ORIGINAL

IN THE SUPREME COURT OF OHIO

Pilkington North America, Inc. Appellant, v. The Public Utilities Commission of Ohio, Appellee.	))))))))))	Case No. 13-0709 Appeal from the Public Utilities Commission of Ohio Case No. 08-255-EL-CSS

NOTICE OF APPEAL OF APPELLANT PILKINGTON NORTH AMERICA, INC.

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FILED
MAY 06 2013
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL

Appellant, Pilkington North America, Inc. ("Appellant" or "Pilkington"), pursuant to Ohio Revised Code Sections ("R.C.") 4903.11, R.C. 4903.13, and S. Ct. Prac. R. II (3)(B), hereby gives notice to the Supreme Court of Ohio and to the Public Utilities Commission of Ohio ("Appellee" or the "Commission") of this appeal to the Supreme Court of Ohio from: (1) the Commission's Entry entered in its Journal on January 23, 2013 (Attachment 1); and (2) the Commission's Entry on Rehearing entered in its Journal on March 20, 2013 (Attachment 2) in the above-captioned case.

On February 22, 2013, and pursuant to R.C. 4903.10, Pilkington timely filed an Application for Rehearing from the Entry dated January 23, 2013. Pilkington's Application for Rehearing was denied with respect to the issues being raised in this appeal by an Entry on Rehearing entered in the Commission's Journal on March 20, 2013.

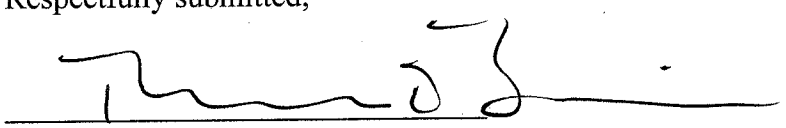
Appellant files this Notice of Appeal, complaining and alleging that both the Commission's January 23, 2013 Entry, and the Commission's March 20, 2013 Entry on Rehearing, are unlawful and unreasonable, and that the Commission erred as a matter of law in the following respects, each of which were raised in the Pilkington's Application for rehearing before the Commission:

1. The Commission erred in failing to ensure that The Toledo Edison Company ("TE") has charged Pilkington the lawful approved rate.
2. The Commissioner erred in failing to follow and comply with the decision issued by this Cour in *Martin Marietta Magnesia Specialties, LLC v. Pub. Util. Comm'n,* (2011) 129 Ohio St.3d 485, 490.
3. The Commission erroneously concluded that Pilkington cannot be granted relief from the entry on rehearing under Civil Rule 60(B)(4) because Pilkington was not a party to the rehearing.

4. The Commission erroneously concluded that Pilkington cannot be granted relief from the entry on rehearing under Civil Rule 60(B)(4) because Pilkington was not a party to the rehearing in an earlier phase of the proceeding.
5. The Commission erred in concluding that Civil Rule 60(B)(4) cannot be used to provide Pilkington relief from the original Commission order issued in 2009.
6. The Commission erroneously concluded that Pilkington is not entitled to relief under Civil Rule 60(B)(5). Specifically, the Commission stated that "[t]he catchall phrase in this rule cannot be read to encompass a claim of error for which appeal is the proper remedy."
7. The Commission erred in concluding that Pilkington's interests were not so interwoven with the interests of the appealing parties to justify relief based on the Ohio Supreme Court's reversal as to the other appealing parties.
8. The Commission erred in concluding that Pilkington failed to participate in multiple stages of litigation, noting that Pilkington "consciously chose not to join in the application for rehearing by the appellants or to file its own application for rehearing."

WHEREFORE, Pilkington respectfully submits that the Commission's January 23, 2013 Entry, and the Commission's March 20, 2013 Entry on Rehearing, are unreasonable and/or unlawful and should be reversed. This case should be remanded to the Commission with instructions to correct the errors complained of herein.

Respectfully submitted,



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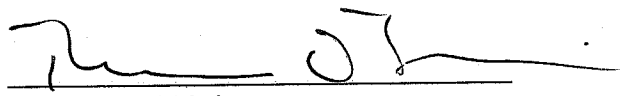
Counsel for Appellant
Pilkington North America, Inc.

