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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of Chapter 4901-7, Ohio Administrative Code, Standard Filing Requirements For Rate Increases Filed Pursuant to Chapter 4909, Revised Code.	))))))	**Case No. 08-558-AU-ORD**

APPLICATION FOR REHEARING OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY

Pursuant to R.C. § 4903.10, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies") hereby apply for rehearing of the Finding and Order issued in the above-captioned case on May 13, 2010 (the "Order") and the administrative rules adopted in that Order (the "Rules"). The Order and Rules adopted by that Order are unlawful and unreasonable in the following respects:

(1) The Rules unreasonably and unlawfully require significant information regarding unregulated entities, including information regarding a parent holding company's common equity. See Order ¶¶ 36-37, Section D, General, at II-2(135)/p. 115; Section D, Paragraph (B), at II-2(135)/p. 115.

(2) The Rules require that electronic schedules containing numerical data be linked absent a showing of good cause. However, the draft rules unreasonably fail to limit the electronic linkage requirement "to the extent practicable." See Order ¶ 15, Paragraph (A)(7), at II-8(19)/p. 13.

(3) The Rules impose an unduly burdensome, unnecessary, and unreasonable requirement that applicants provide extensive information regarding company management policies, practices, and organization upon the occurrence of a merger. See Order ¶ 16, Paragraph (A)(9)(e) at II-12(22)/p. 16.

For these reasons, and as set forth in greater detail in the Companies' attached Memorandum in Support, the Companies respectfully request that the Commission grant rehearing and issue an Order consistent with this filing.

Respectfully submitted,

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In the Matter of the Commission's Review of Chapter 4901-7, Ohio Administrative Code, Standard Filing Requirements For Rate Increases Filed Pursuant to Chapter 4909, Revised Code.	))))))	**Case No. 08-558-AU-ORD**

MEMORANDUM IN SUPPORT OF THE APPLICATION FOR REHEARING OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY

I. INTRODUCTION & BACKGROUND

The Commission has suggested numerous changes to O.A.C. 4901-7 as part of its regular review of this chapter of the Administrative Code. Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies") filed comments on July 15, 2008 regarding these amendments, and filed reply comments on September 30, 2008. The Commission issued its Finding and Order (the "Order") on May 13, 2010, adopting numerous amendments to Chapter 4901-7, most of which are reasonable and lawful. However, three of these amendments are unreasonable and unlawful.

First, the Order requires the Companies to produce extensive information regarding unregulated and/or out-of-state entities, including information regarding the common equity of these entities. Submitting all Section D data on both a stand-alone basis and on a parent-consolidated basis will be extremely burdensome for utilities with a holding company parent having unregulated operations and out-of-state utility operations. Plus, much if not all of this information will be irrelevant and is beyond the Commission's jurisdiction. In particular, inclusion of the parent and subsidiary company common equity is not relevant to the determination of an applicant's revenue requirements. The rate of return is a separately handled

issue as part of the proceeding, and all information relevant to this determination is already provided to all concerned parties. Accordingly, this new provision should either be deleted or modified to exclude any requirements for a utility that is a wholly-owned subsidiary of a holding company to provide such information on a parent consolidated basis.

Second, although the Commission properly incorporated into the filing requirements the Companies' recommendation that active formulae and calculations provided to Staff be subject to waiver for good cause shown, the Commission erred in not also incorporating the gas companies' recommendation that linking of data in electronic documents only be required to the extent practicable. As explained in the gas companies' comments, this modifier is necessary because electronic linkage between spreadsheets is not always possible when the linked data is on specific servers or drives or when the spreadsheets are transmitted to other parties. While the Companies will endeavor to provide linked data as desired, the filing requirements should recognize that this is not always possible.

Finally, the Order requires applicants to provide extensive information regarding company management policies, practices, and organization. As the information sought is already available to all concerned parties, requiring applicants to repeatedly create these time consuming reports is unnecessary, ineffective, redundant, inefficient, needlessly burdensome, and unnecessary for the purposes of the underlying statute. The Companies therefore respectfully request that the Commission accept Staff's proposed language, and reject the revisions suggested by the OCC.

In light of these deficiencies in the Order, the Companies respectfully request rehearing of the Order and modification of the proposed rules as described in detail below.

II. ARGUMENT

A. The Rules unreasonably and unlawfully require significant information regarding unregulated entities, including information regarding a parent holding company's common equity. See Order ¶¶ 36-37, Section D, General, at II-2(135)/p. 115; Section D, Paragraph (B), at II-2(135)/p. 115.

