

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
OHIO EDISON, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY,
AND THE TOLEDO EDISON COMPANY TO
SAFELY RESUME ACTIVITIES TO PRE-
COVID-19 LEVELS AND REQUESTS FOR
WAIVERS

CASE NO. 20-1345-EL-WVR

FINDING AND ORDER

Entered in the Journal on September 23, 2020

I. SUMMARY

{¶ 1} The Commission approves the transition plan of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or the Companies) to return to pre-COVID-19 operations and activities, consistent with this Finding and Order.

II. DISCUSSION

A. *Procedural History*

{¶ 2} FirstEnergy is an electric light company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4909.16 provides, in part, that, in the event of an emergency, when the Commission finds it necessary to prevent injury to the business or interests of the public or of any public utility, it may temporarily alter, amend, or suspend any existing rates or schedules.

{¶ 4} R.C. 4905.13 authorizes the Commission to establish systems of accounts to be kept by public utilities and to prescribe the manner in which these accounts will be kept. Pursuant to Ohio Adm.Code 4901:1-9-05, the Commission adopted the Uniform System of Accounts (USOA), which was established by the Federal Energy Regulatory Commission

(FERC), for electric utilities in Ohio, except to the extent that the provisions of the USOA are inconsistent with any outstanding accounting orders of the Commission. Additionally, the Commission may require the creation and maintenance of such additional accounts as may be prescribed to cover the accounting procedures of electric utilities.

{¶ 5} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 6} Pursuant to R.C. 3701.13, the Ohio Department of Health has supervision of “all matters relating to the preservation of the life and health of the people” and the “ultimate authority in matters of quarantine and isolation.” On March 12, 2020, the Director of the Ohio Department of Health issued an Order indicating that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible.”

{¶ 7} On March 12, 2020, the Commission opened Case No. 20-591-AU-UNC and directed all utility companies in this state to review their disconnection procedures in light of the state of emergency. *In re the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC (*Emergency Case*), Entry (Mar. 12, 2020) at ¶ 7. On March 13, 2020, the Commission extended its winter reconnection order through May 1, 2020, and directed all utility companies in this state to review their reconnection procedures. *Emergency Case*,

Entry (Mar. 13, 2020) at ¶ 6. In the March 12, 2020, and March 13, 2020 Entries, the Commission also directed all utility companies to promptly seek any necessary approval, for the duration of the emergency, to suspend otherwise applicable disconnection or reconnection requirements that may impose a service continuity or service restoration hardship on residential and non-residential customers or create unnecessary COVID-19 risks associated with social contact. The Commission determined that such filings shall be deemed approved on an emergency basis for a period of at least 30 days effective as of the filing date or until such date as the Commission may otherwise specify, which shall not be less than 30 days.

{¶ 8} On March 20, 2020, in the *Emergency Case*, the Commission directed all utility companies to suspend in-person, actual meter readings in circumstances where a meter is located inside a customer's home or similar location, as well as all other non-essential functions that may create unnecessary COVID-19 risks associated with social contact. The Commission also clarified that requests for accounting authority or incremental cost recovery related to the emergency will be addressed in each utility's individual case by subsequent entry. *Emergency Case*, Entry (Mar. 20, 2020) at ¶¶ 10-11, 13.

{¶ 9} On April 8, 2020, in the *Emergency Case*, the Commission, among other things, extended the 30-day automatic approval period for filings to suspend otherwise applicable disconnection requirements for an additional 30 days, unless otherwise ordered by the Commission. *Emergency Case*, Finding and Order (Apr. 8, 2020) at ¶ 9.

{¶ 10} On July 31, 2020, FirstEnergy filed this request for approval of its transition plan for resuming disconnections and other activities (transition plan).

{¶ 11} Motions for intervention have been filed by Ohio Partners for Affordable Energy (OPAE), Coalition on Homelessness and Housing in Ohio (COHHIO), Ohio Consumers' Counsel (OCC), and Ohio Poverty Law Center (OPLC). No memoranda contra were filed. The Commission finds that the motions are reasonable and should be granted.

{¶ 12} On August 10, 2020, OP&E, COHHIO, OCC, and OPLC filed comments in response to FirstEnergy's transition plan.

{¶ 13} On August 13, 2020, Staff filed its review and recommendations in response to FirstEnergy's transition plan. Staff's filing was also docketed in Case No. 20-1344-EL-UNC on August 13, 2020.

{¶ 14} On August 19, 2020, Citizen's Coalition filed comments in response to FirstEnergy's transition plan.

{¶ 15} On August 20, 2020, COHHIO, OCC, and OPLC filed supplemental comments in response to FirstEnergy's transition plan.