CERTIFICATE OF FILING

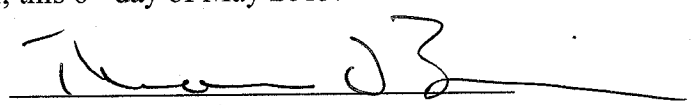
I certify that a copy of the foregoing Notice of Appeal of Pilkington North America, Inc. has been filed with the docketing division of the Public Utilities Commission in accordance with sections 4901-1-02(A) and 4901-1-36 of the Ohio Administrative Code.



Thomas J. O'Brien
Counsel for Appellant
Pilkington North America, Inc.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Appeal of Pilkington North America, Inc. was served upon Chairman of the Public Utilities Commission of Ohio by leaving a copy at the office of the Chairman at 180 East Broad Street, Columbus, Ohio 43215, and upon the parties of record listed below by regular U.S. Mail, this 6th day of May 2013.



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The Toledo Edison Company

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The Public Utilities Commission of Ohio

ATTACHMENT 1

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Pilkington North America, Inc.,	)	
Complainant,	)	
v.	)	Case No. 08-255-EL-CSS
The Toledo Edison Company,	)	
Respondent.	)	

ENTRY

The Commission finds:

(1) By opinion and order issued on February 19, 2009, the Commission dismissed complaints filed by Pilkington and five other complainants[1] finding that the complainants had not provided sufficient evidence to demonstrate that The Toledo Edison Company (TE) had violated any applicable order, statute, or regulation. The Commission noted that the complainants were seeking a determination by the Commission that the rates set forth in the special contracts entered into between the complainants and TE, as amended in 2001, should continue through the date on which TE ceased collecting the regulatory transition charges (RTC), which the complainants submitted was December 31, 2008. The Commission further noted that TE, on the other hand, insisted that the special contracts terminated on the complainants' billing dates in February 2008, as provided for in the rate certainty plan (RCP),[2] which is consistent with the method set forth in the electric transition plan (ETP)[3] for calculating the end dates for the

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1 *Worthington Industries*, Case No. 08-67-EL-CSS, *The Calphalon Corporation*, Case No. 08-145-EL-CSS, *Kraft Foods Global, Inc.*, Case No. 08-146-EL-CSS, *Brush Wellman, Inc.*, Case No. 08-254-EL-CSS, *Martin Marietta Magnesia Specialties, LLC*, Case No. 08-893-EL-CSS.

2 *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Modify Certain Accounting Practices and for Tariff Approvals*, Case Nos. 05-1125-EL-ATA, et al., Opinion and Order (January 4, 2006) (*RCP Case*).

3 *In the Matter of the Application of First Energy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Their Transition Plans and for*

special contracts. In arriving at its conclusion, the Commission reviewed the stipulations and orders in the ETP Case, the RSP Case,[4] and the RCP Case; the Commission concluded that the record in these cases clearly reflects that, regardless of the sales calculation, no scenario results in continuation of the special contracts through December 2008.

(2) On March 20, 2009, the other five complainants (hereinafter referred to as the appellants) filed an application for rehearing, pursuant to Section 4903.10, Revised Code. The appellants sought a rehearing of the Commission's order issued on February 19, 2009.[5] On March, 30, 2009, TE filed a memorandum in opposition to the appellants' joint application for rehearing. The appellants set forth three grounds for rehearing: failure of the Commission to apply the clear and unambiguous termination language in the 2001 amendments to the special contracts; Commission error in modifying the terms of the complainants' special contracts; and a violation of the appellants' right to due process. By entry on rehearing issued on April 15, 2009, the Commission denied the joint application for rehearing, finding that the three grounds for rehearing were previously considered at length and were found to be without merit.

(3) On June 12, 2009, each of the appellants filed a notice of appeal from the Commission's order with the Supreme Court of Ohio (Court), pursuant to Section 4903.13, Revised Code. On August 25, 2011, the Court reversed the Commission's decision establishing February 2008, as the termination date for the special contracts. The Court found that "the commission erred in determining that evidence of the stipulations and orders in Toledo Edison's electric-transition-plan and rate-certainty-plan cases were needed to interpret the plain language of the 2001 Amendments, which provided that appellants' special

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Authorization to Collect Transition Revenues, Case Nos. 99-1212-EL-ETP, et al., Opinion and Order (July 19, 2000) (*ETP Case*).

