ORIGINAL

IN THE SUPREME COURT OF OHIO

Interstate Gas Supply, Inc.	)	
	)	Case No. 2014-1651
Appellant,	)	
	)	Appeal from the Public Utilities Commission of Ohio
v.	)	
	)	
The Public Utilities Commission of Ohio,	)	Public Utilities Commission of Ohio
	)	Case Nos. 14-0689-EL-UNC
Appellee	)	14-0690-EL-ATA

MERIT BRIEF OF INTERVENING APPELLEE DUKE ENERGY OHIO, INC.

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I. INTRODUCTION

This case is about competition. It is about allowing Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) to enter a competitive market to offer a range of non-electric products and services to customers, giving those customers more choices and an opportunity to shop for the best price. But, regardless of the assertions of Interstate Gas Supply, Inc. (the Appellant), it is **not** about electricity and it is **not** about the separation between competitive generation services and regulated distribution or transmission services.

As the Court is aware, the Ohio General Assembly began the process of deregulating electric generation in 1999, allowing the growth of competition among suppliers of electricity. Amended Substitute Senate Bill 3 (SB 3) required electric utilities to transition to a market in which some retail electric services would be deemed competitive. The "retail electric services" were defined, in SB 3, as services "involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption." R.C. 4928.01(A)(27). The legislature explained further that a "retail electric service includes one or more of the following 'service components': generation service, aggregation service, power marketing service, power brokerage service transmission service, distribution service, ancillary service, metering service, and billing and collection service." *Id.* This definition has remained unchanged since its initial passage. And SB 3, together with the subsequently passed Amended Substitute Senate Bill 221 (SB 221), required electric utilities to offer "competitive retail electric services" only through fully separated affiliates or pursuant to the terms of a corporate separation planned approved by the Public Utilities Commission of Ohio (Commission). This requirement was designed to allow the development and growth of new entities that would offer, on a competitive basis, those same retail electric services. The Appellant is one such provider of competitive retail electric service.

The legislature did not stop there, however. It also recognized that there might be other products and services offered by an electric utility – ones that would not fall within the definition of "retail electric service" but might similarly be competitive in nature as opposed to being regulated by the Commission. These could include, for example, services such as underground line protection or whole-house surge protection. Although an undefined term, SB 3 and SB 221 addressed the provision of such products or services, referring to them as a "product or service other than retail electric service" or a "non-electric product or service." R.C. 4928.17(A). For convenience, these products or services will be referred to herein as non-electric services.

While corporate separation requirements do apply to both competitive retail electric service and non-electric service, the difference between them is crucial in the present proceeding. The Commission has mandated the **structural** separation of generation service (which is a competitive retail electric service) from regulated electric service. That is, it has required electric utilities to transfer their generation businesses to a separate legal entity. But, contrary to the assertions of the Appellant, its orders to transfer generating assets have nothing whatsoever to do with the non-electric service business of any utility.

The policies of the state of Ohio, as adopted through SB 3 and SB 221, make it clear that the legislature wants to encourage competition. R.C. 4928.02. The non-electric services that the Commission has allowed Duke Energy Ohio to provide, under the reasonable constraints imposed by the Commission, will increase the availability of customer choice as to those services, along with competition among providers. The Commission had the discretion to allow this outcome, and clearly explained the nature of, and rationale for, the protective constraints it was ordering. The Court should uphold the Commission's reasonable exercise of that discretion.

II. STANDARD OF REVIEW

R.C. 4903.13 provides that an order of the Commission shall be reversed, vacated, or modified by this Court only when, upon consideration of the record, the Court finds the order to be unlawful or unreasonable. *Constellation NewEnergy, Inc. v. Pub. Util. Comm.*, 104 Ohio St.3d 530, 541, 2004-Ohio-6767, 820 N.E.2d 885, ¶ 50. Under this statutory standard, legal issues are reviewed by the Court *de novo*, *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 2008-Ohio-990, 885 N.E.2d 195, ¶ 13, but the Court may rely on the expertise of a state agency in interpreting a law where "highly specialized" issues are involved and where the agency's expertise would be of assistance in discerning the intent of the statute. *Consumers' Counsel v. Pub. Util. Comm.,* 58 Ohio St.2d 108, 110, 388 N.E.2d 1370 (1979).

For factual questions, this Court will not reverse or modify a Commission decision when the record contains sufficient probative evidence to show that the Commission's determination is not manifestly against the weight of the evidence and is not so clearly unsupported by the record that it shows misapprehension, mistake, or willful disregard of duty. *AT&T Communications of Ohio, Inc. v. Pub. Util. Comm.*, 88 Ohio St.3d 549, 555, 728 N.E.2d 371 (2000). The Appellant, here Interstate Gas Supply, bears the burden of demonstrating that the Commission's decision is against the manifest weight of the evidence or is clearly unsupported by the record. *AK Steel Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 81, 765 N.E.2d 862 (2002).

This appeal is based on matters of both law and fact. The Commission's Order must be affirmed.

