

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Ohio Edison Company, The Cleveland )  
Electric Illuminating Company, and ) Case No. 04-1931-EL-AAM  
The Toledo Edison Company for Authority )  
to Modify Their Accounting Procedures. )

FINDING AND ORDER

The Commission finds:

- (1) The Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (FirstEnergy) are public utilities, as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (2) Section 4905.13, Revised Code, authorizes the Commission to establish a system of accounts to be kept by the public utilities in Ohio and to prescribe the manner in which these accounts shall be kept. In Rule 4901:1-9-05, Ohio Administrative Code, the Commission adopted the Uniform System of Accounts for electric utilities established by the Federal Energy Regulatory Commission (FERC) for use in Ohio. For Ohio regulatory purposes, the system of accounts established by FERC is only applicable to the extent that it has been adopted by this Commission. Therefore, the Commission may modify the Uniform System of Accounts prescribed by FERC as it applies to utilities operating within this state.
- (3) On December 30, 2004, FirstEnergy filed an application to modify its accounting procedures and to defer the incremental transmission- and ancillary service-related charges incurred under the Midwest Independent Transmission System Operator, Inc. (MISO) Open Access Transmission Tariff and Transmission Energy Markets Tariff, plus carrying charges, until FirstEnergy begins to recover those costs in rates. FirstEnergy joined MISO, a regional transmission operator, on October 1, 2003, pursuant to Section 4928.12, Revised Code. On March 17, 2005, FirstEnergy filed a supplemental application to request that it be permitted to defer incremental loss charges in addition to all other transmission- and ancillary service-related charges incurred under the MISO tariff.

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- (4) On January 19, 2005, the Ohio Consumers' Counsel (OCC) filed motions to intervene and to dismiss the application. In its memorandum in support, OCC argues that the deferrals requested by FirstEnergy are prohibited by the rate caps established by Am. Sub. S.B. 3 (codified in Section 4928.34(A)(6), Revised Code) as well as the Commission's Opinion and Order approving the stipulation in FirstEnergy's electric transition plan proceeding. OCC further argues that FirstEnergy is not without a remedy for increases in transmission rates approved by FERC; OCC states that FirstEnergy may seek to increase its transmission rates charged to retail customers although OCC also contends that any increase in transmission rates must be accompanied by an equivalent decrease in distribution rates pursuant to Section 4928.34, Revised Code. Finally, OCC argues that granting the application would unlawfully create additional regulatory assets during the market development period for recovery from ratepayers after the market development period.

FirstEnergy filed a memorandum contra the OCC's motion to intervene and motion to dismiss on February 3, 2005, arguing that intervention is not appropriate because a hearing need not be held in this case. FirstEnergy also argued that the OCC does not have a real and substantial interest in this proceeding and that the OCC has not stated a valid legal position.

With respect to OCC's motion to dismiss, FirstEnergy stated that the application does not request an increase in rates and thus cannot violate the rate cap provisions of Section 4928.34(A)(6). Further, FirstEnergy alleged that the application does not violate the stipulation or the Commission's order in the FirstEnergy electric transition plan case, arguing that there is nothing in the stipulation or order that prohibits FirstEnergy from requesting a deferral of incremental transmission- and ancillary-related costs. FirstEnergy contends that OCC's argument that FirstEnergy may seek an increase in transmission rates is no remedy at all because OCC also argues that any such transmission rate increase must be accompanied by an equivalent decrease in distribution rates. On the other hand, FirstEnergy also argues that, contrary to OCC's position, Am. Sub. S.B. 3 did not require that every FERC-approved increase in transmission charges throughout the market development period be accompanied by a corresponding decrease in distribution charges. Finally, FirstEnergy argues that the

application does not request approval of additional regulatory assets subject to Section 4928.40(A), Revised Code, because that statute addresses transition costs, which are not at issue in this case.

OCC filed a reply to FirstEnergy's memorandum contra on February 10, 2005. With respect to its motion to intervene, OCC argues that it is clear that the application has adverse consequences for ratepayers. OCC further alleges that FirstEnergy's application is unlawful and that the OCC has an interest in preventing unlawful charges to FirstEnergy's residential ratepayers. With respect to its motion to dismiss, OCC argues that Ohio law and prior Commission precedents prohibit the deferrals proposed by FirstEnergy. OCC further argues that distribution rates must be decreased if transmission rates are increased during the market development period. Finally, OCC argues that the accounting authority for deferrals cannot be separated from the request for a rider to recover the deferrals after the end of the market development period, contrary to the provisions of Section 4928.40(A), Revised Code.

