

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Smart     )  
Grid Modernization Initiative Contained     ) Case No. 12-406-EL-RDR  
in the Tariffs of Ohio Edison Company,     )  
The Cleveland Electric Illuminating     )  
Company, and The Toledo Edison     )  
Company.     )

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**\*\*\*PUBLIC VERSION\*\*\*  
COMMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC") files Comments in this case that involves collecting charges from customers for the Smart Grid program of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy"). OCC is filing on behalf of all of FirstEnergy's approximately 2.1 million residential electricity consumers.<sup>1</sup>

In this proceeding, the Public Utilities Commission of Ohio ("PUCO") is conducting its annual review of FirstEnergy's Advanced Metering Infrastructure/Modern Grid Rider ("Rider AMI"). In response to a recommendation by the PUCO Staff, on February 15, 2012 FirstEnergy filed a report of the costs it incurred in 2011 for its Advanced Metering Infrastructure project and Rider AMI ("Report"). In an Entry dated March 6, 2013, the PUCO established a procedural schedule for comments and reply comments on the Report and the PUCO Staff's comments.

The Staff's comments focused on the transaction between FirstEnergy and its affiliate, First Telecom Services ("FTS"), to install two segments of fiber optic cable for data

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<sup>1</sup> See R.C. Chapter 4911.

communications to support FirstEnergy's Smart Grid Modernization Initiative in Ohio.<sup>2</sup> OCC's Comments also address this issue.

At the time the expenditures were incurred in this case, FTS was a subsidiary of First Communications, Inc., and FirstEnergy had a [REDACTED] interest in First Communications, Inc.<sup>3</sup> The fiber optic cable installed by FTS was used to connect a base station radio (Mayfield) to the FirstEnergy network as a method of transporting the data between two points in support of its Grid Modernization Initiative in Ohio.<sup>4</sup> Specifically, FirstEnergy required 12 pairs of fiber, but 24 pairs of fiber were installed. FTS has retained ownership of the cable itself, meaning the sheath and 12 of the 24 pairs of fiber, while FirstEnergy owns the other 12 pairs of fiber.<sup>5</sup> Furthermore, "[a]ccording to the Agreement of Sale of (then) FirstEnergy Telecom to First Communications executed in March 2008, (now) First Telecom Services is obligated to remit to [FirstEnergy], 5% of gross revenues for any commercial telecommunications traffic that may use any or all of FTS' 12 fiber pairs."<sup>6</sup>

It does not appear that [REDACTED]<sup>7</sup> The Staff Report states that the "contractual arrangements for procuring, installing, and connecting the two fiber optic cable segments are fixed cost purchase orders. The contract price for the Leroy segment was \$482,000, and the price for the Mayfield segment was \$423,000 for a total of \$905,000."<sup>8</sup> The PUCO should be concerned that [REDACTED]

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<sup>2</sup> Staff Comments at 5-11.

<sup>3</sup> FirstEnergy response to PUCO DR-8, Section 2. Zayo Group acquired FTS from First Communications in December 2012. See <http://www.zayo.com/zayo-acquires-FTS>.

<sup>4</sup> FirstEnergy response to PUCO DR-13, Section 1.

<sup>5</sup> Staff Comments at 5.

<sup>6</sup> Id. at 5-6.

<sup>7</sup> FirstEnergy response to OCC INT 2-3.b.

<sup>8</sup> Staff Comments at 8.

[REDACTED]

[REDACTED]

[REDACTED]<sup>10</sup>

The problem is the PUCO and OCC have no other cost estimates for identical work from other vendors to evaluate FirstEnergy's [REDACTED] claim. In fact, if FirstEnergy's [REDACTED] claim is legitimate, then FirstEnergy should have felt comfortable testing this claim [REDACTED] [REDACTED] OCC thus joins the Staff in recommending that the PUCO require FirstEnergy to "disclose whether other fiber has been installed under similar joint build arrangements, and if so, where it is, how much there is, whether commercial traffic has generated revenue for FTS, and how many revenues have been generated."<sup>11</sup> The answer to this and other questions may lead to a further PUCO investigation.

Also, how does one determine whether another cable provider would have been willing to remit more than 5% of gross revenues from commercial traffic that FirstEnergy negotiated with its affiliate? OCC therefore supports the Staff's recommendation that the PUCO disallow half of the fiber optic cable capital cost that consumers are being charged.<sup>12</sup> This amount – \$452,500 – should be credited to consumers through Rider AMI.<sup>13</sup>

The PUCO should send a strong signal to FirstEnergy that the PUCO expects affiliate transactions will not harm consumers' interest and will not adversely affect the provision of

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<sup>9</sup> FirstEnergy response to OCC INT 2-3.b.

<sup>10</sup> FirstEnergy response to OCC INT 2-3.c.

<sup>11</sup> Staff Comments at 7. The Staff further states that the attribution of revenues from FTS commercial transactions and the crediting back to consumers are beyond the scope of its audit. Id.

<sup>12</sup> Id. at 10. The other half is paid through the U.S. Department of Energy's Smart Grid Investment Grant funding award. See id. at 9.

<sup>13</sup> Since Rider AMI is a ten-year rider and the fiber optic cable life is greater than ten years (see id. at 7-8), FirstEnergy should be required to specify how consumers will be credited for the gross revenue portion of the contract with FTS after Rider AMI ends.

electric service at a just and reasonable rate.<sup>14</sup> The PUCO should adopt the Staff's recommendations as discussed in these Comments.

Respectfully submitted,

BRUCE J. WESTON  
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/s/ Terry L. Etter

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<sup>14</sup> R.C. 4905.22.

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Comments (Public Version) was electronically served on the persons stated below this 5<sup>th</sup> day of April 2013.

/s/ Terry L. Etter

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