

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of First- )  
Energy Corp. on behalf of Ohio Edison )  
Company, The Cleveland Electric Illumi- ) Case No. 01-2736-EL-UNC  
nating Company, and The Toledo Edison )  
Company for Approval of Tariff Adjust- )  
ments. )

ENTRY ON REHEARING

The Commission finds:

- (1) On October 24, 2001, FirstEnergy Corp. (FirstEnergy), on behalf of The Cleveland Electric Illuminating Company, The Toledo Edison Company, and Ohio Edison Company, filed an application to revise its shopping credits established in each of the utilities' electric transition plans (ETP). The application was submitted pursuant to the Stipulation and Recommendation (Stipulation) and the Supplemental Settlement Materials (Supplemental Settlement) filed in Case No. 99-1212-EL-ETP, which were approved by the Commission on July 19, 2000. Under that Stipulation, FirstEnergy was obligated to submit a compliance filing prior to November 1, 2001 in order to reflect the shopping credits to be effective on January 1, 2002. The level of the shopping credits set out in the tariffs consists of a shopping credit (or market support pricing) component and an incentive component, dependent on the level of customer shopping achieved for individual classes. The Stipulation specifies that the shopping incentive percentage for the commercial and industrial classes will not be increased from the previous year if more than 20 percent shopping levels have been attained. FirstEnergy demonstrated that 20 percent shopping levels had been attained for all commercial and industrial classes for the measuring period in accordance with the provisions specified in the Stipulation and the Supplemental Settlement.
- (2) On November 14, 2001, Enron Energy Services (Enron) filed a Motion to Intervene and a Memorandum Contra to the October 24, 2001 application. On December 5, 2001, Citizen Power, Inc., et al. (Citizen) filed a motion to intervene and a memorandum contra to the application. Enron and Citizen argued, among other things, that, in calculating the 20 percent level, no weight should be given to affiliated transactions (e.g. customers who shop with marketing affiliates of FirstEnergy) and that

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FirstEnergy failed to establish that there is shopping at the 20 percent level.

- (3) On December 13, 2001, the Commission approved the application, finding that the computation of shopping levels, as reported in the application, was consistent with the Stipulation. The Commission also denied the motions to intervene filed by Enron and Citizen, inasmuch as the Commission did not hold a hearing on the application.
- (4) On December 31, 2001, Citizen filed an application for rehearing. Citizen asserts that the Commission erred by not granting Citizen intervention. Further, Citizen argues that the factors FirstEnergy used to consider whether or not 20 percent switching levels had occurred were unreasonable and did not give a true picture of the percentage of customers that actually switched. Citizen believes that, in calculating the 20 percent switch, FirstEnergy should not have (a) deleted contract customers from the data base, (b) used electric load figures from 2 to 3 years ago, and (c) counted switches between wholly owned subsidiaries of FirstEnergy Corp.
- (5) On January 10, 2002, FirstEnergy filed a memorandum contra to the application for rehearing. FirstEnergy argues that it was proper for the Commission to deny Citizen's intervention and that, in determining the levels of customer switching, FirstEnergy followed the provisions of the Stipulation approved by the Commission.
- (6) The Commission has considered the issues raised by Citizen on rehearing. In reviewing FirstEnergy's application, we found that FirstEnergy had followed the provisions of the Stipulation concerning how future adjustments would be made to the shopping credits. The methodology for determining whether 20 percent switching level has been met was one of many issues upon which parties to the Stipulation agreed as part of a total agreement. The Commission will not now change the terms of the Stipulation by ordering that a different methodology be used. With regard to the issue of our denial of Citizen's intervention, we do not agree with Citizen that it had a right to intervene or that its intervention in the ETP case automatically gave it intervention status in the current docket. The application filed by FirstEnergy was one to amend its operating companies' tariffs to adjust the shopping credits. No increase in rates was requested in the application. Pursuant to Section 4909.18, Revised Code, the Commission is not required to hold a hearing on the application. Further, there is no requirement in the Stipulation that the Commission holds a hearing before adjusting the shopping credits. Having reviewed the

application and finding that it followed the agreed-upon methodology, the Commission determined that no hearing was warranted. Consequently, Citizen's intervention was not granted in the application docket inasmuch as the Commission was not holding a hearing. Our holding is supported by the Ohio Supreme Court in *Ohio Domestic Violence Network v. Pub. Util. Comm.*, 70 Ohio St. 3d 311 (1994), wherein the court stated:

Appellants argue that the commission was compelled to grant them intervention under R.C. 4903.221. That statute, however, clearly contemplates intervention in quasi-judicial proceedings, characterized by notice, hearing, and the making of an evidentiary record. Since the commission did not exercise its discretion to hold a hearing on applications for new services under R.C. 4909.18, there is no right to intervene.

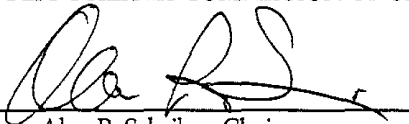
Further, we do not agree with Citizen that its intervention in the FirstEnergy ETP case makes it a party to the instant application. We have not consolidated the two dockets nor incorporated the record from that case into this docket. Accordingly, Citizen's application for rehearing should be denied

It is, therefore,

ORDERED, That the application for rehearing filed by Citizen is denied. It is, further,


ORDERED, That a copy of this Entry on Rehearing be served on Citizen and all interested persons of record.

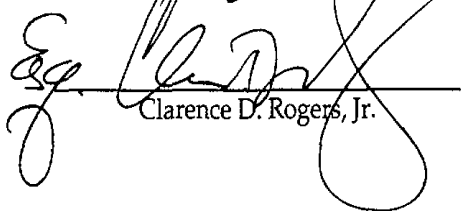
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
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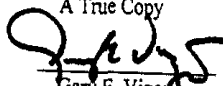
  
Clarence D. Rogers, Jr.

RRG/geb

Entered in the Journal

JAN 24 2002

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Gary E. Vigoro  
Secretary