

IN THE SUPREME COURT OF OHIO

In the Matter of the Review of The)	
Alternative Energy Rider Contained in The)	Case No. 13-2026
Tariffs of Ohio Edison Company, The)	
Cleveland Electric Illuminating Company and)	Appeal from the Public Utilities
The Toledo Edison Company.)	Commission of Ohio
)	
)	Public Utilities Commission of Ohio Case
)	No. 11-5201-EL-RDR

MEMORANDUM CONTRA MOTION FOR EXTENSION OF TIME
BY
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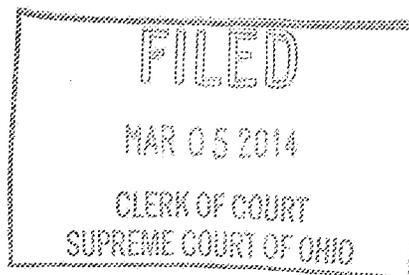
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I. INTRODUCTION

FirstEnergy¹ filed a notice of appeal in regard to the Public Utilities Commission of Ohio (“PUCO” or “Commission”) finding that customers should be protected from paying \$43,362,796.50 (plus carrying costs) for FirstEnergy’s imprudent purchase (in 2010) of 2011-vintage In-State All Renewable Energy Credits (RECs). *See In the Matter of the Review of The Alternative Energy Rider Contained in The Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company*, Case No. 11-5201-EL-RDR (Opinion and Order at 25) (Aug. 7, 2013). Specifically the PUCO found that FirstEnergy did not meet its “burden of proving that, based upon the facts and circumstances which the Companies knew, or should have known, at the time of the decision to purchase, the purchase of 2011 vintage year RECs

¹ “FirstEnergy,” “Utilities” and “Company” mean the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

in August 2010 was prudent.” *Id.* at 28. That PUCO finding is both lawful and reasonable.

FirstEnergy’s first merit brief in this appeal was due to be filed on March 4, 2014. That has been known since the day the record was filed on January 23, 2014.² But FirstEnergy’s Merit Brief was not filed on March 4, 2014. Instead, FirstEnergy filed a one-sentence (Motion For Extension of Time) that failed to adhere to the requirements of the Rules of Practice of the Supreme Court of Ohio.

“The purpose of the Rules of Practice of the Supreme Court of Ohio is to promote the efficient administration of justice in cases filed with the Supreme Court.”

S.Ct.Prac.R.1.02. Those rules mandate that FirstEnergy’s request for additional time to file its first merit brief be denied. FirstEnergy’s “Motion for Extension of Time” does not comply with the Supreme Court’s Rules of Practice because it fails to “state with particularity the grounds on which it is based.”³ FirstEnergy’s pleading also fails to set forth any reason, let alone the requisite “good cause,” to justify why the Company should be excused from failing to file its first merit brief as prescribed by S.Ct.Prac.R.3.03(B)(2)(b)(i). Consequently, the motion should be denied.

The Office of the Ohio Consumers’ Counsel (“OCC”), on behalf of the residential customers of FirstEnergy, files this response (to FirstEnergy’s motion) in accordance with S.Ct.Prac.R.4.01(B)(1). For the reasons explained further below, the Court should deny FirstEnergy’s request for additional time to file its first merit brief. Thereafter, the Court should dismiss FirstEnergy’s appeal in accordance with S.Ct.Prac.R.16.07(A).

² S.Ct.Prac.R.16.05(B)(1)(b).

³ S.Ct.Prac.R. 4.01(A)(1).

II. ARGUMENT

A. **FirstEnergy's Request Should Be Denied Because It Does Not Meet The Requirements of A Motion Under the Rules of Practice of The Ohio Supreme Court.**

FirstEnergy's request for more time to file its first merit brief fails to meet the requirements of the Court's Rules of Practice and should be denied. Although FirstEnergy's request for extension was timely filed, the request does not meet the requirement established for submission of a motion before the Supreme Court of Ohio.

