

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

PCC AIRFOILS, LLC,	)	
	)	
Complainant,	)	
	)	Case No. 16-2213-EL-CSS
v.	)	
	)	
THE CLEVELAND ELECTRIC	)	
ILLUMINATING COMPANY,	)	
	)	
Respondent.	)	
	)	

**Post Hearing Brief of PCC Airfoils, LLC**

This is a simple case involving the application of a Cleveland Electric Illuminating Company (CEI) tariff. The complaint initially raised two claims, but according to the filed testimony of Peter Blazunas by CEI, CEI essentially concedes the second pleaded claim.

**I. Selection of Subtransmission Service Under the Tariff**

The primary issue tried and requiring briefing in this case is whether PCC Airfoils LLC has a right under the applicable CEI tariff to migrate from the current General Service Secondary service to General Service Subtransmission. The entire tariff was submitted and admitted into evidence as Joint Exhibit 1.

The relevant portion of the tariff argued by both parties and attached as attachments to testimony file by both parties is found on Original Sheet 4, page 4 of 21, effective May 1, 2009. For ease of reference, a copy of that page is attached to this brief.

While PCC Airfoils believes that the language of the applicable tariff unambiguously favors PCC Airfoils position, any ambiguity in the tariff must be

construed in favor of PCC Airfoils, the customer, as a matter of law. *Consumers' Counsel v. Pub. Util. Comm.*, 575 N.E.2d 157, 61 Ohio St.3d 396 (1991)

Pertinent to PCC Airfoils complaint and application to CEI, the tariff states, "C. Delivery Voltage: Subject to the provisions of paragraph IV.B. above<sup>1</sup>, and after the Company determines that facilities of **adequate capacity** are available and **adjacent to the premises** to be served, the types of services available with nominal voltages are: ... Subtransmission Service-11,000 volts three wire and 36,000 volts three wire...." [Emphasis added.]

Besides adequacy of capacity and adjacency to the premises, the only other qualification contained in the tariff is, "Customers with demands in excess of twenty-five (2500) kW will generally be served at Transmission Service."

#### **A. Adequate Capacity**

The adequacy of CEI's capacity for PCC Airfoils to go on the subtransmission line is not at issue. [Transcript p. 38].

#### **B. Adjacency to Premises**

The parties also agree that there is a 36 kV line running adjacent to the PCC Airfoils premises. [Transcript p. 38].

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<sup>1</sup> Paragraph IV.B that precedes the regulation is not applicable in this controversy. Essentially paragraph IV.B, titled, "Continuity," states that the company does not guarantee a continuous supply of electric energy but it will attempt to maintain voltage and frequency within reasonable limits; the company is not liable for damages due to variations; customer has responsibility to supply regulative apparatus if supply voltage is unsatisfactory. The paragraph describes the standard voltages and states that secondary service voltages are within a range of plus or minus 5%; that the company will attempt to take corrective action when voltage are outside the range; that for primary, subtransmission, transmission voltage services, the company provides voltages available from existing facilities and the company designs a system for a range of plus or minus 10% of the normal voltage level for that service.

### C. Customer Demand

CEI's expert witness acknowledged that PCC Airfoils has a peak load in excess of 3000 kW, which exceeds the 2500 kW which "will generally be served at Transmission Service." [Transcript p. 38]. Accordingly, PCC Airfoils not only qualifies for the lesser Subtransmission Service, but has a demand level that should "generally be served at Transmission Service." CEI's expert witness Dean Phillips acknowledged under cross-examination that PCC Airfoils' customer load would not be a cause for denial of Subtransmission Service:

Q. (By Mr. Carroll) The 3,000 kilowatt load of PCC Airfoils would not be a basis for objecting to migrating to the sub-transmission system, would it?

A. No.

Q. After all, CEI has over 400 customers with loads under 2,500 kilowatts receiving sub-transmission service, right?

A. That's correct. [Transcript p. 41].

Accordingly, CEI cannot deny PCC Airfoils' requested migration to the Subtransmission System based upon the PCC Airfoils' load.

### D. Delivery Voltage

In this case, CEI relies on its right to specify the delivery voltage to the extent permitted in the tariff. The right to specify delivery voltage is limited by the tariff. The tariff states, "Delivery voltage will be specified by the Company **and will be based upon** the availability of lines in the vicinity of the customer's premises and commensurate with the size of the customer's load." [Emphasis added.] Not "may be based upon." It is phrased in the mandatory language "**will be** based upon."

As we have already seen, CEI acknowledges "the availability of lines in the vicinity of the consumer's premises" [Transcript p. 38] and acknowledges that Subtransmission Service is "commensurate with the size of the customer's load." [Transcript p. 41]. As CEI's witness Dean testified,

Q. And in denying the application, CEI is relying on a right to determine the delivery voltage; is that correct?

A. That's correct.

Q. The voltage decision in this case was not based upon the availability of lines in the vicinity of the customer's premises, correct?

A. Correct.

Q. And the voltage decision was not based upon the customer's load being too small, correct?

A. Correct. [Transcript pp. 42-43].

According to the standards established by the tariff itself, CEI lacked any tariff basis for refusing to specify the delivery voltage consistent with Subtransmission Service in this case.

#### **E. Real Reason for Denial**

CEI's denial violates its tariff. CEI's witness Dean Phillips testified that the real reason that CEI denied PCC Airfoils' application was that "CEI determined that there was no engineering reason to change PCC Airfoils's delivery voltage...." [Company Exhibit 2, page 10, lines 7-8]. That was the reason CEI gave to PCC Airfoils for the denial. [Transcript pp. 41-42].

Nothing in the tariff justifies denial of the requested migration to Subtransmission Service based upon there being "no engineering reason to change." CEI apparently relies upon an unwritten exception to the tariff known only to CEI. If so,

that is an ambiguity in the tariff which must be construed in favor of PCC Airfoils. *Consumers' Counsel, supra.*

As a customer, PCC Airfoils has the right to select the appropriate tariff rate as long as it otherwise qualifies under the tariff. PCC Airfoils qualifies in this case for migration to Subtransmission Service, GSUB rate schedule.

#### **F. Customer's Right to Select**

The tariff provides in paragraph V.A., "Where two or more alternative rate schedules are applicable to the same class of service, the Company, upon request, **will assist a customer in selecting** an appropriate rate schedule to be applied." [Emphasis added]. In this case, Subtransmission Service is applicable to the industrial class of customer, and PCC Airfoils LLC desires to select the Subtransmission Service rate schedule to be applied, exactly as the tariff permits.

The paragraph continues, "The customer, however, shall select from the alternative rate schedules and such selection shall be the basis for the application or contract for service." Nothing in the paragraph allows CEI to select from the rate schedules. The tariff gives that right and option to the customer.

Paragraph V.B. of the tariff applies to changes in the rate schedule. Again, the right to change is given to the customer. It states, "Subject to the limitations in the service contract or applicable rate schedule, the customer may change to an alternative applicable rate schedule, except [exception not applicable here]."

The common theme is that the customer selects the rate schedule, but CEI may specify the delivery voltage based upon only two things: (1) availability of lines and (2) size of the customer's load. CEI has offered no support in the tariff for deviating from the stated standard for choosing the delivery voltage. If the tariff were to be construed

to provide absolute discretion in CEI notwithstanding the stated standard, that would be an ambiguity that must be construed in favor of PCC Airfoils in accordance with *Consumer Counsel, supra*.

Since PCC Airfoils qualifies for the appropriate delivery voltage for Subtransmission Service, PCC Airfoils has the right to select Subtransmission Service.

## **II. Recovery of Rates Based upon Wrongful Denial**

PCC Airfoils first applied to CEI for Subtransmission Service on June 26, 2015. [Complainant's Exhibit 1, p. 10.] If CEI had approve the application, PCC Airfoils should have been receiving service at GSUB rates since October 26, 2015. [Complainants Exhibit 1, p. 12.]

Accordingly, CEI should be ordered to recalculate PCC Airfoils' electrical service charges based upon Subtransmission Service rates from October 26, 2015 and repay the excess over charges actually paid by PCC Airfoils through the date that the actual Subtransmission Service rate schedule (GSUB) begins.

## **III. General Service Primary**

The direct testimony of Peter Blazunas essentially concedes that PCC Airfoils may migrate to General Service Primary rates with the appropriate engineering and construction in accordance with the proposed configuration attached as PRB-3.

## **IV. Conclusion**

PCC Airfoils believes that the applicable tariff is clear.

PCC Airfoils qualifies for Subtransmission Service because,

- CEI has adequate capacity;
- The appropriate 36 kV line runs adjacent to the premises;

- PCC Airfoils has appropriate peak demand.

Those bullet points are all that the tariff requires.

As a customer, PCC Airfoils and not CEI has the right to select the rate schedule.

The tariff allows CEI to deny the selected delivery voltage only if there is a lack of available adjacent lines or if the customer's load is too small. Neither basis for denial applies in this case. If CEI is to comply with its own tariff, CEI has no discretion to deny PCC Airfoils the right to select the general Subtransmission Service rate schedule based upon delivery voltage.

CEI had a clear duty under its tariff to approve PCC Airfoils selection of the general Subtransmission Service rate schedule. Because of CEI's unreasonable contrary-to-tariff refusal to allow PCC Airfoils to select a rate schedule for which it qualifies (after required engineering and construction of facilities) , CEI has denied PCC Airfoils adequate service.

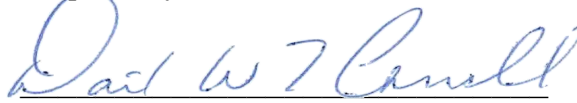
## **V. Relief Requested**

PCC Airfoils respectfully requests that the Commission,

- Order CEI to approve the customer request to select the general Subtransmission Service rate schedule and provide appropriate cooperation with PCC Airfoils in connection with the engineering and construction that will be required;
- Order CEI to recalculate PCC Airfoils electrical service charges based upon Subtransmission Service rates from October 26, 2015 and repay the excess over charges actually paid by PCC Airfoils through the date that the actual Subtransmission Service rate schedule (GSUB) begins;
- In the alternative and only if the Commission finds in favor of CEI on the Subtransmission Service rate schedule issue, order CEI to approve PCC Airfoils migration to General Service Primary retaining the Business Distribution Credit Rider and ordering CEI to recalculate PCC Airfoils electrical service charges based upon the General Service Primary from October 26, 2015 and repay the excess over charges actually paid by PCC

Airfoils through the date that the actual General Service Primary rate schedule begins after the required engineering and construction.

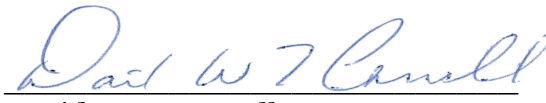
Respectfully submitted,



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### **CERTIFICATE OF SERVICE**

I certify that on June 16, 2017, I served a true copy of the foregoing responses to requests for production upon Carrie M Dunn, First Energy Service Company, 76 S. Main St., Akron, OH 44308, [cdunn@firstenergycorp.com](mailto:cdunn@firstenergycorp.com) and Joshua R. Eckert, FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308, [jeckert@firstenergycorp.com](mailto:jeckert@firstenergycorp.com).



David W. T. Carroll



**ELECTRIC SERVICE REGULATIONS**

- C. Delivery Voltage:** Subject to the provisions of paragraph IV.B above, and after the Company determines that facilities of adequate capacity are available and adjacent to the premises to be served, the types of service available with the nominal voltages are:

1. **Secondary Service** - Less than or equal to 600 volts
2. **Subtransmission Service** - 11,000 volts three wire and 36,000 volts three wire
3. **Transmission Service** - Greater than or equal to 69,000 volts
4. **Primary Service** - All other available voltages

Delivery voltage will be specified by the Company and will be based upon the availability of lines in the vicinity of the customer's premises and commensurate with the size of the customer's load. Customers with demands in excess of twenty-five hundred (2,500) kW will generally be served at Transmission Service

**V. RATE SCHEDULE ALTERNATIVES**

- A. Selecting Rate Schedule:** Where two or more alternative rate schedules are applicable to the same class of service, the Company, upon request, will assist a customer in selecting an appropriate rate schedule to be applied. The customer, however, shall select from the alternative rate schedules and such selection shall be the basis for the application or contract for service. No refund will be made representing the difference in charges under different rate schedules applicable to the same class of service except as required by law.
- B. Changing Rate Schedule:** Subject to limitations in the service contract or applicable rate schedule, the customer may change to an alternative applicable rate schedule, except that a customer contracting for a specified capacity served at available primary or transmission voltage shall not be eligible to recontract for service at secondary voltage, unless a secondary voltage circuit of adequate capacity is available adjacent to the premises and the customer complies with all of the provisions of the applicable secondary rate schedule.

**VI. BILLING AND PAYMENT**

- A. Billing Periods:** Bills for electric service will be rendered monthly or at the Company's option at other regular intervals. Bills rendered monthly shall typically cover a period of approximately 30 days.
- B. Due Dates:** For residential customers, bills are due and payable to the Company on or before fourteen (14) days from the date the bill is mailed to said customer. Governmental customers' bills are due and payable to the Company on or before thirty (30) days from the date the bill is mailed to said customer. All other customers' bills are due and payable to the Company on or before twenty-one (21) days from the date the bill is mailed to said customer. When the due date for payment falls on Saturday, Sunday or a holiday the due date for payment is extended to the next business day. Remittances mailed by the customer for the amount(s) due shall be accepted by the Company as tendered within the period to avoid late payment charges if such payment is received by the Company no more than five (5) days after the due date of the bill.

**This foregoing document was electronically filed with the Public Utilities**

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