4 *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Continue and Modify Certain Regulatory Accounting Practices and Procedures, for Tariff Approvals and to Establish Rates and Other Charges Including Regulatory Transition Charges Following the Market Development Period*, Case Nos. 03-2144-EL-ATA, et al., Opinion and Order (June 9, 2004) (rate stability plan [*RSP*] *Case*).

5 As mentioned in Footnote 4 of the entry on rehearing, while the February 19, 2009, order addressed Pilkington, Pilkington did not file an application for rehearing of the Commission's order.

contracts were to continue until Toledo Edison stopped collecting the regulatory-transition charges." *Martin Marietta Magnesia Specialties, L.L.C. v. Pub. Util. Comm.*, 129 Ohio St. 3d 485, 495, 954 N.E.2d 104, 114 (2011) (*Martin Marietta*). The Court then ordered the money in escrow to be returned to the appellants.

(4) On January 5, 2012, Pilkington filed a motion for relief under Rules 60(B)(4) and 60(B)(5) of the Ohio Rules of Civil Procedure (ORCP). Rule 60(B)(4) of the ORCP grants relief from a final judgment, order, or proceeding if "a prior judgment upon which it is based has been reversed or otherwise vacated or it is no longer equitable that the judgment should have prospective application." Pilkington asserts it is entitled to relief under Rule 60(B)(4) of the ORCP because it would be inequitable for Pilkington to remain subject to findings in the order and entry on rehearing that were reversed by the Court. In addition, Rule 60(B)(5) of the ORCP grants relief for "any other reason justifying relief from the judgment." Pilkington asserts that this provision applies, because it would be unjust and unlawful not to return to Pilkington the escrowed funds returned to the appellants. Pilkington further asserts that failure to return its escrowed funds would result in TE collecting an unlawful rate and becoming unjustly enriched.

(5) On January 20, 2012, TE filed a memorandum contra Pilkington's Rule 60(B) motion for relief. TE asserts that the Commission lacks the authority to grant Pilkington's motion to dismiss and, alternatively, that Pilkington is not entitled to relief under Rule 60(B) of the ORCP. In response to Pilkington's Rule 60(B)(4) claim, TE asserts that the plain language of the statute states that the prior decision upon which the judgment is based must be reversed for relief under this rule. TE further states that the judgment at issue is not based on a prior decision that has been reversed. In response to Pilkington's Rule 60(B)(5) claim, TE asserts that failure to appeal does not justify relief from a final judgment.

(6) On January 27, 2012, Pilkington filed a reply in support of its motion for relief under Rule 60(B) of the ORCP. Pilkington argues that the Commission has the power to grant a Rule 60(B) motion and that the Commission has previously considered such motions in its proceedings. Pilkington further

asserts that relief should be granted under Rule 60(B)(4) of the ORCP because the Commission's entry on rehearing was based on the Commission's prior order, which was reversed by the Court in *Martin Marietta*. Pilkington reiterates that relief is warranted because TE would be unlawfully enriched if the escrowed funds were returned to the appellants, but not Pilkington.

(7) Upon consideration of the arguments made by Pilkington and TE, the Commission finds that, contrary to Pilkington's assertion, it did not participate in each step of the complaint case except for the appeal to the Court. Section 4903.10, Revised Code, provides that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days after the entry of the order upon the journal of the Commission. Pilkington consciously chose not to join in the application for rehearing filed by the appellants or to file its own application for rehearing. By failing to file for rehearing of the Commission's order, Pilkington also consciously determined that it would not be filing an appeal with the Court, pursuant to Section 4903.13, Revised Code. Therefore, Pilkington's assertion that it fully participated at every stage is ill-advised because it failed to participate in multiple stages of the litigation.

(8) With regard to Pilkington's specific arguments pertaining to relief in Rule 60(B)(4) of the ORCP, the Commission finds that Pilkington is not entitled to relief under Rule 60(B)(4). The Commission cannot grant Pilkington relief from the entry on rehearing because, unlike the appellants, Pilkington failed to appeal the Commission order. Therefore, Pilkington was not a party to the rehearing and is not entitled to relief from the Commission's entry on rehearing. Pilkington also seeks relief from the Commission order. In applying Rule 60(b)(5) of the Federal Rules of Civil Procedure (FRCP),[6] courts have interpreted the rule as requiring a decision upon which the challenged judgment was based, as opposed to the judgment itself, to be overturned. *Cal. Med. Ass'n v. Shalala*, 207 F.3d 575, 577-578 (9th Cir. 2000). The order in Pilkington's case is not based on a prior judgment that has been reversed, vacated, or

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6 Rule 60(B)(5) of the FRCP is the federal equivalent of Rule 60(B)(4) of the ORCP.

become no longer equitable enough to have prospective application. Therefore, Pilkington is not entitled to relief under Rule (60)(B)(4) of the ORCP.

