

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of the
Cleveland Board of Education for the
Cleveland Municipal School District to
Establish a Reasonable Arrangement with
the Cleveland Electric Illuminating
Company for Electrical Service.

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Case No. 08-1238-EL-AEC

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POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

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May 20, 2009

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**BEFORE
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Cleveland Municipal School District to	:	Case No. 08-1238-EL-AEC
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THE PUBLIC UTILITIES COMMISSION OF OHIO**

INTRODUCTION

In order to find that the application of the Cleveland Schools is just and reasonable the Commission must weigh the competing interests at hand. The first question facing the Commission in this case is: does the application comply with Chapter 4901:1-38, O.A.C., regarding reasonable arrangements? Evidence shows that no new jobs are created, nor are local or state incremental tax dollars provided by the proposed arrangement. The impact of the rate increases without special arrangements is likely to cause job losses and program cuts to all school districts in FirstEnergy's service territory. As a result, Staff's perspective is that the proposed arrangement does not qualify as an economic development or energy efficiency arrangement. The remaining possibility is that the Commission could find the Cleveland Schools qualify under the "unique arrangement"

provision. Indeed, the Cleveland Schools claim they are in a unique situation even as compared to other school districts.

While electric rate increases will certainly impact city of Cleveland Schools, they will also negatively impact all other school districts throughout FirstEnergy's service territory. This is borne out by the testimony of representatives of *numerous* school districts given during the more than fifteen local public hearings held by the Commission during the FirstEnergy distribution rate cases¹ and standard service offer cases.² In those hearings the other school district representatives also maintained that the rate increases would cause teacher and staff layoffs, as well as building closings, and program cuts. The negative economic impact of electric rate increases is not unique to Cleveland schools. The magnitude of the increase is claimed to be the difference. That is because the Cleveland Schools previously received a deep discount to their electric rates that expired, one that the other school districts did not receive. Consequently, any increase will necessarily have a greater impact on Cleveland Schools.

The second question to be addressed by the Commission in these cases is: will approval of the application result in raising the cost of electricity for all other FirstEnergy customers, including other school districts? The answer is unequivocally "yes." FirstEnergy is only willing to enter into this arrangement, or any such arrangement, if it is permitted to recover the difference between the rate levels on the otherwise applicable

¹ *In re FirstEnergy*, Case Nos. 07-551-EL-AIR, *et al.*

² *In re FirstEnergy*, Case Nos. 08-935-EL-SSO, *et al.*

rate schedule and the rate resulting from any reasonable arrangement approved by the Commission. This difference in revenue recovery as a result of such an arrangement is known as “delta revenue.” Staff believes that all other FirstEnergy ratepayers do not benefit from the higher rates they will be forced to pay if this arrangement is approved.

STATEMENT OF THE FACTS AND THE CASE

The Cleveland Municipal School District (CMSD or Cleveland Schools) filed an application to establish a reasonable arrangement with The Cleveland Electric Illuminating Company (CEI), a FirstEnergy company, on November 19, 2008. In the application CMSD proposed a gradual increase in rates commencing May 1, 2009 through 2011 using the same percentage increase proposed by FirstEnergy in its pending rate cases.³ The purpose of the application is to alleviate the alleged major increase in electric rates to Cleveland Schools. The CMSD came into this predicament due to the expiration of their 2002 rate reduction agreement (the Electric Service Agreement or ESA) with CEI, extended in 2005, that ended in December 2008.⁴ At the time of this application CMSD was unsuccessful in negotiating an agreement with CEI. As a result CMSD applied to the Commission pursuant to R.C. 4905.31 for a reasonable arrangement with CEI.

On January 27, 2009 CMSD filed an amended application.⁵ A new ESA was attached to the amended application as Appendix A. The new ESA was again filed

³ Cleveland Municipal School District Application at 1.

⁴ *Id.* at 2.

⁵ CMSD Amended Application at 1.

pursuant to R.C. 4905.31(E) and provided a reduction in rates to the Cleveland Schools, as well as full recovery of “revenue foregone as a result of such arrangements, as compared to the otherwise applicable standard tariff rates.”⁶ CMSD agreed to “make its best efforts” to conserve its electricity consumption recognizing its physical modifications under way known as the capital improvement project.”⁷

After the Commission issued its Second Finding and Order in the FirstEnergy Electric Service Plan case (Case No. 08-935-EL-SSO (March 25, 2009)), CMSD filed yet a second amended application in this docket. The reason given for the submission of the second amended application was that the pricing structure established by the Commission’s ESP order was significantly different than that anticipated by the amended application.⁸ This third application proposed a slightly different term than the original arrangement, or from January 1, 2009 through May 2011. The rates are set at a percentage off the Standard Tariff with a guaranteed minimum rate for each of three periods.⁹ Again, CEI is guaranteed full recovery of all costs incurred in conjunction with the arrangement, including recovery of all foregone revenue (otherwise known as “delta revenue”).¹⁰

⁶ CMSD Amended Application, Appendix A at 1.

⁷ CMSD Amended Application at 6, ¶11.

⁸ CMSD Second Amended Application at 1.