In paragraph 36 of the Order, the Commission approved the Section D instructions requiring, among other things, that an extensive amount of data be provided both on a stand-alone basis and also on a parent-consolidated basis. Then, in paragraph 37 of the Order, the Commission approved a new provision mandating the filing of common equity information from both the regulated utility and any unregulated holding company parent. The Commission did not justify this decision in any significant manner, simply finding that the "equity information of the entire corporate structure is important in our determination of the appropriate cost of capital in rate cases." Order ¶ 37. The Commission's findings relating to both paragraphs are unreasonable.

As to paragraph 36 of the Order, AEP recommended in its comments that language be added to clarify that required information would consist only of data relating to the service function actually covered by the application. See Order ¶ 36. Based on the OCC's comments, however, the Commission held that applications should include data on both a stand-alone and parent-consolidated basis, since "analysis of the application requires an analysis of the financial data of publicly traded companies that are only comparable to the parent companies of the utilities regulated by the Commission." Id. The revised rule now requires a parent company to file data "on a consolidated basis covering all subsidiaries." See Appendix dated May 13, 2010, at Section D, General, at II-2(135)/p. 115.

This requirement will impose unduly burdensome obligations on utilities with parent companies having multiple in-state and out-of-state unregulated operations and multiple out-of-

state regulated operations. As one example, are the Companies now required to provide ten years of plant data (such as gross plant in service by major property groupings) on a consolidated parent basis, which necessarily would include plant data from Pennsylvania and New Jersey, as well as Maryland, Virginia and West Virginia, once the merger of FirstEnergy Corp. and Allegheny Energy, Inc. is complete? In the case of the consolidated operations of FirstEnergy, any *consolidated* "rate of return" data required by Section D will include wholly irrelevant data derived from unregulated and/or out-of-state regulated businesses. Although the Commission's jurisdiction extends to the records and accounts of an Ohio public utility's holding company, this jurisdiction extends only insofar as those records and accounts relate to the Ohio utility's costs of operating in Ohio. R.C. § 4905.05. Because Section D requires much more than this, it exceeds the Commission's jurisdiction.[1] As a result, the Commission and Staff recently recognized that the Companies' rate of return analysis should be based on the capital structure and embedded long-term cost of debt of the combined EDUs, not the consolidated parent.[2] The rules should recognize that the provision of this data is not appropriate or necessary in all cases when parent-consolidated data would include multiple irrelevant data points. In such a case, selected parts of this information that may be relevant under an applicant's particular circumstances can be obtained through data requests.

As to paragraph 37 of the Order, the entity subject to the proposed Rule is the applicant utility, not holders of the applicant's common equity, or the applicant's parent or subsidiary companies. The common equity information requested is completely irrelevant to the applicant's

[1] Disclosure also could involve competitively sensitive information of unregulated entities, which would compound the problems presented. These entities should not be placed at risk of disclosure of their competitively sensitive information simply because data of this type generally may be helpful on occasion. As the Commission is aware, confidential information is not assured of protection from public disclosure even when protective orders are in place.

[2] *See* January 21, 2009 Opinion and Order in Case No. 07-551-EL-AIR *et al.* at p. 20.

cost of capital. It obviously has no relevance to the capital structure and cost of debt, which, it must be noted, were determined in the Companies' last rate case using the Companies' combined EDU data and not consolidated parent data.[3] It also has no relevance to the cost of common equity, regardless of whether the DCF, CAPM or some other methodology is employed. All such methodologies depend upon proxy groups of comparable firms,[4] not holding company common equity. This is because cost of equity for rate making purposes is forward-looking and represents the expected rate of return determined in the market. The information requested here is booked, historic earnings information. The rate of return data for both regulated and non-regulated entities, from Ohio and elsewhere, is wholly irrelevant to the issue actually before the Commission, which is the appropriate rate of return for the service function covered by the application.

Moreover, proposed Schedule D-1.1 appears to assume that all of the common equity balances of subsidiary companies will add up to the parent company's common equity balance. This is an incorrect assumption due to dividends, eliminations, etc. at the parent company level. In stark contrast to how subsidiaries' embedded long-term debt balances tie directly to that of the parent company, the subsidiaries' common equity balances will not roll up into a summary schedule.

Of course, the cost of capital and rate of return of a holding company with multiple regulated and unregulated affiliates can be substantially different from that of the regulated applicant performing a specific service function. Cost of capital is the expected return investors

[3] *Id.* at pp. 19-21. Nevertheless, information regarding the debt structure of an applicant already is provided to the Commission as part of schedules requiring that applicants provide the embedded long-term debt balances for the parent company and all subsidiaries.

