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PUCO

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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. 10-388-EL-SSO

SUPPLEMENTAL POST-HEARING BRIEF FILED ON BEHALF OF THE CITIZENS COALITION, AND URGING FIRST ENERGY AND THE PUCO TO INSURE THAT ANY STIPULATION INCLUDES AN APPROPIATE AND SUFFICIENT FUEL FUND FOR LOW-INCOME FAMILIES

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ARGUMENT

THE PUCO SHOULD ONLY APPROVE A STIPULATION THAT PROVIDES LOW-INCOME FAMILIES WITH AN ADEQUATE AND APPROPRIATE FUEL FUND. THE AMOUNT FOR THE FUEL FUND IN THE PROPOSED STIPULATION FOR THIS CURRENT ESP CASE IS ONLY HALF A MILLION DOLLARS ANNUALLY WHICH IS A REDUCTION OF SEVENTY-FIVE PERCENT FROM THE ANNUAL AMOUNT OF TWO MILLION DOLLARS IN THE CURRENT OPERATING STIPULATION. SINCE THIS REDUCTION OF SEVENTY-FIVE PERCENT IS NOT THE PRODUCT O F SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES, FAILS TO ADEQUATELY BENEFIT RATEPAYERS AND THE PUBLIC INTEREST, AND VIOLATES IMPORTANT REGULATORY PRINCIPLES AND PRACTICES, THE PROPOSED STIPULATION—UNLESS CHANGED—MUST BE REJECTED BY THE PUCO. THE CITIZENS COALITION URGES THAT THE FUEL FUND BE FINANCED AT A LEVEL OF FOUR MILLION DOLLARS ANNUALLY, UTILIZING THE ADMINISTRATIVE MECHANISMS AND COMMUNITY AGENCIES CURRENTLY EMPLOYED BY FIRST ENERGY.

Everyone in this current proceeding is in favor of a Fuel Fund that will help low-income customers obtain and retain necessary electric service when they have exhausted all other means of assistance. This very broad statement is easily substantiated by looking at the current Stipulation (that includes the Supplemental stipulation) which provides for a Fuel Fund of half a million dollars. (See first Stipulation and Supplemental Stipulation filed by FirstEnergy in this proceeding.) All the parties that have signed so far have thus indicated their approval of this Stipulation provision. Of course, the Citizens Coalition is in favor of a Fuel Fund. The OCC also is in favor as indicated by the statements in its Supplemental Post-Hearing Brief filed for OCC and various other parties. (See page 16, of Supplemental Post-Hearing Brief, filed July 1, 2010.)

At its recent Annual Stockholders' Meeting on May 18, 2010, in Akron, First Energy Corporation President and Chief Executive Officer Anthony J. Alexander responded to a question by this attorney about the Fuel Fund. He indicated to the audience of several hundred stockholders and FirstEnergy officers and directors that he was pleased to see that the proposed stipulation contains provisions about a Fuel Fund. FirstEnergy should be proud of this program and rightfully deserves praise from its customers, the Citizens Coalition, and the community for its establishment of the Fuel Fund. At present this Fund is actively helping distressed low-income customers throughout the territories of the FirstEnergy operating companies.

If all are in favor of a Fuel Fund including FirstEnergy and this is in the proposed stipulation, what is the problem? Very simple, It is true that the current stipulation has a Fuel Fund and the Proposed stipulation has a Fuel Fund. The difficulty is that the proposed Fuel Fund has seventy-five percent less funding than the current one. (See Transcript of May 21, 2010, PUCO Hearing at pages 92-94.)

This is a drastic downward reduction. The PUCO very properly issued its Entry on Rehearing on May 13, 2010, which called for "a detailed analysis of the impact of the proposed ESP on customer's bills." (See <u>Entry on Rehearing,</u> PUCO, May 13, 2010.) This showed FirstEnergy, all the parties, and the general public that the Commission was very much concerned about what could happen to customer rates under the proposed

ESP. It is no secret that economically times are tough. People speak about the Great Recession. Some worry that we may slip back into another Great Depression. That is why a Fuel Fund—adequately funded—is so important. It insures that there is still some help available after all other assistance programs and alternatives have been exhausted. But this Fuel Fund needs to be adequately funded.

