed above [including those arising from Case No. 08-935-EL-SSO.]” FirstEnergy Ex. 1 at 45-46.

ratemaking theory” as well as Commission precedent.⁶⁴ The Commission should stand by its earlier decision and again rule that carrying charges should be calculated on a net of tax basis.

G. The Commission Erred by Limiting Contributions that Support the New Rates for Electric Heating Residential Customers, in Violation of the PUCO’s Rule Regarding Reasonable Arrangements.

The revenue shortfall associated with the RGC should not be paid entirely by residential customers. The Order summarizes the OCC’s position regarding spreading the revenue shortfall associated with the RGC as “analogous to a reasonable arrangement.”⁶⁵ The analogy is appropriate, especially after the considerable public testimony on the matter,⁶⁶ but the OCC’s argument was also legal.

R.C 4905.31 provides that “Chapters . . . 4909 [distribution rates] [and] 4928 [standard service offers] . . . do not prohibit a public utility from filing a schedule . . . providing for . . . [a] classification of service based upon the quantity used, the time when used, the purpose for which used, the duration of use, and any other reasonable consideration. . . .”⁶⁷ FirstEnergy has proposed such a schedule. By *Commission rule*, recovery for the reduced revenue resulting from reasonable arrangements is “spread to all customers in proportion to the current revenue distribution between and among classes . . .”⁶⁸ The Commission should modify its Order to comply with the PUCO’s own rules on

⁶⁴ Id., Order at 58 (December 19, 2008) (citing to *Cleveland Electric Illuminating Co.*, Case No. 88-205-EL-AAM, Entry (February 17, 1988), ordering carrying charges for Perry nuclear power plant to be net of taxes) and *In re Cleveland Electric Illuminating Co.*, Case No. 92-713-EL-AAM, Entry (December 17, 1992) (ordering carrying charges on deferred program costs to be on a net of tax basis).

⁶⁵ Order at 25.

⁶⁶ See, e.g., Tr. Strongsville at 144 (Finley, former mayor of Strongsville) (October 27, 2010).

⁶⁷ R.C. 4905.31(D).

⁶⁸ Ohio Adm. Code 4901:1-38-08(A)(4).

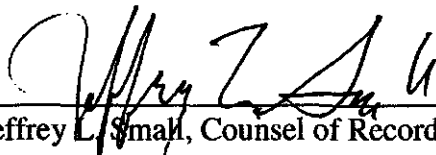
the subject and spread the revenue shortfall associated with the RGC across all customers according to the "current revenue distribution."

III. CONCLUSION

The Commission should order rates for residential customers that are fair and reasonable, and that balance the interests of customers in FirstEnergy's service area. A proper balance is not reflected in the Commission's Order dated May 25, 2011, and should be remedied on rehearing consistent with the contents of this pleading.

Respectfully submitted,

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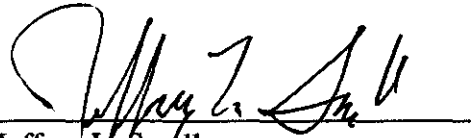


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's Application for Rehearing was served electronically upon the persons listed below this 24th day of June, 2011.


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