- (5) The Ohio Partners for Affordable Energy (OPAE) filed a motion to intervene on January 11, 2005. In addition, a motion for admission pro hac vice was filed to admit David C. Rinebolt to practice before the Commission in this proceeding. The Commission finds that the motion for admission pro hac vice should be granted.

On January 24, 2005, FirstEnergy filed a memorandum contra the motion to intervene, arguing that intervention need not be granted because a hearing need not be held and that the Commission generally does not grant intervention when it does not hold a hearing. On February 4, 2005, OPAE filed both a motion for a one-day extension of time to file its reply and its reply to the memorandum contra. OPAE's motion for a one-day extension of time to file the reply should be granted. In its reply, OPAE argues that the application is "a backdoor attempt to circumvent" the rate caps during the market development period and that the Commission has previously indicated that it will grant deferrals only in limited circumstances, generally to avoid the possibility of significant financial harm to the utility.

- (6) On January 19, 2005, the Industrial Energy Users-Ohio (IEU-Ohio) filed a motion to intervene, a request for a hearing and a motion to consolidate this case with *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Rider for the Collection of RTO Costs and Transmission and Ancillary Service Costs And for Authority to Modify Their Accounting Procedures*, Case No. 04-1932-EL-ATA. In its memorandum in support, IEU-Ohio states that it has a direct, real and substantial interest in the issues and matters involved in this proceeding that will only be protected by its participation in these proceedings. IEU-Ohio also argues that this case should be consolidated with Case No. 04-1932-EL-ATA because the issues in the application for accounting approval are interrelated to the issues in the tariff application since the accounting application seeks approval to defer the MISO costs paid by FirstEnergy and the tariff application seeks to implement riders for the recovery of the same costs in rates beginning January 1, 2006.

FirstEnergy filed a memorandum contra IEU-Ohio's motion to intervene on February 3, 2005, arguing that intervention need not be granted because a hearing need not be held and that the Commission generally does not grant intervention when it does not hold a hearing. Regarding IEU-Ohio's motion to consolidate, FirstEnergy argues that this case is not interrelated with Case No. 04-1932-EL-ATA. FirstEnergy states that the deferrals should be approved whether or not the rider mechanism is approved in the ATA case; further, the rider mechanism requested in the ATA case is an appropriate mechanism for recovering FirstEnergy's MISO costs and should be approved regardless of whether the deferrals are approved.

IEU-Ohio filed its reply to FirstEnergy's memorandum contra on February 10, 2005. In its reply, IEU-Ohio states that FirstEnergy has failed to demonstrate that its applications are just and reasonable; therefore, absent outright dismissal, the Commission should set the matter for a full evidentiary hearing.

- (7) Upon consideration, the Commission finds that it is not necessary to grant intervention to OCC, OPAE or IEU-Ohio in order to consider their pleadings in our determination on this application.

- (8) Although Section 4905.13 provides that a hearing may be held in these proceedings, the Commission does not believe that a hearing is necessary for conducting an evaluation of the application; therefore, the Commission will base its decision on a review of the application and the pleadings filed by FirstEnergy and the parties seeking intervention. Further, this proceeding should not be consolidated with Case No. 04-1932-EL-ATA because a hearing is not necessary in this proceeding and because the issues in the two cases can be addressed separately.
- (9) The Commission believes that the Commission's recent decisions in the Columbus Southern Power Company and the Ohio Power Company (AEP) rate stabilization plan proceeding and the Cincinnati Gas & Electric Company (CG&E) rate stabilization plan proceeding have been misconstrued by both FirstEnergy and the parties seeking intervention in this proceeding. In both cases, the decision to deny authority to create deferrals was only one element of a complex rate stabilization plan proceeding and was made based upon the specific facts and circumstances in the record in each case. *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of a Post-Market Development Rate Stabilization Plan*, Case No. 04-169-EL-UNC (Opinion and Order dated January 26, 2005 at 27). *In the Matter of the Application of the Cincinnati Gas & Electric Company to Modify its Nonresidential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish an Alternative Competitive-Bid Service Option Subsequent to the Market Development Period*, Case Nos. 03-93-EL-ATA et al., (Opinion and Order dated September 29, 2004 at 34). The Commission did not decide in either case that, as a matter of law, all deferrals for expenses incurred during the market development period violate the provisions of Am. Sub. S.B. 3.