⁹ *Id.* at 5.

¹⁰ CMSD Second Amended Application at 5.

On February 10, 2009 the Attorney Examiner issued an Entry ordering that CEI's motion to intervene be granted; that motions to intervene, comments and objections to the application be filed by March 2, 2009. The Staff submitted comments on March 2, 2009 stating essentially that Staff suggests that R.C. 4905.31 and good regulatory policy, dictate that a reasonable arrangement implies an exchange of values. This means the benefit or value of a special arrangement accrues to all parties to the arrangement, not just to the customer or the utility. In other words, in exchange for a reduced rate, the arrangement should contain provisions which (a) reflect cost savings to the utility, or (b) gives some value to the ratepayers who may ultimately pay for the revenue shortfall created by the arrangement, or (c) provide economic development benefits to the State of Ohio. In terms of utility regulatory policy, Staff submitted that the application fails to provide the type of value to the company, the ratepayers, or the State contemplated by R.C. 4905.31. In Case No.07-551-EL-AIR, *et al.*, to ameliorate the rate increase to schools the Commission ordered that the Cleveland Public Schools should receive an 8.693% discount to its otherwise applicable rates.¹¹ The stipulation approved by the Commission in Case No. 08-935-EL-SSO contemplates the same discount to the generation component of the rates to be paid by CMSD. This discount places the CMSD on the same level playing field as schools represented by the Ohio Schools Council.

¹¹ *In re FirstEnergy*, 07-551-EL-AIR, *et al.* (Opinion and Order at 29-30) (January 21, 2009).

CMSD filed reply comments on March 5, 2009 stating that its situation is unique because of the deeply discounted rates it is starting from in requesting this reasonable arrangement. Further, CMSD claims its arrangement is reasonable and provides value through the educational opportunities provided.

An Entry issued scheduling the evidentiary hearing for April 9, 2009. CMSD filed the direct testimony of Nicholas P. Jackson and Mark R. Frye on April 30, 2009. Mr. Jackson serves as the Deputy Chief of Business Operations of CMSD. His educational background is in Industrial Engineering, Industrial Management and Quality Assurance. Nonetheless, Mr. Nicholson without expertise or educational background discusses the application in terms of his interpretation of R.C. 4905.31. He also inappropriately relates, from his perspective alone, the alleged substance of a meeting between members of the Commission's Staff and CMSD representatives. In his testimony Mr. Frye, also admittedly not an attorney, improperly attempts to interpret the facts in conjunction with the requirements of R.C. 4905.31.

On May 1, 2009 Staff filed the testimony of Robert B. Fortney. The hearing was held on May 9, 2009 where the parties and the Staff stipulated witnesses' testimony into the record without cross-examination. No party agreed to the substance of the testimony submitted. A briefing schedule was agreed upon with one round of briefs due on May 20, 2009.

ARGUMENT

Staff submits that the proposed arrangement does not meet the Ohio Administrative Code requirements for economic development or energy efficiency arrangements, and approval of the arrangement as a unique arrangement places an undue burden on all other FirstEnergy ratepayers.

Does the application comply with Chapter 4901:1-38, O.A.C., regarding reasonable arrangements? The evidence shows that no new jobs are created, nor are local or state incremental tax dollars provided by the proposed arrangement.¹² O.A.C. Section 4901:1-38-03(A) provides that the application for an economic development arrangement be “between the electric utility and a *new or expanding customer or group of customers.*”¹³ Neither the Second Amended Application, nor the Cleveland Schools witnesses allege that the Cleveland Schools are a new or expanding customer or group of customers because they cannot do so. No new full-time jobs are alleged to be created coincident to the approval of this arrangement, indeed, a major focus of CMSD testimony is job retention, not job creation.¹⁴ Instead the impact of the rate increases without special arrangements is likely to cause job losses and program cuts to Cleveland Schools *and* numerous other school districts in FirstEnergy’s service territory.¹⁵ None of the school districts,

¹² Staff Ex. 1, Direct Testimony of Robert B. Fortney, at 2-3.

¹³ Ohio Admin. Code § 4901:1-38-03(A) (West 2009).

¹⁴ CMSD Ex. 2, Direct Testimony of Nicholas P. Jackson, at 6-7.

¹⁵ See, Attachment, a compilation of the transcript cites for the testimony of numerous school district representatives given during the local public hearings for the FirstEnergy distribution rate increase cases and standard service offer cases.

Cleveland included, threatens to stop functioning or move out of state.¹⁶ As a result, Staff's perspective is that the proposed arrangement does not qualify as an economic development or energy efficiency arrangement pursuant to O.A.C. Section 4901:1-38-03 or § 4901:1-38-04.

The remaining possibility is that the Commission could find the Cleveland Schools qualify under the "unique arrangement" provision found in O.A.C. Section 4901:1-38-04. Indeed, the Cleveland Schools claim they are in a unique situation even as compared to other school districts. Yet, while electric rate increases will certainly impact city of Cleveland Schools, they will also negatively impact all other school districts throughout FirstEnergy's service territory. This is borne out by the testimony of representatives of *numerous* school districts given during the more than fifteen local public hearings held by the Commission during the FirstEnergy distribution rate cases¹⁷ and standard service offer cases¹⁸. In those hearings the other school district representatives also maintained that the rate increases would cause extensive teacher and staff layoffs, as well as building closings, and program cuts.¹⁹ The economic impact of electric rate increases is not unique to Cleveland schools.