The current Fuel Fund has two million dollars available for each year of 2009, 2010, and 2011. (See Transcript of May 21, 2010, PUCO Hearing at page 61.) While the staff at the May 21st hearing presented some data about bill impacts on customers, the staff did not take into account in their analysis any statistics at all about income of the various customer groups, especially residential customers that would be affected by these rate impacts. See Transcript of May 21, 2010, PUCO Hearing at page 66.) It seems extremely unlikely that the number of customer families with poverty incomes will decrease by seventy-five percent for the years 2012, 2012, and 2013 covered by the proposed ESP. No one knows how the ESP will affect customer bills, whether increasing these, decreasing these, or holding the bills the same. (See discussion in the Transcript of May 21, 2010, PUCO Hearing at pages 59-61.) But everyone can determine for certain that—absent any further change in the Stipulation—low-income customers will suffer a substantial decrease in the availability of funds in the Fuel Fund.

The Citizens Coalition maintains that because of this substantial defect of the Fuel Fund reduction, this proposed stipulation violates the well-established requirements before any proposed stipulation can be accepted by the PUCO. Here are some of these requirements which this stipulation violates.

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

2. Does the settlement, as a package, benefit ratepayers and the public interest?

3. Does the settlement package violate any important regulatory principle or practice?

First, it was the Citizens Coalition who argued for an adequately financed Fuel Fund in the last ESP stipulation case. From the very beginning of that case, the Citizens Coalition fought for funds to help low-income customers. It was the Citizens Coalition who advocated for a fund of Two Million dollars annually. In this current case, the underfunded Fuel Fund of a half-a-million dollars has not been "a product of serious bargaining" between FirstEnergy and the Citizens Coalition. While OPAE, a party in this case and a signatory for the Stipulation, helped secure this half-a-million, OPAE is a weatherization provider, and not a direct knowledgeable representative of low-income families. No other signatories seem to have been involved in any specific negotiations on the Fuel Fund.

In conclusion, this first requirement for a stipulation has not been met and thus should be rejected on this ground alone.

Secondly, a proposed stipulation can only be accepted if the settlement, as a package, benefits ratepayers and the public interest. A proposed stipulation with such a huge Fuel Fund reduction hardly makes for an overall package that benefits either low-income families or ratepayers generally. There are no other items in this package which offset such a radical reduction. This proposed settlement instead of benefitting customers and the public interest, will actually be to their detriment since there will be less help available than provided in the current stipulation out of which this new stipulation is considered an extension of the current stipulation. (See below for Comments from FirstEnergy President and CEO Anthony Alexander about the proposal currently before the PUCO.)

Since the proposed stipulation violates this second requirement, on that ground alone it must be rejected.

Thirdly, the Citizens Coalition asserts that the severe Fuel Fund reduction violates at least two important Regulatory Principles and Practices. First, there is a violation of the principle of nondiscrimination. The policy of the State of Ohio is to insure "nondiscriminatory... retail electric service." (See O.R.C. 4928.02(A).) The new Stipulation, however, if approved by the PUCO will discriminate against the poor compared to the present Stipulation. Under the provisions for general residential rates, these can increase, decrease, or stay the same between the Present Stipulation and the Proposed Stipulation. But for the Fuel Fund provision, this will go one way—a drastic decrease. To the extent funds are less available, this means that those low-income families will have greater rate burdens, leading either to more disconnections or heavier burdens on their already overstretched budgets. This discriminatory effect can impinge upon the lives and health of our most vulnerable during these very stressful economic times with so much unemployment, house foreclosure, and decline in incomes.