(9) The Commission also finds that Pilkington is not entitled to relief under Rule 60(B)(5) of the ORCP. The catchall phrase in this rule cannot be read to encompass a claim of error for which appeal is the proper remedy. The Supreme Court of the United States stated that, when a deliberate choice not to appeal is made, the "petitioner cannot be relieved of such a choice because hindsight seems to indicate to him that his decision not to appeal was probably wrong." *Ackermann v. United States*, 340 U.S. 193, 198 (1950). The Supreme Court of Ohio has stated that "where one party appeals from a judgment, a reversal as to him will not justify a reversal against other non-appealing parties unless the respective rights of the appealing and non-appealing parties are so interwoven or dependent on each other as to require a reversal of the whole judgment." *Wigton v. Lavender*, 9 Ohio St. 3d 40, 43, 457 N.E.2d 1172, 1175 (1984). Pilkington's interests are not so interwoven with those of the appellants to justify relief under Rule 60(B)(5) of the ORCP, because the harm suffered differed in degree and amount, and the appellants' appeal, and ultimate refund, were not interwoven with or dependent on Pilkington's participation in the appeal. Therefore, Pilkington is not entitled to relief under Rule 60(B)(5) of the ORCP.

(10) Accordingly, the Commission finds that Pilkington's motion for relief under Rule 60(B) of the ORCP should be denied in its entirety.

It is, therefore,

ORDERED, That the motion for relief filed by Pilkington be denied. It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Lynn Slaby

CMTP/TJA/vrm

Entered in the Journal

JAN 23 2013

Barcy F. McNeal

Barcy F. McNeal
Secretary

ATTACHMENT 2

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Pilkington North America, Inc.,	)	
Complainant,	)	
v.	)	Case No. 08-255-EL-CSS
The Toledo Edison Company,	)	
Respondent.	)	

ENTRY ON REHEARING

The Commission finds:

(1) By opinion and order issued on February 19, 2009, the Commission dismissed complaints filed by Pilkington North America, Inc. (Pilkington) and five other complainants[1] finding that the complainants had not provided sufficient evidence to demonstrate that The Toledo Edison Company (TE) had violated any applicable order, statute, or regulation. The Commission noted that the complainants are seeking a determination by the Commission that the rates set forth in the special contracts entered into between the complainants and TE, as amended in 2001, should continue through the date on which TE ceases collecting the regulatory transition charges (RTC), which the complainants submit is December 31, 2008. The Commission further noted that TE, on the other hand, insists that the special contracts terminate on the complainants' billing dates in February 2008, as provided for in the rate certainty plan (RCP),[2] which is consistent with the method set forth in the electric transition plan (ETP)[3] for calculating the

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3 *In the Matter of the Application of First Energy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Their Transition Plans and for*

end dates for the special contracts. In arriving at its conclusion, the Commission reviewed the stipulations and orders in the *ETP Case*, the *RSP Case*,[4] and the *RCP Case*; the Commission concluded that the record in these cases clearly reflects that, regardless of the sales calculation, no scenario results in continuation of the special contracts through December 2008.

(2) On March 20, 2009, the other five complainants (hereinafter referred to as the appellants) filed an application for rehearing pursuant to Section 4903.10, Revised Code. The appellants sought a rehearing of the Commission's order issued on February 19, 2009.[5] On March 30, 2009, TE filed a memorandum in opposition to the joint application for rehearing. The appellants set forth three grounds for rehearing: failure of the Commission to apply the clear and unambiguous termination language in the 2001 amendments to the special contracts; Commission error in modifying the terms of the complainants' special contracts; and a violation of the right to due process. By entry on rehearing issued April 15, 2009, the Commission denied the joint application for rehearing, finding that the three grounds for rehearing were previously considered at length and were found to be without merit.