B. Review of the Transition Plan and the Comments

1. RESUMPTION OF DISCONNECTIONS AND PAYMENT PLAN OPTIONS

{¶ 16} FirstEnergy states that it has suspended service shutoffs for nonpayment for both residential and non-residential customers in response to the Commission's March 12, 2020 Entry. *Emergency Case*, Entry (Mar. 12, 2020). FirstEnergy now proposes to end its moratorium on disconnecting customer accounts for non-payment by resuming disconnections on September 15, 2020, noting that it has communicated to customers via its website, bill messages, and interactive voice response system that it will not resume disconnections before September 15, 2020. Additionally, FirstEnergy states that it will provide information to customers at least 21 days before resuming disconnections stating that the disconnection will soon be actionable. Further, FirstEnergy notes that it will resume normal disconnection procedures and notifications but also contact residential customers 10 days before disconnection by personal contact, telephone, or hand-delivered notice. With respect to personal protective equipment (PPE), FirstEnergy commits to utilizing PPE when providing personal notice.

{¶ 17} Regarding service restoration after a disconnect, FirstEnergy states that it has reconnected customers upon request without a requirement to pay reconnection fees in

response to the Commission's March 13, 2020 Entry. *Emergency Case*, Entry (Mar. 13, 2020). FirstEnergy proposes to resume its normal requirements for reconnecting service on September 15, 2020. This plan will require customers to pay the entire delinquent amount, reconnection charges, and payment of a security deposit before reconnecting the service. FirstEnergy commits to communicate the new reconnection requirements to customers at least 21 days before resuming those requirements.

{¶ 18} Regarding the payment of late charges, FirstEnergy indicates that it has waived late payment charges since April 3, 2020. FirstEnergy seeks to resume late payment charges starting on or after September 15, 2020, noting that it will not subsequently charge late payments that were waived. FirstEnergy states that it will communicate the resumption of late payment charges at least 21 days before resuming those charges.

{¶ 19} Regarding alternative payment plans, FirstEnergy states that it has offered additional payment plans during the state of emergency. FirstEnergy indicates that the additional payment plan for residential customers has allowed a repayment term of up to twelve months and no money down, and the additional payment plan for nonresidential customers has allowed a repayment term of up to six months and no money down. FirstEnergy seeks to discontinue offering these additional payment plan options on September 15, 2020, noting that it will continue to honor the payment plans customers have already entered. FirstEnergy commits to communicating the discontinuation of the additional payment plans at least 21 days before discontinuing those plans.

{¶ 20} Regarding the customer assistance programs, FirstEnergy states that it has suspended percentage of income payment plan (PIPP) anniversary date unenrollments since mid-March 2020 at the request of the Ohio Development Services Agency (ODSA). The Companies indicate that they will coordinate with the ODSA as that agency reinstitutes the PIPP eligibility verification process. FirstEnergy also commits to extend the Summer Crisis Program through September 30, 2020.

{¶ 21} Regarding in-person activities, FirstEnergy indicates that it has not read indoor meters, performed inside service disconnections, or in-person collection activities in response to the Commission's March 20, 2020 Entry. *Emergency Case*, Entry (Mar. 20, 2020). FirstEnergy plans to request that customers self-report meter information where the meter is located indoors. FirstEnergy requests that the Commission lift the directives in its March 20, 2020 Entry so FirstEnergy can resume in-person meter readings of indoor meters and inside service disconnections for non-payment. FirstEnergy commits to use the appropriate social distancing protocol and PPE during all in-person activities.

{¶ 22} OPAE states that, while it has advocated for a moratorium on disconnections until the Winter Reconnect Order, the date of September 15, 2020, is consistent with other transition plans approved by the Commission. OPAE suggests continuing the suspension of reconnection fees and deposits until the Winter Reconnect Order is implemented and offering flexibility on down payments, which it states would be consistent with Dominion East Ohio Transition Plan. *In re the Motion of the East Ohio Gas Company DBA Dominion Energy Ohio to Suspend or Modify Certain Procedures and Processes During the Covid-19 State of Emergency and Related Matters*, Case No. 20-600-GA-UNC, Entry (July 15, 2020) at ¶40. OPAE also argues that late fees should not be charged until the Winter Reconnect Order is implemented. It notes that the primary focus in negotiating payment plans should be the customer's ability to comply with it rather than a specific number of months to repay. OPAE also states that FirstEnergy should be flexible with in-person contact with customers, especially when a customer is at high risk for COVID-19 and avoid unnecessary interactions.

{¶ 23} COHHIO, OCC, and OPLC state in their joint comments that FirstEnergy never filed an emergency plan pursuant to the Commission's March 12, 2020 Entry. They argue that FirstEnergy should not resume disconnections, require deposits, charge late fees, or charge reconnection fees on September 15, 2020, because the emergency is not yet over. Noting that other utility companies provide additional payment plans such as a 24-month plan, they recommend that FirstEnergy allow customers to enter into extended repayment plans during the emergency and for a reasonable amount of time thereafter. They also note

that FirstEnergy should outline a more specific plan for PIPP customers rather than just planning to coordinate with ODSA.