[4] *See* Jonathan A. Lesser & Leonardo R. Giacchino, *Fundamentals of Energy Regulation*, pp. 113-18 (2007). The cost of equity cannot be directly measured. *Id.* at p. 109.

require based on the perceived risks of investing in the regulated utility.[5] Thus, calculating cost of capital based on holding company data, particularly when that data bears little or no relationship to the risks of investing in a regulated utility, can be extremely misleading. As a result, the Commission acted unreasonably in requiring that parent company common equity and rate of return information be included in every filing. At most, such information can be obtained through the discovery process to the extent deemed relevant to a particular filing. It does not need to be included as part of the Standard Filing Requirements.

The Commission's requirement to include holding company information in an electric distribution utility's rate case proceeding is unreasonable as being unduly burdensome and irrelevant to the issues before the Commission and unlawful as being beyond the jurisdiction of the Commission to review. Accordingly, the Companies respectfully request that these new provisions of the Rules be stricken or, at a minimum, amended to exclude such a requirement for utilities that are wholly-owned subsidiaries of holding companies.

B. The Rules require that electronic schedules containing numerical data be linked absent a showing of good cause. However, the draft rules unreasonably fail to limit the electronic linkage requirement "to the extent practicable." See Order ¶ 15, Paragraph (A)(7), at II-8(19)/p. 13.

Staff requested that all schedules be provided to it in electronic format and that the electronic format use links to retrieve the data from related schedules and, if necessary, related work papers. See Order ¶ 15. The gas companies recommended that the phrase "to the extent practicable" be added to Staff's language because, among other things, electronic linkage is not always possible as a technical matter. In addition, the Companies recommended that Staff's language requiring active formulae and calculations be subject to waiver for good cause shown, since certain electronic files do not include active formulae and calculations. *Id.* The

[5] *Id.* at p. 110.

Commission acted reasonably in adopting the Companies' suggestion, but acted unreasonably in not adopting the gas companies' recommendation.

The addition of the "absent a showing of good cause" language does not solve the problem raised by the gas companies. In particular, Chapter I, paragraph (A)(7) still includes this statement: "The electronic format must use links to retrieve data from related schedules and, if applicable, relevant working papers." To address fully the gas companies' criticism, this sentence should be amended to state (with new language in italics): "*To the extent practicable,* the electronic format must use links to retrieve data from related schedules and, of applicable, relevant working papers." This revision of the proposed Rule is both necessary and appropriate on rehearing.

C. The Rules impose an unduly burdensome requirement that applicants provide extensive information regarding company management policies, practices, and organization upon the occurrence of a merger. Forcing the Companies to provide this information is unnecessary, unduly burdensome and unreasonable. See Order ¶ 16, Paragraph (A)(9)(e) at II-12(22)/p. 16.

In this paragraph Staff recommended that applicants be required to submit a complete set of the applicant's management policies, practices, and organization on a 10-year interval, and to identify any changes to the last plan filing as appropriate. See Order ¶ 16. Upon the OCC's recommendation, the Commission held that applicants also should be required to submit a completed application in the event it has been purchased by another regulated company, purchased another regulated company, or merged with another company. Id.

This provision of the Order is unreasonable. Creating the "complete set" of information required by the Rule requires substantial time and resources which could be better spent elsewhere. Current law, as well as the language proposed by Staff, requires applicants to disclose any changes, enhancements, or modifications from the last plan filing. Therefore, to the extent a merger creates a substantial change in operations, that change will be identified under

the language proposed by Staff. To the extent a merger does not create any substantial change in operations, requiring a complete revision of management policies would be simply a recreation of information already provided, and a waste of both time and resources. In particular, it is unlikely that a merger or purchase in which the applicant is the acquiring entity would result in any significant change to the applicant's policies, and, thus, the Commission's new requirement simply creates waste and redundancy.

The language proposed by Staff sufficiently addresses any need for information by requiring applicants to update the management information which changes between filings. Should any party, including Staff, need additional information regarding these policies, such information is available as part of the discovery process. Since the information at issue is already available to all concerned parties, requiring applicants to provide this information as part of the Standard Filing Requirements is needlessly burdensome.

As the Commission rightfully pointed out, Governor Strickland's Executive Order 2008-4S requires the Commission to consider, among other things, whether a rule is necessary to implement the underlying statute and whether the rule is unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome. See Order ¶ 4. The rule as currently drafted is improper because the information at issue is already available to all concerned parties. Requiring applicants to provide information in this circumstance is unnecessary, ineffective, redundant, inefficient, needlessly burdensome, and unnecessary for the purposes of the underlying statute.

Accordingly, the Companies respectfully request that the Commission grant rehearing to revert to Staff's proposed language.

III. CONCLUSION

For the reasons set forth above, the Commission's Order is unlawful and unreasonable, and entitles the Companies to a rehearing. The Commission should grant the Companies' application for rehearing and revise the Rules as described above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application For Rehearing was served by first class U.S. mail, postage prepaid, on this 14th day of June, 2010 upon the following parties of record.

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