(3) On June 12, 2009, the appellants filed a notice of appeal from the Commission's order with the Supreme Court of Ohio (Court) pursuant to Section 4903.13, Revised Code. On August 25, 2011, the Court reversed the Commission's decision establishing February 2008 as the termination date for the special contracts. The Court found that "the commission erred in determining that evidence of the stipulations and orders in Toledo Edison's electric-transition-plan and rate-certainty-plan cases were needed to interpret the plain language of the 2001

Authorization to Collect Transition Revenues, Case Nos. 99-1212-EL-ETP, et al., Opinion and Order (July 19, 2000) (ETP Case).

4 *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Continue and Modify Certain Regulatory Accounting Practices and Procedures, for Tariff Approvals and to Establish Rates and Other Charges Including Regulatory Transition Charges Following the Market Development Period*, Case Nos. 03-2144-EL-ATA, et al., Opinion and Order (June 9, 2004) (rate stability plan [RSP] Case).

5 As mentioned in Footnote 4 of the entry on rehearing, while the February 19, 2009 order addressed Pilkington, Pilkington did not file an application for rehearing of the Commission's order.

Amendments, which provided that appellants' special contracts were to continue until Toledo Edison stopped collecting the regulatory-transition charges." *Martin Marietta Magnesia Specialties, L.L.C. v. Pub. Util. Comm.*, 129 Ohio St. 3d 485, 495, 954 N.E.2d 104, 114 (2011) *(Martin Marietta)*. The Court then ordered the money in escrow to be returned to the appellants.

(4) On January 5, 2012, Pilkington filed a complaint for relief under Rule 60(B) of the Ohio Rules of Civil Procedure (ORCP). Pilkington asserted that it was entitled to relief under Rule 60(B), ORCP, because it would be inequitable for Pilkington to remain subject to findings in the order that were reversed by the Court. Pilkington also submitted that it was entitled to relief because it would be unjust and unlawful not to return to Pilkington the escrowed funds that the Court returned to the appellants.

(5) By entry issued January 23, 2013, the Commission dismissed Pilkington's motion, noting that Pilkington chose not to join in the application for rehearing filed by the appellants or to file its own application for rehearing; thus, by failing to file for rehearing of the Commission's order, Pilkington also consciously determined that it would not be filing an appeal with the Court. With regard to Pilkington's arguments pertaining to relief under Rule 60(B), ORCP, the Commission found that Pilkington was not entitled to relief under this rule stating that such relief of the Commission's entry on rehearing in this case cannot be granted because, unlike the appellants, Pilkington failed to appeal the Commission's order. Therefore, Pilkington was not a party to the rehearing and is not entitled to relief from the Commission's order or entry on rehearing. Moreover, the Commission found that, consistent with federal court precedent, since Pilkington's motion for relief is not based on a prior judgment that has been reversed, vacated, or become no longer equitable enough to have prospective application, Pilkington is not entitled to relief under Rule (60)(B)(4) of the ORCP. [6] The Commission also concluded that Pilkington is not entitled to relief under Rule 60(B)(5), ORCP, finding that precedent dictates that this rule cannot be read to

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6 *Cal. Med. Ass'n v. Shalala*, 207 F.3d 575, 577-578 (9th Cir. 2000).

encompass a claim of error for which appeal is the proper remedy.[7] In addition, the Commission found that Pilkington's interests are not so interwoven with those of the appellants to justify relief under Rule 60(B)(5), ORCP, because the harm suffered differed in degree and amount, and the appellants' appeal, and ultimate refund, were not interwoven with or dependent on Pilkington's participation in the appeal.[8]

(6) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.

(7) On February 22, 2013, Pilkington filed an application for rehearing of the Commission's January 23, 2013, order in this case essentially setting forth two arguments on rehearing.

(8) On March 4, 2013, TE filed a memorandum in opposition to the Pilkington's application for rehearing stating that the request simply reiterates arguments that were considered and rejected by the Commission in its order.

(9) In its first argument on rehearing, Pilkington contends that the Commission based its decision to deny the Rule 60(B), ORCP, motion on procedural grounds, rather than the merits of the motion. Pilkington believes the Commission ignored the point of the motion, which is: the Commission made a mistake in its decision in this case and, as a result, Pilkington was charged an unlawful rate by TE and TE was not entitled to that money. Pilkington asserts that the Commission acted unreasonably in denying its Rule 60(B), ORCP, motion on procedural grounds. According to Pilkington, Rule 4901-1-38(B), Ohio Administrative Code (O.A.C), gives the Commission authority to waive certain requirements, for good cause shown, including those contained in Rule 4901-1-35, O.A.C., regarding applications for rehearing. According to Pilkington, the Commission should exercise its authority under Rule 4901-1-

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7 Citing *Ackermann v. United States*, 340 U.S. 193, 198 (1950) (*Ackerman*).