{¶ 24} Citizen's Coalition states its opposition to FirstEnergy's plan to resume disconnections on September 15, 2020. It instead proposes a reevaluation of the economy and virus statistics at the end of September 2020 to determine if shutoffs are feasible at that time. Citizen's Coalition also proposes that if a customer does not answer the door for a disconnection attempt, then FirstEnergy should leave a two-day notice at the location rather than proceeding with the disconnection immediately. In addition to opposing FirstEnergy's timeline for beginning to disconnect customers for non-payment, Citizen's Coalition opposes FirstEnergy's proposal to resume charging reconnection fees and security deposits for low-income customers. It similarly opposes the reinstatement of late fees for low-income customers. Regarding payment plan options, Citizen's Coalition urges that the Companies offer 12-month payment plans indefinitely or at least through the end of 2020. It also proposes the reduction of PIPP payments from 6% to 3% of monthly income until at least December 15, 2020. Citizen's Coalition proposes that instead of in-person meter reads for indoor meters, FirstEnergy should request meter reading reports from the customers so that in-person contact can be minimized. As a suggestion for written communications, Citizen's Coalition proposes that FirstEnergy emphasize changing policies in large color font in written communications.

{¶ 25} The Commission recognizes that many customers may continue to experience financial stress as a result of COVID-19, despite the gradual reopening of businesses throughout Ohio. At the same time, service disconnections for non-payment cannot be suspended indefinitely. For the protection of consumers, the Commission, therefore, previously extended the winter reconnect order issued in Case No. 19-1472-GE-UNC until May 1, 2020, which provided customers with additional options to reconnect service or avoid the disconnection of service. *Emergency Case*, Entry (Mar. 13, 2020) at ¶ 8. Further, FirstEnergy has ceased all residential and non-residential disconnections. FirstEnergy also suspended its collection of deposits and reconnection fees for customers that had been

recently disconnected while also halting late fees. In addition, FirstEnergy has offered additional payment plans, as well as taken steps to ensure that PIPP customers remain enrolled in the program regardless of eligibility and verification requirements. Moreover, pursuant to Ohio Adm.Code 4901:1-18-05(A), FirstEnergy is required to offer a custom payment plan when contacted by a customer who has, or seeks to avoid, a delinquent account, while considering certain factors such as the account balance and recent payment history. For these reasons, we approve FirstEnergy's transition plan, except in regard to the Companies' request to resume meter readings where the meter is located inside a customer's residence. FirstEnergy may resume residential disconnections where the meter is located inside a customer's residence, as presented in the transition plan. In approving the transition plan, we stress the need for the Companies' consistent commitment to provide employees and contractors with necessary PPE and to observe social distancing guidelines, as well as other precautionary measures. The Commission declines to adopt Citizen's Coalition, COHHIO, OCC, and OPLC's recommendation that disconnections for non-payment be suspended until a later date.

{¶ 26} Additionally, the Commission finds that FirstEnergy's resumption of regular payment plans for residential and non-residential customers should be approved. While we approve FirstEnergy's transition back to regular payment plans, we acknowledge that the proposed down payments could be financially difficult for some customers during the pandemic. Accordingly, in addition to the resumption of payment plans as proposed in the transition plan, FirstEnergy should continue to provide residential customers with the extended payment plan options, including PIPP, as set forth in Ohio Adm.Code 4901:1-18-05, and information regarding other available payment assistance. We also expect that FirstEnergy will accommodate reasonable requests from both residential and non-residential customers for additional payment plan options on a case-by-case basis. As to the resumption of late payment fees and the reinstatement of reconnection fees and deposits, we determine that FirstEnergy's transition plan is reasonable. However, FirstEnergy should be flexible with the collection of deposits and fees during this emergency where it is

reasonable to do so under the circumstances. Finally, regarding PIPP customers, the Commission directs FirstEnergy to work with ODSA to determine how and when eligibility and verification requirements will be reinstated after the moratorium ends and whether missed PIPP payments will be rolled into arrears. By October 2, 2020, FirstEnergy shall file a notice in these dockets confirming how the PIPP and Graduate PIPP programs will begin to resume their normal operations.

2. WAIVER OF CERTAIN REQUIREMENTS AND OPERATIONAL REPORT

{¶ 27} FirstEnergy proposes that for the duration of the state of emergency it will provide email notification to the director of the Service Monitoring and Enforcement Department for each month that the average answer time for customer service calls exceeds 90 seconds.

{¶ 28} FirstEnergy also requests a permanent waiver of the Commission's rule requiring employees to accept payments in the field. It seeks this waiver to limit face-to-face interactions and allow for social distancing. It states that it will update communications to customers that clarify that no payments will be accepted in the field.