The Commission finds that FirstEnergy's application to modify its accounting procedures and to defer the incremental transmission- and ancillary service-related charges, including incremental loss charges, incurred under the MISO tariff should be granted for those charges incurred after December 30, 2004, the date the application in this case was filed. These charges are being incurred pursuant to MISO's FERC-approved tariff. Section 4928.35(A), Revised Code specifically authorizes the Commission to approve adjustments to the rate schedules

during the market development period as "authorized by federal law." FERC approval of the MISO tariffs falls within this "authorized by federal law" exception for adjusting rate schedules as contemplated by Section 4928.35(A), Revised Code.

For those charges incurred prior to the filing of the application, the Commission notes that FirstEnergy has been aware that it was incurring these charges since it joined MISO on October 1, 2003; however, FirstEnergy did not file its application to defer these charges until December 30, 2004. Therefore, FirstEnergy will not be granted authority to defer charges incurred prior to the filing of the application. FirstEnergy will be permitted to defer only those charges incurred on a going-forward basis after the filing of the application and ending January 1, 2006.

Finally, FirstEnergy's request for permission to accrue carrying charges on the deferral balances, at the same rate authorized for each of the operating companies in Case no. 03-2144-EL-ATA, should be granted.

- (10) With respect to OCC's argument that the provisions of Section 4928.40(A), Revised Code, prohibit the creation of additional regulatory assets during the market development period for recovery from ratepayers after the market development period, the provisions of Section 4928.40(A), Revised Code, specifically deal with the issue of transition costs. Section 4928.40(A), Revised Code does not govern the creation of any and all regulatory assets in the future. The application submitted in this proceeding does not request authority to defer transition costs. Therefore, Section 4928.40(A), Revised Code, is not pertinent to consideration of this application.

It is, therefore,

ORDERED, That the applications filed by the Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison to modify their accounting procedures and to defer their incremental transmission- and ancillary service-related charges, including incremental loss charges, under the Midwest Independent Transmission System Operator, Inc., Open Access Transmission Tariff and Transmission Energy Markets Tariff be granted as discussed in Finding (9). It is, further,

ORDERED, That the motion for admission *pro hac vice* of David Rinebolt and OPAE's motion for a one-day extension of its reply are granted. It is, further,

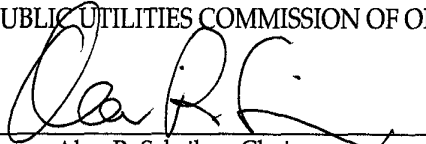

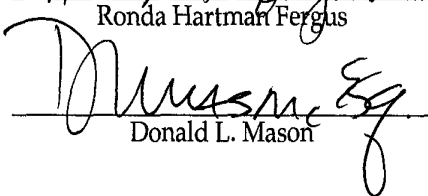
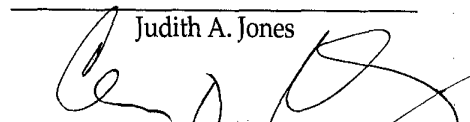
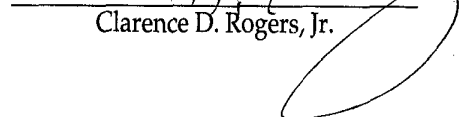
ORDERED, That the motions to intervene filed in this proceeding by the Ohio Consumers' Counsel, OPAC and IEU-Ohio be denied. It is, further,

ORDERED, That the motion filed by IEU-Ohio to consolidate this proceeding with Case No. 04-1932-EL-ATA is denied. It is, further,

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

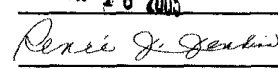
ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Alan R. Schriber, Chairman  
Ronda Hartman Fergus  
  
Donald L. Mason  
Judith A. Jones  
  
Clarence D. Rogers, Jr.

GAP:ct

Entered in the Journal

**MAY 18 2005**  
  
Renee J. Jenkins  
Secretary