

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of :
 Application of Ohio Edison:
 Company, The Cleveland :
 Electric Illuminating :
 Company, and The Toledo :
 Edison Company for :
 Administration of the : Case No. 10-1265-EL-UNC
 Significantly Excessive :
 Earnings Test Under :
 Section 4928.143(F), :
 Revised Code, and Rule :
 4901:1-35-10, Ohio :
 Administrative Code. :

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PROCEEDINGS

before Messrs. Henry Phillips-Gary and Gregory A.
 Price, Hearing Examiners, at the Public Utilities
 Commission of Ohio, 180 East Broad Street, Room 11-A,
 Columbus, Ohio, called at 10:00 a.m. on Wednesday,
 November 3, 2010.

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APPEARANCES:

Calfee, Halter & Griswold, LLP
By Mr. James F. Lang
1400 KeyBank Center
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Cleveland, Ohio 44114-2688

On behalf of Ohio Edison Company,
The Cleveland Electric Illuminating
Company, and The Toledo Edison Company.

Richard Cordray, Ohio Attorney General
William L. Wright, Section Chief
Public Utilities Section
By Mr. Thomas W. McNamee
and Ms. Sarah J. Parrot
Assistant Attorneys General
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793

On behalf of the staff of the Public
Utilities Commission of Ohio.

Boehm, Kurtz & Lowry
By Mr. Michael Kurtz
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

On behalf of Ohio Energy Group.

Ms. Colleen L. Mooney
and Mr. David C. Rinebolt
231 West Lima Street
Findlay, Ohio 45840

On behalf of the Ohio Partners for
Affordable Energy.

Janine L. Migden-Ostrander
Ohio Consumers' Counsel
By Mr. Jeffrey L. Small
Assistant Consumers' Counsel
Ten West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

On behalf of the residential ratepayers
of Ohio Edison Company, The Cleveland
Electric Illuminating Company, and The

Toledo Edison Company.

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19
20
21
22
23
24
25

INDEX

- - -

WITNESS

PAGE

Doris McCarter

Direct examination by Ms. Parrot

7

- - -

JOINT EXHIBIT

ID'D

ADMT'D

1 - Stipulation and Recommendation

6

11

COMPANY EXHIBITS

ID'D

ADMT'D

1 - Direct Testimony of
Harvey L. Wagner

6

11

2 - Direct Testimony of
Michael J. Vilbert

6

11

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Wednesday Morning Session,
November 3, 2010.

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EXAMINER PHILLIPS-GARY: Let's go ahead and go on the record. The Public Utilities Commission of Ohio has called for hearing at this time and place case number 10-1265-EL-UNC, being In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Administration of the Significantly Excessive Earnings Test Under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code.

My name is Henry Phillips-Gary. With me is Greg Price. We are the attorney examiners assigned to hear this case.

At this time we will take appearances on behalf of the parties starting with the company.

MR. LANG: Thank you, your Honor. James Lang of Calfee, Halter & Griswold, 800 Superior Avenue, Cleveland, Ohio, 44114 on behalf of the FirstEnergy utilities, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

EXAMINER PHILLIPS-GARY: Thank you.

1 We'll just keep going.

2 MS. PARROT: Thank you, your Honors. On
3 behalf of the staff of the Public Utilities
4 Commission of Ohio, Richard Cordray, Ohio Attorney
5 General, William L. Wright, Section Chief, by Thomas
6 W. McNamee and Sarah J. Parrot, Assistant Attorneys
7 General, 180 East Broad Street, Columbus, Ohio.

8 MR. KURTZ: Good morning, your Honors.
9 Mike Kurtz for the Ohio Energy Group, Boehm, Kurtz &
10 Lowry, 1510 URS Center, Cincinnati, Ohio.

11 MS. MOONEY: On behalf of Ohio Partners
12 for Affordable Energy, David C. Rinebolt, Colleen L.
13 Mooney, 231 West Lima Street, Findlay, Ohio, 45840.