{¶ 29} Further, FirstEnergy requests a waiver of any other Commission rules, orders, or tariff requirements that conflict with their transition plan.

{¶ 30} Staff does not oppose a temporary waiver that would allow FirstEnergy to email instead of providing a report when the answer time for calls exceeds 90 seconds. However, Staff does not recommend a waiver of the rule that requires FirstEnergy to accept payments in the field to avoid disconnection, reasoning that customers expect this option at the time of disconnection. Additionally, disconnection requires both the disconnect and later reconnect, so taking payments in the field could prevent a second face-to-face interaction at a later time.

{¶ 31} OP&E opposes FirstEnergy's request for a permanent waiver to the requirement to accept payment in the field. It states that FirstEnergy provided no justification for a temporary or permanent waiver of this requirement.

{¶ 32} COHHIO, OCC, and OPLC state in their joint comments that FirstEnergy's request for a blanket waiver for any tariffs and code sections should not be adopted by the Commission. They assert that FirstEnergy must identify the tariffs and code section it seeks to waive and justify that waiver. They also state their opposition to FirstEnergy's request to waive the requirement to accept payments in the field to avoid disconnection.

{¶ 33} Citizen's Coalition opposes FirstEnergy's first waiver request, reasoning that long phone wait times are burdensome to customers and that FirstEnergy's continued reporting would take minimal effort because the information is already being tracked. Citizen's Coalition also opposes FirstEnergy's request to suspend the requirement to accept in-person payments. Citizen's Coalition emphasizes the importance of in-person payments when the alternative is disconnecting service and suggests that safety precautions when accepting in-person payments can minimize the risks of spreading COVID-19.

{¶ 34} The Commission finds that FirstEnergy's request to temporarily provide email notification for each month that the average answer time for customer service calls exceeds 90 seconds is approved. With respect to FirstEnergy's request for a permanent waiver of the requirement to accept payments in the field, we decline to extend the waiver. In doing so, we stress the need for the Companies' consistent commitment to provide employees and contractors with necessary PPE and to observe social distancing guidelines, as well as other precautionary measures. Further, the Commission declines to extend waivers of the Commission's rules, orders, or tariff requirements that conflict with the transition plan, finding that the Companies must specify areas where they deem noncompliance to be supported, rather than seeking blanket Commission approval for any such items. FirstEnergy shall withdraw or consider expired any waiver that persists for 12 months after this Finding and Order.

3. ADDITIONAL OCC RECOMMENDATION

{¶ 35} OCC recommends that the Commission establish a uniform set of guidelines, such as those published by the National Consumer Law Center (NCLC), applicable to all utilities for establishing an orderly transition back to pre-pandemic operations. OCC notes that each utility is proposing its own schedule for resuming activities, including disconnections for non-payment, and that the consumer protections available in some utility service territories differ greatly from the protections available to consumers elsewhere. OCC concludes that this haphazard approach should not be approved by the Commission.

{¶ 36} As we have noted in prior orders, the issues of service continuity, social distancing, consumer protections, and payment arrangements, including fees and charges, are being, and will continue to be, adequately addressed through the *Emergency Case* and each utility company's emergency plan case. *See, e.g., In re Columbia Gas of Ohio, Inc.*, Case No. 20-637-GA-UNC, Finding and Order (May 20, 2020) at ¶ 51; *In re The East Ohio Gas Co. d/b/a Dominion Energy Ohio*, Case No. 20-600-GA-UNC, Supplemental Finding and Order (July 15, 2020) at ¶ 43. Because the Commission finds that FirstEnergy's transition plan is reasonable in addressing these issues, subject to our findings elsewhere in this Finding and Order, we again decline to adopt OCC's recommendation regarding the NCLC guidelines.

C. Commission Conclusion

{¶ 37} Upon thorough review of FirstEnergy's transition plan and the intervenors' comments, the Commission finds that the transition plan is reasonable and should be approved, consistent with the above findings.

III. ORDER

{¶ 38} It is, therefore,

{¶ 39} ORDERED, That FirstEnergy's transition plan be approved, consistent with this Finding and Order. It is, further,

{¶ 40} ORDERED, That FirstEnergy take all necessary steps to carry out the terms of this Finding and Order. It is, further,

{¶ 41} ORDERED, That the motions to intervene in these proceedings filed by COHHIO, OCC, OPLC, and OPAE be granted. It is, further,

{¶ 42} ORDERED, That a copy of this Finding and Order be served upon all interested persons and parties of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

JWS/hac

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Case No(s). 20-1345-EL-WVR

Summary: Finding & Order approving the transition plan of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or the Companies) to return to pre-COVID-19 operations and activities, consistent with this Finding and Order electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio