

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

PCC Airfoil's Reply to CEI's Post Hearing Brief

I. Overview

CEI's post hearing brief offers a new interpretation of CEI's tariff. A cardinal principle of tariff interpretation was established by the Ohio Supreme Court in *Consumers' Counsel v. Pub. Util. Comm.*, 575 N.E.2d 157, 61 Ohio St.3d 396 (1991). Ambiguities in a tariff must be construed in favor of the customer, in this case PCC Airfoils LLC.

II. The Meaning of "Require"

In its post hearing brief and for the first time in this matter, CEI proposes to deny sub transmission service to PCC Airfoils, because in CEI's sole opinion, PCC Airfoils does not "require" sub transmission service. CEI contends that a customer does not "require" sub transmission service unless it is currently receiving inadequate service. CEI's interpretation is unsupported by anything actually in the tariff.

"Require" is not defined in the tariff. According to Webster's dictionary (<http://www.dictionary.com/browse/require?s=t>) "require" means:

1. to have need of; need: He requires medical care.

2. to call on authoritatively; order or enjoin to do something: to require an agent to account for money spent."
3. to ask for authoritatively or imperatively; demand.
4. to impose need or occasion for; make necessary or indispensable: The work required infinite patience.
5. to call for or exact as obligatory; ordain: The law requires annual income-tax returns.
6. to place under an obligation or necessity: The situation requires me to take immediate action.
7. Chiefly British. to desire; wish to have: Will you require tea at four o'clock?

It is a **requirement** of every private business to take appropriate steps to maximize its profits by attracting revenues and minimizing expenses including utility costs. PCC Airfoils **requires** sub transmission service as part of its duty to its members to minimize expenses (e.g., have need of).

PCC Airfoils **requires** CEI to supply sub transmission service because it has applied for it, demanded it from CEI, and now is demanding it via its complaint to the Public Utilities Commission of Ohio (e.g. to exact as obligatory or to ask for authoritatively). This interpretation is consistent with CEI's tariff in Section V. A and B which expressly permits the customer to select the appropriate rate schedule, as discussed in PCC Airfoils Post Hearing Brief.

By having requested it under the tariff, PCC Airfoils **requires** sub transmission service (e.g., to desire; wish to have).

Nothing in the dictionary definition supports CEI's proposed extremely limited interpretation which amounts to "would fail to survive without it." Nothing in the definition and nothing in the tariff provides that "requires" is a strictly engineering

determination. Nor is there anything in the definition which provides that it is CEI's sole right to decide whether PCC Airfoils requires sub transmission service.

At worst, CEI's argument suggests an ambiguity in the construction of the word "requires" in the tariff. If so, the tariff must be construed in favor of PCC Airfoils in accordance with *Consumer's Counsel, supra..* Since PCC Airfoils **requires** sub transmission service in several senses of the dictionary definition—and construing any ambiguity in PCC Airfoils' favor—CEI has a duty under its tariff to supply sub transmission service to PCC Airfoils.

III. CEI Admits Violating its own Tariff

In its post hearing brief, CEI state that "CEI takes numerous factors into account when determining the service voltage...." CEI Brief at 2 and 7. By saying that CEI admits that it violates its own tariff. Here is what the tariff says about the proper bases for determining the voltage to be supplied:

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. [Emphasis added.]

Nothing in the tariff permits CEI to consider "numerous factors." The only factors permissible under the tariff are the availability of lines in the vicinity of the customer's premises and the size of the customer's load. PCC Airfoils qualifies under both factors in this case.

Making the determination based upon other "numerous factors" violates CEI's tariff. CEI's deliberate violation of its own tariff should be taken into account in determining that it has provided inadequate service to PCC Airfoils in this case.

IV. CEI Falsely Claims that Request was Abandoned

There is no basis in the record or elsewhere for CEI's claim that the June 2015 request to change its class of service from secondary to sub transmission service was apparently abandoned. To the contrary, PCC Airfoils deferred aggressive pursuit of the request while PCC Airfoils worked to recover wrongful charges from CEI. CEI had failed to apply the Business Development Credit Rider to PCC Airfoils account. PCC Airfoils also worked to obtain the alternate service in the second claim of the complaint (which CEI also wrongfully denied) before bringing the sub transmission service matter to the PUCO. PCC Airfoils never "abandoned" its application that CEI had wrongfully denied.

V. CEI Exaggerates the Risk of PCC Airfoils Receiving Sub transmission Service

CEI exaggerates the risk of allowing PCC Airfoils to receive sub transmission service. In fact, reading between the lines of CEI's post hearing brief and reading the express testimony of its expert Dean Phillips, the only risk involved is that of adding one more customer to the sub transmission system in the sense that every customer anywhere is a "potential point of failure" for the system.

Mr. Phillips testified that the process includes an engineering proposal and review. "The purpose of that is to help protect the sub transmission system from events on PCC Airfoils site...." [Transcript page 44]. The only additional risk is the normal risk of adding a customer to the system because of "additional facilities (poles, wires, transformers)" as explained by Mr. Phillips. [CEI Exhibit 2, Phillips testimony at p. 6].

It is perhaps the unfortunate burden of public utilities to be forced to serve customers. Every customer in every service category requires the utility to provide facilities (poles, wires, transformers) that put other customers at risk. But that is the

job, the duty, of the public utility. That is the electric utility's reason for its existence. The risk of adding PCC Airfoils to the sub transmission service is no greater than adding any other customer, and the process includes design and approval of isolation facilities to protect the distribution system from customer-side events.

It is also the job of the public utility to follow its own tariff, a tariff that it drafted. CEI has failed to follow its tariff in this case and has thus provided inadequate service.

VI. Conclusion

PCC Airfoils believes that the applicable tariff is clear. PCC Airfoils **requires** CEI to provide the service for which it qualifies, sub transmission 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.

Under the tariff, 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. CEI has no discretion to deny PCC Airfoils the right to select the general sub transmission service rate schedule that it **requires** for its financial health and otherwise.

CEI had a clear duty under its tariff to approve PCC Airfoils selection of the general sub transmission service rate schedule. CEI's unreasonable refusal contrary to its own tariff constitutes inadequate service.

VII. Relief Requested

PCC Airfoils respectfully repeats its request that the Commission,

- Order CEI to approve the customer request to select the general sub transmission 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 sub transmission service rates from October 26, 2015 and repay the excess over charges actually paid by PCC Airfoils through the date that the actual sub transmission service rate schedule (GSUB) begins;
- In the alternative and only if the Commission finds in favor of CEI on the sub transmission 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.

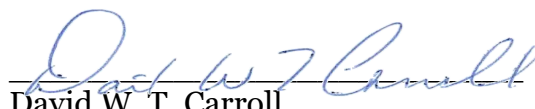
Respectfully submitted,



David W. T. Carroll
Carroll, Ucker & Hemmer LLC
175 S. 3rd St., Suite 200
Columbus OH 43215
614-547-0350
dcarroll@cuhlawn.com
Attorney for PCC Airfoils LLC

CERTIFICATE OF SERVICE

I certify that on June 23, 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 and Joshua R. Eckert, FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308, jeckert@firstenergycorp.com.



David W. T. Carroll

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Summary: Brief PCC Airfoils' Reply to CEI Post-Hearing Brief electronically filed by Mr. David W. Carroll on behalf of PCC Airfoils, LLC