14 MR. SMALL: Your Honor, on behalf of the
15 Office of the Ohio Consumers' Counsel, Jeffrey L.
16 Small, Assistant Consumers' Counsel, 10 West Broad
17 Street, Suite 1800, Columbus, Ohio, 43215. Thank
18 you.

19 EXAMINER PHILLIPS-GARY: Thank you.

20 The Bench notes that we have two motions
21 to intervene, a motion of Citizen Power, Incorporated
22 which was filed on October 8, 2010, and the motion of
23 the Industrial Energy Users-Ohio which was filed on
24 October 13th, 2010. The Bench finds that these
25 motions to intervene are reasonable and should be

1 granted.

2 Are there any other preliminary matters
3 before we begin?

4 MR. LANG: Your Honor, there was a
5 stipulation and recommendation filed this morning
6 submitted both by the applicant companies, also by
7 Ohio Partners for Affordable Energy, Ohio Energy
8 Group, Citizen Power, Inc., and the staff of the
9 Public Utilities Commission.

10 Pursuant to the stipulation the parties
11 would move that the stipulation be made part of this
12 hearing as Joint Exhibit 1, and then also as part of
13 the stipulation the applicants would move into the
14 record Company Exhibit 1 and Company Exhibit 2 which
15 are the direct testimony of Harvey Wagner and the
16 direct testimony of Michael Vilbert.

17 EXAMINER PHILLIPS-GARY: Okay. So the
18 companies have marked and moved for admission of
19 Joint Exhibit 1, which is the stipulation, and
20 Company Exhibit 1 and Company Exhibit 2, which is the
21 direct testimony. Thank you.

22 Do we have a witness here to support the
23 stipulation?

24 MS. PARROT: Yes, your Honor, we do. The
25 staff has a witness available to testify and would

1 call at this time Doris McCarter to the witness
2 stand.

3 EXAMINER PHILLIPS-GARY: Good morning.
4 Please raise your right hand.

5 (Witness sworn.)

6 EXAMINER PHILLIPS-GARY: You may be
7 seated.

8 - - -

9 DORIS McCARTER
10 being first duly sworn, as prescribed by law, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 By Ms. Parrot:

14 Q. Good morning, Ms. McCarter. Would you
15 please state your full name for the record.

16 A. My name is Doris McCarter.

17 Q. And your business address, please.

18 A. It's Public Utilities Commission of Ohio,
19 180 East Broad Street, Columbus, Ohio, 43215.

20 Q. And you're employed by the Public
21 Utilities Commission of Ohio; is that correct?

22 A. Yes, I am.

23 Q. And in what capacity are you employed?

24 A. I am Chief of the Capital Recovery and
25 Financial Analysis division, which is the division

1 that is responsible for administering the SEET test.

2 Q. And what are your capacities or, I'm
3 sorry, what are your responsibilities in your current
4 capacity with the Commission?

5 A. My responsibility is to supervise and
6 oversee the cases that are coming from that division,
7 those cases would involve things such as depreciation
8 studies, corporate separation reviews, management and
9 operations reviews, securities financing, and the
10 application of the significantly excessive earnings
11 test.

12 Q. How long have you been employed with the
13 Commission?

14 A. I have been employed with the Commission
15 since December 1989.

16 Q. And would you please briefly describe for
17 us any other relevant experience you have with the
18 Public Utilities Commission of Ohio.

19 A. Well, I began December 1989 as an adviser
20 to Commissioner Richard M. Fanelly, a capacity which
21 I held for 7-1/2 years. I then, in 1996, became a
22 cost studies specialist in the telecommunications
23 division reviewing cost-of-service and access charge
24 settlements. I then spent ten years as the director
25 of the service monitoring and enforcement department

1 overseeing all of the service quality rules for the
2 Commission. And in January of 2010 I obtained this
3 current position.

4 Q. Thank you.

5 Ms. McCarter, are you familiar with the
6 stipulation and recommendation in this case which has
7 been marked as Joint Exhibit No. 1?

8 A. Yes, I am.

9 Q. And how did you gain that familiarity
10 with the stipulation?

11 A. I gained familiarity with this
12 stipulation by participating in the negotiation
13 process and watching its development as part of
14 overseeing FE's SEET test.

15 Q. Thank you.

16 Are you also familiar with the three-part
17 test that the Commission uses to evaluate
18 stipulations?

19 A. Yes, I am.

20 Q. And with respect to the first part of
21 that test, do you believe that the stipulation that's
22 been marked as Joint Exhibit 1, do you believe that
23 it's the product of serious bargaining among capable
24 and knowledgeable parties?

25 A. Definitely.

1 Q. And why is that?

2 A. The parties in this case have been
3 involved in numerous complex negotiations on various
4 matters in the energy fields and with respect to 221
5 and have been actively involved in the entire
6 development of the SEET test.

7 Q. And based on your experience with the
8 Commission do you believe that the settlement package
9 as a whole benefits ratepayers and that it's in the
10 public interest?

11 A. Yes, I do. Based on the earnings that
12 are experienced by FE for 2009, by FirstEnergy for
13 2009, it resolves without excess procedures the
14 resolution to this case.

15 Q. And, finally, do you believe that the
16 stipulation violates any important regulatory
17 principle or practice?

18 A. No, I do not.

19 Q. And do you find that the stipulation
20 that's been marked as Joint Exhibit 1, do you find
21 that it's a reasonable resolution to this proceeding?

22 A. Yes, I do.

23 Q. And do you recommend that the Commission
24 adopt the stipulation as its resolution of this case?

25 A. Yes, I do.

1 MS. PARROT: We have no further
2 questions, your Honor, and Ms. McCarter is available
3 if there are questions from the other parties.

4 EXAMINER PHILLIPS-GARY: All right. Are
5 there any parties wishing to ask questions of the
6 witness?

7 MS. MOONEY: No, your Honor.

8 EXAMINER PHILLIPS-GARY: All right.
9 There are no questions, the witness may be excused.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 EXAMINER PHILLIPS-GARY: At this point in
13 time we have pending the motion for admission of
14 Joint Exhibit 1 and Company Exhibits 1 and 2. Is
15 there any opposition to admission of those exhibits?

16 (No response.)

17 EXAMINER PHILLIPS-GARY: Seeing none,
18 they will be admitted.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 EXAMINER PHILLIPS-GARY: And given that
21 the stipulation and recommendation is not signed by
22 all the parties in this case, Ms. Parrot, did you
23 have -- with regard to IEU-Ohio, were you authorized
24 to make a statement regarding their position?

25 MS. PARROT: Yes, I am, your Honors.

1 Thank you. I have been authorized by Joseph Clark,
2 who is counsel for Industrial Energy Users-Ohio, I'm
3 authorized to state on the record that Industrial
4 Energy Users-Ohio is taking no position on the
5 stipulation and will be filing later today a letter
6 in the docket of this proceeding stating that that is
7 their position in the case.

8 EXAMINER PHILLIPS-GARY: Thank you.

9 And Mr. Small.

10 MR. SMALL: The OCC similarly is taking
11 no position on the stipulation.

12 EXAMINER PHILLIPS-GARY: All right.

13 Thank you.

14 Are there any other matters before us at
15 this point in time?

16 MR. LANG: No, your Honor.

17 EXAMINER PHILLIPS-GARY: Seeing none,
18 this hearing is adjourned. Thank you.

19 (The hearing concluded at 10:14 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, November 3, 2010, and carefully compared with my original stenographic notes.

Maria DiPaolo Jones, Registered
Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2011.
(MDJ-3643)

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/17/2010 8:54:02 AM

in

Case No(s). 10-1265-EL-UNC

Summary: Transcript Hearing Transcript from 11/3/10 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.