

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of the Office )  
of the Ohio Consumers' Counsel, )  
 )  
Complainant, )  
 )  
v. ) Case No. 10-1128-EL-CSS  
 )  
The Toledo Edison Company, Ohio Edison )  
Company, and The Cleveland Electric )  
Illuminating Company, )  
 )  
Respondents. )

OPINION AND ORDER

The Commission, having considered the record in this matter and the Stipulation and Recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Kathy J. Kolich, FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308; Carpenter Lipps & Leland, LLP, by Mark A. Whitt, Christopher T. Kennedy, and Melissa L. Thompson, 280 North High Street, Suite 1300, Columbus, Ohio 43215, on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

Bruce J. Weston, Interim Ohio Consumers' Counsel, by Jeffery L. Small, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of the residential utility consumers of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

OPINION:

I. Background

On August 12, 2010, the Ohio Consumers' Counsel (OCC) filed a complaint against The Toledo Edison Company, Ohio Edison Company, and The Cleveland Electric Illuminating Company (collectively, the Companies or FirstEnergy), alleging that the Companies are violating various Ohio statutes and administrative rules by enforcing

interconnection and net-metering standards that are unduly burdensome and expensive for residential customers utilizing wind turbines to generate electricity.

On September 1, 2010, the Companies filed an answer denying the material allegations of the complaint and stating that at all times the Companies have acted in compliance with all applicable regulations and tariffs.

A settlement conference was held on April 7, 2011. However, the parties were unable to resolve this matter at the settlement conference. A hearing was scheduled to commence on December 8, 2011. On November 14, 2011, the parties filed a stipulation (Jt. Ex. 2), and the supporting testimony of Wilson Gonzalez (Jt. Ex.1). The hearing commenced as scheduled on December 8, 2011.

## II. Stipulation

A Stipulation signed by the Companies and OCC was filed on November 14, 2011. The Stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The following is a summary of the provisions agreed to by the stipulating parties and is not intended to replace or supersede the stipulation:

- (1) FirstEnergy's web page describes the process for interconnection of distributed generation facilities to FirstEnergy's facilities. The interconnection/net-metering information on that web page shall be within one computer click of FirstEnergy's distribution company web site home pages, and shall include the following:
  - (a) A description of the application process, including links to applicable Commission rules, a description of the Level 1, Level 1.1, and Level 1.2 review processes and links to applications and forms that the applicant must submit, and disclosure of all applicable fees.
  - (b) Instructions for submission of completed applications.
  - (c) A description of the utilities' review process.
  - (d) Links to the FirstEnergy utilities' interconnection and net metering tariffs.

- (e) In the portion of the web page that currently states the requirement for interconnection applications to be complete, First Energy shall add the following language in readable, plain text:

Once the application is complete, the company will process the application under the schedule provided for by rules approved by the public utilities commission of Ohio. (Hyperlinks)

With this language, FirstEnergy will also provide hyperlinks to Rules 4901:1-22-04(B) and 4901:1-22-06(A), O.A.C. on the Commission's website.

- (2) For two years following the order in this case, FirstEnergy shall notify the OCC of material changes to its web page that address residential customer interconnection and shall describe all such changes to appropriate OCC personnel before implementing the changes on its publicly accessible web page. FirstEnergy shall not be required to obtain the OCC's consent before implementing such changes.
- (3) FirstEnergy shall plan and convene a workshop within 90 days of the date of this order in which FirstEnergy invites representatives of OCC and any invitees of OCC for whom OCC has provided email addresses, Commission Staff, and all certified installers listed on the Green Energy Ohio website. OCC shall be responsible for inviting any attendees the OCC wishes to attend, for whom no email addresses have been provided to FirstEnergy, and shall provide FirstEnergy with the names of such invitees at least seven days prior to the workshop. The workshop shall include the opportunity to participate by telephone, and all invitees for whom email addresses have been provided shall be provided with FirstEnergy's presentation materials before the date of the workshop. OCC will be responsible for providing material to any attendees for whom no email addresses have been provided. The workshop shall be conducted such that FirstEnergy provides a concise presentation of its application process for interconnection using FirstEnergy's qualified professional staff on this subject. The workshop shall also include an opportunity for attendees to ask questions and to

make recommendations on revisions and updates to FirstEnergy's interconnection process, and such questions, recommendations, and suggested revisions shall be recorded by FirstEnergy at the workshop.