In an attempt to move this Court for additional time to file its first merit brief, FirstEnergy filed a one sentence pleading which states, "Pursuant to Ohio Supreme Court Rule 3.03(b)(2), Ohio Edison Company, The Toledo Edison Company and The Cleveland Electric Illuminating Company seek a 10 day extension of time, on and until March 14, 2014, to file their Merit Brief." FirstEnergy's single-sentence pleading does not constitute a "motion" under the Rules of Practice because it does not "state with particularity the grounds on which it is based." S.Ct.Prac.R.4.01(A)(1). The Court's general rule is that a request for relief shall be made by the filing of a motion that states with particularity the grounds on which it is based. *See* S.Ct.Prac.R.4.01(A)(1). And there is no exception that applies. FirstEnergy's request should be denied because the Company failed to make a proper motion that complies with the Court's Rules of Practice.⁴

This Court has recognized that "the integrity of procedural rules is dependent upon consistent enforcement because the only fair and reasonable alternative thereto is complete abandonment." *Miller v. Lint*, 62 Ohio St.2d 209, 215; 404 N.E.2d 752 (1980). And this Court has dismissed an appeal of a PUCO Order when the Appellant (OCC)

⁴ Additionally it should be noted that FirstEnergy's Motion does not comply with S.Ct.Prac.R. 3.07.

failed to include the certificate of filing that was required by the Rules of Practice and Procedure of the Supreme Court. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 105 Ohio St.3d 1211, 2005-Ohio-1023. Accordingly, FirstEnergy's request should be denied because it was not made in a motion that complies with the Court's Rules of Practice.⁵

B. FirstEnergy's Motion Should Be Denied Because The General Prohibition Against Extensions of Time Of The Rule of Practice of The Supreme Court of Ohio Applies to FirstEnergy's Request.

FirstEnergy should be denied the extension that it seeks because it failed to state good cause (or any cause) for the Court to grant it additional time to file its first merit brief. The Court has a general prohibition against extensions of time.

S.Ct.Prac.R.3.03(B)(1). But this Court "will grant a party only one extension of time, not to exceed ten days, *provided the request for extension of time states good cause for an extension* and is filed with the Clerk within the time prescribed by the rules for filing the brief ***." S.Ct.Prac.R.3.03(B)(2)(b)(i). (Emphasis added.)

The general rule that the "Supreme Court will not extend the time for filing a document ***" applies to FirstEnergy's request. S.Ct.Prac.R.3.03(B)(1). As discussed above, FirstEnergy did not allege any reason why it should be excused from its failure to file its first merit brief by the March 4, 2014 deadline. Accordingly, since the Court's exception (good cause) to its general rule prohibiting extensions of time does not apply to FirstEnergy's request, that request should be denied.

⁵ Additionally it should be noted that FirstEnergy's Motion does not comply with S.Ct.Prac.R. 3.07.

C. The Rules of Practice and Procedure of the Supreme Court of Ohio Prohibit FirstEnergy From Filing Its First Merit Brief And Any Request For Extension of Time to File.

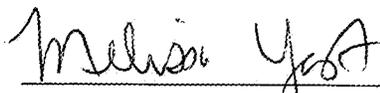
The deadline (prescribed by the Court's Rules) for FirstEnergy to file its first merit brief has passed. And the deadline for FirstEnergy to request additional time to file its first merit brief (S.Ct.Prac.R.3.03(B)(2)(b)(i)) has also passed. FirstEnergy's request filed on March 4, 2014 should not be granted for the reasons explained above. And any other request is now barred by the Court's Rule prohibiting untimely filings. Specifically, the Court's Rule mandates that "No document may be filed after the filing deadline imposed by these rules, set by Supreme court order, or as extended in accordance with S.Ct.Prac.R. 3.03(B)(2) ***." S.Ct.Prac.R. 3.02(D). Additionally, no motion requesting a waiver of that Rule (S.Ct.Prac.R. 3.02(D)) is permitted. The Court should find that FirstEnergy failed to file its first merit brief within the time prescribed by S.Ct.Prac.R.16.02 and should dismiss FirstEnergy's appeal accordingly.

III. CONCLUSION

For the reasons set forth for Ohio consumers in this Memorandum Contra, OCC respectfully requests that this Court deny FirstEnergy's Motion for Extension of Time.

Respectfully submitted,

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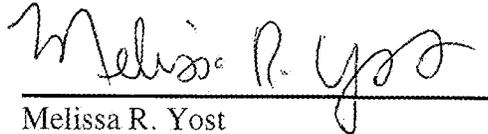
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Memorandum Contra Motion for Extension of Time* was served on the persons listed below, via electronic service, this 5th day of March 2014.



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