

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	Case No. 09-1820-EL-ATA
Illuminating Company and The Toledo)	Case No. 09-1821-EL-GRD
Edison Company for Approval of Ohio)	Case No. 09-1822-EL-EEC
Deployment of the Smart Grid)	Case No. 09-1823-EL-AAM
Modernization Initiative and Timely)	
Recovery of Associated Costs.)	

**MEMORANDUM CONTRA
FIRSTENERGY’S APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

In the proceeding, the Public Utilities Commission of Ohio (“Commission” or “PUCO”) approved FirstEnergy’s¹ (“FirstEnergy” or “Utility”) request to charge consumers approximately \$8.5 million to complete data collection related to its Smart Grid pilot program.² This \$8.5 million funding is in addition to the \$36 million that customers have already paid for SmartGrid costs. The PUCO approved FirstEnergy’s Application to conduct Volt/Var Optimization and Distribution Automation studies through June 1, 2019.³ In the same Order, the PUCO also directed the Utility to “continue

¹ Cleveland Electric Illuminating Company, Toledo Edison, and Ohio Edison.

² Finding and Order (May 28, 2015) (“Order”).

³ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Ohio Deployment of the Smart Grid Modernization Initiative and Timely Recovery of Associated Costs*, Case No. 09-1820-EL-ATA, et al., FirstEnergy Application at 5(December 22, 2014).

to offer to Phase 2 customers the voluntary two-part residential time-of-use on- and off-peak Standard Service Offer rate (Rider RCP).”⁴

Now, through its June 29, 2015 Application for Rehearing, the Utility is seeking clarification from the PUCO to charge customers an additional \$5.8 million to continue Rider RCP through 2019.⁵ FirstEnergy contends that it is unclear whether the May 28 Order was intended to cover only the costs associated with the continuation of the Volt/Var Optimization and Distribution Studies, or if the language was also intended to include recovery of costs associated with continuing to offer Rider RCP.⁶ Further, FirstEnergy does not want to be subject to a prudence disallowance associated with costs incurred for Rider RCP if only a limited number of customers elect to participate in Rider RCP.⁷ For the reasons explained below, the PUCO should deny FirstEnergy’s requests.

II. DISCUSSION

A. FirstEnergy’s Application does not meet the requirements for applications for rehearing found in R.C. 4903.10 and the PUCO’s rules; hence the PUCO should dismiss the Utility’s Application.

FirstEnergy is seeking the PUCO’s clarification that it may charge customers to continue Phase 2 customers’ voluntary two-part residential time-of use and off-peak Standard Service Offer rate (Rider RCP). The estimated cost to provide this service could be as much as \$5.8 million.⁸ This is an inappropriate purpose for applications for rehearing under R.C. 4903.10 and does not conform to the PUCO rules.

⁴ Order at ¶ 8.

⁵ FirstEnergy Application for Rehearing at 1.

⁶ Id. at 2.

⁷ Id. at 1.

⁸ Id..

Ohio law provides that, within thirty days after issuance of an order from the PUCO, “any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding.”⁹ Further, the application for rehearing “shall set forth *specifically* the ground or grounds on which the applicant considers *the order to be unreasonable or unlawful*.”¹⁰ Ohio Adm. Code 4901-1-35 mirrors this requirement.

The Supreme Court of Ohio and the PUCO have determined that an application for rehearing does not comply with R.C. 4903.10 if the application does not specify the grounds on which the PUCO’s order is unlawful or unreasonable. The Court has held that “when an appellant’s grounds for rehearing fail to specifically allege in what respect the PUCO’s order was unreasonable or unlawful, the requirements of R.C. 4903.10 have not been met.”¹¹ The Court has further mandated that there be “strict compliance with such specificity requirement.”¹² FirstEnergy’s Application does not meet the specificity required by R.C. 4903.10 and should be dismissed.

In addition, the PUCO eliminated motions for clarification of PUCO orders in 2008.¹³ The Utility filed a request for clarification, not an application for rehearing. Additionally, its filing was deficient because it failed to meet the specificity requirements

⁹ R.C. 4903.10.