- (4) Within 30 days of the conclusion of the workshop described in the preceding paragraph, FirstEnergy shall issue a written summary to all attendees for whom email addresses have been provided, describing the topics discussed, questions raised, and FirstEnergy's responses thereto. The summary will also describe any proposed changes that FirstEnergy intends to make to its interconnection or net metering policies, as well as changes requested or proposed by any attendee. OCC shall be responsible for providing copies of the summary to attendees for whom no email address has been provided. FirstEnergy is not obligated to propose changes to its current policies or adopt changes requested or recommended by workshop attendees.

(Jt. Ex. 2 at 5-7.)

### III. Consideration of the Stipulation

Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1004); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?

- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St.3d 559 (citing *Consumers' Counsel, supra*, at 126.) The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. (*Id.*)

OCC witness Gonzales testified that the Stipulation is the product of negotiations in which the parties to this case were represented by able counsel and technical experts and addressed the details of the interconnection process for adding customer-owned, distribution generation resources to the region served by the Companies. Moreover, Mr. Gonzales explained that the Stipulation is a compromise between parties with divergent interests. With respect to the benefits to ratepayers and the public interest, Mr. Gonzales explained that the Stipulation provides for changes to the Companies' website that will provide additional information to persons interested in the interconnection of distributed generation resourced and provides for a workshop to help advocates, Commission Staff, and those who install distributed generation resources better understand the process. Finally, Mr. Gonzales opined that the Stipulation further the policy of the state by encouraging the development of small generation resources and does not violate any regulatory principle or practice. (Jt. Ex. 1 at 5-7.)

In this case, the Commission finds that the Stipulation is supported by adequate data and information. In addition, the Stipulation represents a just and reasonable resolution of the issues raised in this proceeding and violates no regulatory principle or precedent. Further, we find that the Stipulation is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process, encouraged by this Commission and undertaken by the parties in this case, resulting in the sharing of information with regard to interconnection of distributed generation resources in FirstEnergy's service area. Accordingly, the Commission concludes that the Stipulation should be adopted in its entirety.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On August 12, 2010, OCC filed a complaint against the Companies.
- (2) On November 14, 2011, the parties filed a stipulation that purports to resolve all of the issues in this proceeding.
- (3) The evidentiary hearing was held on December 8, 2011.

- (4) The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

ORDER:

It is, therefore,

ORDERED, That the Stipulation filed in this proceeding be approved and adopted.  
It is, further,

ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this opinion and order be served upon all parties of record.

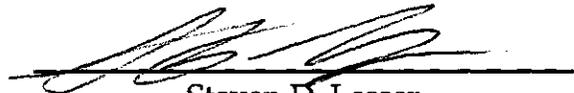
THE PUBLIC UTILITIES COMMISSION OF OHIO

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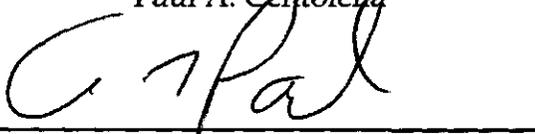
Todd A. Snitchler, Chairman



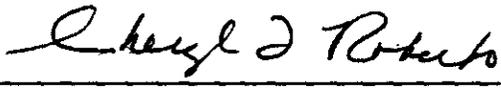
Paul A. Centolella



Steven D. Lesser



Andre T. Porter

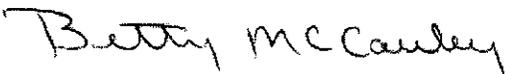


Cheryl L. Roberto

KLS/vrm

Entered in the Journal

**JAN 04 2012**



Betty McCauley  
Secretary