

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric) Case No. 10-0176-EL-ATA
Illuminating Company and The Toledo)
Edison Company for Approval of a)
New Rider and Revision of an Existing)
Rider.)

**COMMENTS OF
INDUSTRIAL ENERGY USERS-OHIO**

Samuel C. Randazzo (Counsel of Record)
Lisa G. McAlister
Joseph M. Clark
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
lmcAlister@mwncmh.com
jclark@mwncmh.com

February 24, 2010

Attorneys for Industrial Energy Users-Ohio

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COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

On February 12, 2010, Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("TE") (hereinafter "FirstEnergy") filed an Application with the Public Utilities Commission of Ohio ("Commission") for approval of a new rider, Residential Generation Credits ("Rider RGC"), which would provide rate credits to residential customers on certain rate schedules. At the same time, FirstEnergy requested that its Economic Development Rider ("Rider EDR") be revised to fund the Rider RGC credits. Based on an initial review of FirstEnergy's Rider RGC Application, it appears that the proposed revisions to Rider EDR would require customers served under rate schedules GS and GP to pay higher rates to fund the Rider RGC credits.

After extensive settlement discussions, on February 19, 2009, FirstEnergy filed an Amended Application in its electric security plan case ("FE ESP Proceeding")¹ and a Stipulation and Recommendation ("ESP Stipulation") signed by many of the intervening parties. On February 26, 2009 a Supplemental Stipulation was filed that contained

¹ *In the Matter of the Application of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, PUCO Case No. 08-935-EL-SSO, Application (July 31, 2008) (hereinafter "FE ESP Proceeding").*

refinements to the ESP Stipulation (concerning things like governmental aggregation and the creation of a \$25 million fund that was not permitted to be used to fund reasonable arrangements or "special contracts") that was joined by additional signatory parties including the Office of Consumers' Counsel ("OCC"), the statutory representative of residential customers. At page 10 of the Supplemental Stipulation, the signatory parties stated:

The undersigned Parties respectfully request the Commission to issue its Opinion and Order approving and adopting the Stipulated ESP as set forth in this Stipulation and this Supplemental Stipulation.

The ESP Stipulation, as supplemented, was not opposed by any non-signatory parties.

On March 4, 2009, the Commission approved the portion of the ESP Stipulation regarding the limited term ESP.² On March 25, 2009, the Commission approved the remaining provisions of the ESP Stipulation regarding FirstEnergy's standard service offer ("SSO") generation price for the June 1, 2009 through May 31, 2011 period.³ Under the approved ESP Stipulation, retail generation rates for June 1, 2009 through May 31, 2011 were determined by a descending-clock format competitive bidding process ("CBP") and FirstEnergy procured, on a slice of system basis, 100 percent of the aggregate wholesale "full requirements" SSO supply. By letter dated March 30, 2009, FirstEnergy notified the Commission that it accepted the results of the Commission's March 25, 2009 Opinion and Order saying:

While no formal acceptance of the Commission's Second Opinion and Order is required because the Commission approved and adopted the totality of the Stipulated ESP without modification, in order to avoid unnecessary uncertainty regarding the implementation of the Stipulated ESP, the Companies hereby provide notice that they accept the Commission's Second Finding and Order issued on March 4, 2009 and

² *FE ESP Proceeding*, Second Finding and Order (March 4, 2009).

³ *FE ESP Proceeding*, Second Opinion and Order (March 25, 2009).

the Second Opinion and Order issued on March 25, 2009 as their ESP through May 31, 2011, with such acceptance remaining dependent upon the terms and conditions of the Stipulated ESP being specifically implemented in the manner and timeframe contemplated thereby, particularly regarding the terms and conduct of the competitive bid process and the implementation of the results arising therefrom.

On March 30, 2009, the Commission issued an entry *nunc pro tunc* amending its opinion and order dated March 25, 2009. Thereafter, no applications for rehearing were filed with the Commission.

FirstEnergy's Rider RGC Application appears to propose a unilateral modification to the ESP Stipulation as approved by the Commission and as accepted by FirstEnergy. FirstEnergy's Rider RGC Application does not identify the legal theory or authority that would permit the Commission to modify the rates previously approved by the Commission through the process briefly described above.

IEU-Ohio is aware of the protests that have recently come from residential customers served under what have historically been called "all electric" rate schedules. While these all-electric rate schedules have been in the process of being eliminated for many years, some customers on these rate schedules or their representatives have recently and strongly expressed their opposition to the billing consequences of the rates on file with and approved by the Commission. It is not clear from these public protests whether, and if so to what extent, the protests are from all-electric customers on budget billing programs, customers who are shopping through governmental aggregation or other programs, or if the protests are rooted in other problems.

The potential rate and bill consequences of the ESP Stipulation and the Commission's approval thereof on all-electric customers was in full view of the residential representatives that signed the ESP Stipulation and urged the Commission to approve the same. In fact, during the course of the proceedings that produced the

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ESP Stipulation, IEU-Ohio frequently pointed to the potential rate impacts on the all-electric residential customers should the Commission approve a flat, kWh-based or volumetric rate design. This type of rate design makes it very difficult to differentiate bill impacts in ways that properly recognize the cost causative influence of things like load factor. This problem was and is not unique to residential customers.

In any event, the statutory representative of residential customers as well as environmental advocates have frequently urged the Commission to adopt kWh-based or volumetric rate designs and revenue distributions regardless of how these rate designs might be supportable based on any cost of service analysis or the resulting bill impacts. Based on the advocacy of these parties, high-use residential customers are going to see disproportionately higher utility bill impacts as a mathematical certainty.

As the Commission proceeds to consider and potentially address the issues that are directly and indirectly raised by FirstEnergy's Rider RGC Application, IEU-Ohio urges the Commission to proceed with caution. FirstEnergy's current SSO rates are scheduled to end May 31, 2011. FirstEnergy's Rider RGC Application (at Exhibit C-1) indicates that it "...should also be recognized as being part of the initial elements to be included toward developing a new electric security plan for the Applicants, the development of which was suggested by Staff in its comments filed in Case No. 09-906-EL-SSO".

In this larger context and even assuming that the Commission has the legal authority to do so, it seems like the proposal to transfer the "rate shock" from all-electric residential customers to customers served on rate schedules GS and GP is an exercise designed to simply move the "pain" to a different location. And, distributing this pain to GS and GP customers on a kWh basis as proposed in FirstEnergy's Rider RGC

Application is difficult to reconcile with Ohio's claims that it is trying to improve the opportunity for Ohio's businesses to stay and expand in Ohio.

Respectfully submitted,



Samuel C. Randazzo (Counsel of Record)

Lisa G. McAlister

Joseph M. Clark

MCNEES WALLACE & NURICK LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

sam@mwncmh.com

lmcAlister@mwncmh.com

jclark@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 24th day of February, 2010 via first class mail, postage prepaid.


Samuel C. Randazzo

James W. Burk
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308

ON BEHALF OF FIRSTENERGY

Jeffrey L. Small
Office of the Ohio Consumers' Counsel
10 W. Broad Street
18th Floor
Columbus, OH 43215-3485

ON BEHALF OF THE OHIO CONSUMERS' COUNSEL

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/24/2010 4:23:19 PM

in

Case No(s). 10-0176-EL-ATA

Summary: Comments Comments of Industrial Energy Users-Ohio filed by Samuel C. Randazzo electronically filed by Ms. Vicki L. Leach-Payne on behalf of Industrial Energy Users-Ohio