¹⁰ R.C. 4903.10(B).

¹¹ *Discount Cellular, Inc., et al. v. Pub. Util. Comm.*, 112 Ohio St. 3d 360, 375, 2007-Ohio-53, 59 (citations omitted).

¹² *Office of Consumers’ Counsel v. Public Util. Comm.* (1994), 70 Ohio St. 3d 244, 247-248 (citations omitted). See also *Discount Cellular*, 112 Ohio St. 3d at 375 (stating that “[W]e have strictly construed the specificity test set forth in R.C. 4903.10.”).

¹³ *In the Matter of the Review of Chapters 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code*, Case No. 06-685-AU-ORD, Finding and Order (December 6, 2008) at 55-56.

of R.C. 4903.10. The PUCO should not issue the clarification sought in FirstEnergy's Application.

B. FirstEnergy's request to approve charges to customers for its time of use rate without a prudence review is unreasonable and should be dismissed.

Setting aside the procedural defects in FirstEnergy's filing, the Utility's requests themselves are unreasonable and should be denied by the PUCO.

First, the Utility requested the PUCO's permission to charge customers as much as \$5.8 million for costs associated with continuing Rider RCP, even though participation levels are expected to be "very low."¹⁴ In this regard, the Utility notes that only six customers elected to take service under the previous Rider RCP in the summer of 2014.¹⁵ FirstEnergy points out that it did not seek approval to continue Rider RCP because the Utility "did not believe the costs associated with continuing to offer the Previous Rider RCP justified continuing to offer the program on a going forward basis."¹⁶ The Utility estimates it could cost over \$5 million to offer Rider RCP to up to 250 customers through 2019.¹⁷ According to the Utility, these estimates generally include the costs to maintain the network and back office system, costs to maintain the meters, as well as costs to operate Rider RCP.¹⁸

The PUCO should not approve these additional charges to customers based on the Utility's bare-bones request that is not adequately supported by evidence. FirstEnergy should be required to demonstrate that any charges to customers for Rider RCP are

¹⁴ FirstEnergyApplication for Rehearing at 1.

¹⁵ Id. at 2.

¹⁶ Id.at 4.

¹⁷ Id.

¹⁸ Id.

prudent and reasonable before they are approved. If the Utility does not believe it can continue Rider RCP in a cost-effective manner that acknowledgement provides the PUCO further justification for examining the prudence of the estimated \$5.8 million in costs prior to requiring FirstEnergy to provide Rider RCP.

Second, FirstEnergy's argument that it does not want to be subject to a prudence review by the PUCO supports the notion that these additional Rider RCP charges would not be found to be prudent by the PUCO. In its Order, the PUCO found that it will only approve recovery of *prudently incurred costs* (subject to an annual true-up and reconciliation), for Rider RCP.¹⁹ That was a reasonable and lawful approach for the PUCO to advocate, prior to charging customers for such costs. The Utility's request to forgo a prudence review is contrary to the PUCO's ruling. It would be unjust and unreasonable to forego a prudence review of these costs because it puts customers at risk of paying for imprudent charges. The PUCO should deny FirstEnergy's rehearing request.

III. CONCLUSION

The PUCO should deny FirstEnergy's Application for Rehearing. Procedurally, the Application does not follow the PUCO's rules as it seeks clarification and does not specifically set-forth the grounds in which the PUCO's Order was unlawful or unreasonable. The PUCO should not allow customers to be charged for Rider RCP until the Utility demonstrates that any additional charges to customers are prudent. Further, the Utility's request that the PUCO forgo its review of the prudence of charges associated with Rider RCP is unreasonable and should be denied.

¹⁹ Order at ¶ 8 (May 28, 2015) (emphasis added).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra was served on the persons stated below via electronic transmission this 9th day of July, 2015.

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Summary: Memorandum Memorandum Contra FirstEnergy's Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Kern, Kyle L.