¹⁶ Ohio Admin. Code § 4901:1-38-03(B) (West 2009).

¹⁷ *In re FirstEnergy*, Case Nos. 07-551-EL-AIR, *et al.*

¹⁸ *In re FirstEnergy*, Case Nos. 08-935-EL-SSO, *et al.*; *see*, Attachment, a compilation of the transcript cites for the testimony of numerous school district representatives given during the local public hearings for the FirstEnergy distribution rate increase cases and standard service offer cases

¹⁹ *See*, CMSD Ex. 2, Direct Testimony of Nicholas P. Jackson, at 6-7.

For the Cleveland Schools the magnitude of the increase is claimed to be the difference, the unique factor to be considered. That is because the Cleveland Schools previously received a deep discount to their electric rates that expired, a discount of a much greater magnitude than that the other school districts received through the . In 2002 CMSD entered into what is known as the 2002 Electric Service Arrangement or 2002 ESA that was extended in 2005.²⁰ Consequently, any increase will have a greater impact on Cleveland Schools because they start from a lower discounted rate than the other school districts. The extended ESA was scheduled to expire in December 2008. Is it reasonable to perpetuate this rate differential given the lost revenue generated by the proposed arrangement and the certainty that FirstEnergy's other ratepayers will bear an increased cost if it is approved?

It follows from this that the second question to be addressed by the Commission in this case is: will approval of the application result in raising the cost of electricity for all other FirstEnergy customers, including other school districts? The answer is unequivocally "yes." FirstEnergy is only willing to enter into this arrangement, or any such arrangement, if it is permitted to recover the difference between the rate levels on the otherwise applicable rate schedule and the result of any reasonable arrangement approved by the Commission.²¹ This difference in revenue recovery as a result of such an arrangement is known as "delta revenue." Staff believes that all other FirstEnergy ratepayers do

²⁰ See, *In re CEI*, Case No. 08-1238-EL-AEC (Second Amended Application to Establish a Reasonable Arrangement at 2) (April 29, 2009).

²¹ See, CMSD Ex. 2, Direct Testimony of Nicholas P. Jackson, at 13.

not benefit from the higher rates they will be forced to pay if this arrangement is approved.

The generation of delta revenue puts an undue burden on all other FirstEnergy ratepayers to make up the difference. Staff recommends that the Commission seriously consider the interests of the FirstEnergy ratepayers and the Cleveland Schools. If this arrangement is approved ratepayers may only be taking on an incrementally small burden,²² but it is one they were not given notice of, and one more in addition to whatever else this currently tumultuous economy has handed each of them.

²²

CMSD Ex. 2, Direct Testimony of Nicholas P. Jackson, at 13.

CONCLUSION

For the reasons stated above, Staff recommends against the approval of the proposed arrangement.

Respectfully submitted,

Richard Cordray
Ohio Attorney General

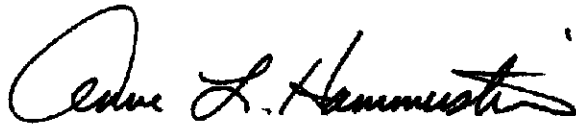
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A handwritten signature in black ink, appearing to read "Anne L. Hammerstein", written over a horizontal line.

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Comments submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, hand-delivered, and/or delivered via electronic mail, upon the following parties of record, this 20th day of May, 2009.



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**Transcripts Cites from Local Public Hearings of
Testimony Presented by Numerous School District Representatives
at Various Local Public Hearings
for the
FirstEnergy Distribution Rate Increase Cases
and
Standard Service Offer Cases**

*In the Matter of the Notice of Intent of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company to File an Application to Increase Distribution Rates for Electric Service and for Tariff Approval,
Case No. 07-551-EL-AIR*

Local Public Hearing held March 5, 2008, Akron, Ohio:

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Local Public Hearing held March 5, 2008, Barberton, Ohio:

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Local Public Hearing held March 6, 2008, Austintown, Ohio:

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Local Public Hearing held March 11, 2008, Wauseon, Ohio:

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Local Public Hearing held March 12, 2008, Geneva, Ohio:

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Local Public Hearing held March 12, 2008, Toledo, Ohio:

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Local Public Hearing held March 17, 2008, Sandusky, Ohio:

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Local Public Hearing held March 19, 2008, Springfield, Ohio:

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Local Public Hearing held March 24, 2008, Mansfield, Ohio:

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In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Case No. 08-935-EL-SSO, and In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated with Reconciliation Mechanism, and Tariffs for Generation Service, Case No. 08-936-EL-SSO.

Local Public Hearing held September 25, 2008, Cleveland, Ohio:

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Local Public Hearing held October 1, 2008, Sandusky, Ohio:

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