This seventy-five percent reduction in the Fuel Fund also violates a second regulatory practice and principle. There has been a growing understanding and acceptance in Ohio regulatory law that public utilities must provide adequate Fuel Funds to help their needy customers. Virtually every major utility has a Fuel Fund. Inherent in this practice is the requirement that these Fuel Funds must be adequately financed.

Otherwise, why have them? If these are underfunded, they become a sham and a cruel hoax upon low income families.

A reduction of seventy-five percent in the current Fuel Fund for a major utility such as FirstEnergy--which has been earning superior profits even in these harsh times--seems not only uncalled for, but improper and should not be permitted by the PUCO. Furthermore such a reduction hardly seems to fit with the following excerpts from FirstEnergy News release about company operations:

> **FirstEnergy Holds 2010 Annual Meeting**
> AKRON, Ohio, May 18, 2010 /PRNewswire via COMTEX/ --FirstEnergy Corp. (NYSE: FE) President and Chief Executive Officer Anthony J. Alexander told the audience at today's Annual Meeting of Shareholders in Akron, Ohio, that the company made significant progress in 2009, despite a very difficult economy.
>
> Among other highlights, he said the company enhanced its financial strength and flexibility by reducing operating expenses and capital costs; delivered improved distribution reliability for the fifth consecutive year; and achieved solid results at the company's generating plants.
>
> "These and many other accomplishments underscore our strong focus on the fundamentals of our business, and our commitment to continuous improvement in every part of our operations," Alexander said.
>
> "On the regulated side of our business, last year we received PUCO approval for an Electric Security Plan, or ESP. The plan was used to purchase generation through a competitive bidding process and to establish retail rates for generation service through May of 2011."
>
> He added that the company is working with key parties in Ohio on an agreement that would extend the ESP to purchase generation through a competitive bidding process and establish retail rates for generation service through May 2014 - providing continued rate stability for customers and supporting jobs and economic development in its communities.

Such a seventy-five percent reduction with no explanation or justification—based upon our current enlightened understanding of these Fuel Funds—thus violates developing regulatory principles and practices. On this ground alone, the proposed stipulation must be rejected by the PUCO.

How much financing should be in the Fuel Fund for this proceeding?

It would seem that the best starting point is the amount in the last ESP stipulation which was Two million dollars per year. Certainly, FirstEnergy could argue that this amount would seem reasonable as an extension from the current stipulation. The Citizens Coalition do acknowledge that Two Million is far more preferable than half a million.

Unfortunately, these are harsh times. There is little to indicate there will be any substantial economic resurgence, including in employment, for years into the future. Economists who once spoke of recovery in 2010 are now talking about 2013 or later. Therefore, the Citizens Coalition declare that the Fuel Fund should be set at Four Million dollars a year. Remember this fund must be available in the territories of all the operating companies and must be available to cover millions and millions of Ohio citizens, including children and seniors.

CONCLUSUION

In conclusion, the PUCO must reject the currently proposed FirstEnergy Stipulation. Because of the drastic reduction of the Fuel Fund from Two Million Dollars in the currently operating Stipulation to half-a-million dollars in the proposed stipulation, the latter fails to meet the various long-standing requirements before a stipulation can be accepted for a settlement in a case by the PUCO. If the PUCO should seriously consider any stipulation in this case, the PUCO should modify the current proposal—in the interests of law, justice, and public policy-- to establish a Fuel Fund financed at the level of Four Million Dollars for 2012, 2013, and 2014 and employing the same mechanisms and agencies for fund administration as now employed by FirstEnergy and its operating companies. The Citizens Coalition would also invite FirstEnergy as well as other parties in this proceeding—signatory and otherwise—to support an adequately financed Fuel Fund as part of a fair, generous, and just Stipulation and Settlement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Supplemental Post Hearing Brief was served on all parties in this proceeding, listed below, electronically (as instructed by the Attorney Examiners), on this 1st day of July, 2010.

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