8 Citing *Wigton v. Lavender*, 9 Ohio St. 3d 40, 43, 457 N.E.2d 1172, 1175 (1984) (*Wigton*).

38(B), O.A.C, to waive the procedural requirements that Pilkington failed to follow.

(10) In response to complainant's first argument for rehearing, TE states that the Commission did not act unreasonably or unlawfully in denying Pilkington's motion because Pilkington consciously chose not to appeal the Commission's February 19, 2009, order. According to TE, if the Commission ignores the ORCP by deciding this matter on the merits, the Commission will be encouraging future litigants in multi-party litigation to sit back and wait for other parties to work on an appeal. TE points out that Ohio courts have consistently held that a party may not use a Rule 60(B) motion as a substitute for an appeal.[9]

(11) With regard to Pilkington's first argument, the Commission finds that Pilkington has raised no new issue that we did not already consider in our order. In essence, Pilkington is asking us to waive the statutory requirements requiring a party to appeal a Commission order if it wants to be relieved from a judgment. As we recognized in our order, the Supreme Court of the United States in *Ackermann* stated that, when a deliberate choice not to appeal is made, the "petitioner cannot be relieved of such a choice because hindsight seems to indicate to him that his decision not to appeal was probably wrong." The fact that Pilkington failed to follow the process laid out in the Ohio Revised Code cannot now be cured by asking the Commission to ignore those requirements and the policies behind them. The Commission cannot grant a waiver of the statutory rehearing and appeal requirements under Sections 4903.10 and 4903.11, Revised Code. Therefore, we conclude that this argument by Pilkington is without merit and should be denied.

(12) In its second argument for rehearing, Pilkington asserts that the Commission violated the filed rate doctrine by forcing Pilkington to pay an unauthorized rate for electric service. According to Pilkington, this is not a situation where a rate had been determined and approved by the Commission and then later set aside by the Court. Pilkington states that the lawful rate that applied to its electric service during the period in question was the contract rate in place at that time and the

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9 *Doe v. Trumbull Cty. Children Servs. Bd.*, 28 Ohio St. 3d 128 (1986), syll. para. 2.

Court corrected the Commission's later, mistaken interpretation. Therefore, Pilkington posits that the Commission failed to uphold the correct, lawful rate for electric service as it applies to Pilkington. Failure to return the escrowed funds, according to Pilkington, would result in TE collecting an unlawful rate and becoming unjustly enriched.

(13) TE responds to the Pilkington's second argument by pointing out that Pilkington was not a party to *Martin Marietta* because Pilkington consciously chose not to appeal the Commission's order. Therefore, TE contends that the Court's interpretation of the contract does not apply to Pilkington and any inequality and injustice Pilkington claims to be suffering is a result of its own conscious choice not to appeal in the first place.

(14) With regard to the Pilkington's second ground for rehearing, the Commission finds that it is without merit. For the first time, in its application for rehearing, Pilkington summarily argues the filed rate doctrine is applicable in this situation. The Commission disagrees. Contrary to the Pilkington's position, the Court's decision in *Martin Marietta* does not apply to Pilkington, because Pilkington consciously chose not to appeal the Commission's order. The Supreme Court of the United States[10] and the Court[11] have consistently held that a ruling for the appealing parties does not entitle the nonappealing party to relief. The statute clearly sets forth the process a party must follow to reverse a Commission decision and Pilkington cannot circumvent the process mandated by statute by, in an effort to cure its noncompliance, alluding that the filed rate doctrine applies. Therefore, Pilkington is not entitled to relief because appeal was the proper route under the ORCP. Accordingly, Pilkington's argument for rehearing should be denied.

It is, therefore,

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

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10 *Ackermann* at 198.

11 *Wigton* at 1175.

ORDERED, That a copy of this entry on rehearing be served upon all parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Lynn Slaby

M. Beth Trombold

CMTP/TJA/vrm

Entered in the Journal
MAR 2 0 2013

Barcy F. McNeal
Secretary