III. STATEMENT OF THE CASE AND RELEVANT FACTS

Duke Energy Ohio[1] was, in 1999, operating as a vertically integrated electric utility, providing generation, distribution, and transmission services. After the General Assembly's passage of SB 3, the Company began the process of separating its generation service from the distribution and transmission portions of its business. Parties to the Company's transition proceeding negotiated a stipulation, which the Commission reviewed in detail, approving, among other things, the Company's corporate separation plan. *In the Matter of the Application of The Cincinnati Gas & Electric Company for Approval of its Electric Transition Plan*, Case No. 99-1658-EL-ETP, Opinion and Order (Aug. 31, 2000). That plan has been amended several times since its adoption the 1999 proceeding, but it has never been replaced by an entirely new plan. *In the Matter of the Application of The Cincinnati Gas & Elec. Co. to Modify its Nonresidential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish an Alternative Competitive-Bid Service Rate Option Subsequent to the Market Development Period*, Case No. 03-93-EL-ATA, Opinion and Order (Sep. 29, 2004), PUCO App. at 21-22;[2] *In the Matter of the Application of Duke Energy Ohio for Approval of an Elec. Security Plan*, Case No. 08-920-EL-SSO, *et al*, Opinion and Order, pg. 20 (Dec. 17, 2008), PUCO App. at 25; *In the Matter of the Application of Duke Energy Ohio for Approval of the Second Amended Corporate Separation Plan Under Section 4928.17, Revised Code and 4901:1-37 Ohio Adm. Code*, Case No. 09-495-EL-UNC, Opinion and Order, pg. 1 (Apr. 5, 2011), PUCO App. at 27; *In the Matter of the Application of Duke Energy Ohio for Auth. To Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan, Accounting*

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[1] At that time, Duke Energy Ohio was operating as The Cincinnati Gas & Electric Company.

[2] The Appendix included as part of the Commission's Merit Brief will be cited as PUCO App. at __. Similarly, the Appendix or Supplement of the Appellant or the Company will be cited as IGS App. at ___, IGS Supp. at ___, Duke App. at ___, or Duke Supp. at ___.

Modifications and Tariffs for Generation Service, Case No. 11-3549-EL-SSO, *et al.*, Opinion and Order, pp. 45-46 (Nov. 22, 2011), PUCO App. at 41-42.

Under the terms of its corporate separation plan, Duke Energy Ohio has never had the ability to offer its customers products or services that the customers might find desirable but that were not part of distribution service. On April 16, 2014, it filed an application with the Commission to amend its tariffs and its corporate separation plan such that it could, at some point in the future, consider offering those non-electric services directly. The Company, however, made no assertion that it would decide to offer non-electric services to its customers or that, if it did so, such a change would occur at any particular point in time. It simply sought the authority to do so at some point in the future.

As an amendment to a previously approved corporate separation plan, the Company applied for approval pursuant to R.C. 4928.17(D), which allows the Commission to amend a corporate separation plan "as it considers necessary . . . to reflect changed circumstances." The Commission considered the Company's application and approved it. *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its Fourth Amended Corporate Separation Plan Under R.C. 4928.17 and Ohio Adm. Code 4901:1-37*, Case No. 14-689-EL-UNC, *et al.*, Finding and Order (Jun. 11, 2014)., IGS App. at 6.[3] The Appellant would have preferred a different outcome and so argues that the Commission should have applied the standards that relate to the original approval of a plan, rather than an amendment.

The Appellant seeks to justify its position by expounding on Ohio's support for competition. Ohio law and policy, it says, prohibit an electric utility from using its monopoly

[3] The Finding and Order in the Commission proceeding below will be referred to herein as the "Finding and Order." Similarly, its order on rehearing will be referred to as the "Entry on Rehearing."

status to extend an advantage to its provision of unregulated services. Appellant's Merit Brief, pg. 3. It points out that distribution service may not subsidize the generation portion of the business. *Id.* at 4. Underlining that "Ohio law is pro-competitive," the Appellant repeats that the law is meant to ensure that distribution utilities do not use distribution assets to provide an advantage to competitive parts of their business. Neither the Commission nor the Company would disagree with these statements. But Appellant misses the point. The Commission exercised its discretion under R.C. 4928.17(D) to ensure this very outcome. Its decision was legal and reasonable.

And beyond that, the Appellant forgets that, if Ohio is "pro-competitive," the state should support the entry of Duke Energy Ohio into the market for non-electric services, to enhance that competitive market and to provide additional competitive options for consumers. The Commission's decision allows the process of competition to continue, without favoring one competitor over another. It allows for the future enhancement of innovation.

The Appellant wants to confine the Commission's decisions within strict limits that were not intended to apply to proposed amendments. And it wants to redefine the Company's proposed offering as if it were related to generation, so that it can avoid the very competition that it allegedly supports.

The Commission's decision was based upon a careful analysis of the facts and the law and included safeguards to ensure the Commission's ability to confirm the Company's compliance with legal requirements. Its determination and its Order comply with Ohio law and policy, and should be affirmed.

IV. ARGUMENT

Proposition of Law 1:

The Commission Has Never Prohibited Duke Energy Ohio from Offering Non-electric Services to its Customers.

The Appellant's statement of the case creates the confusing impression that the provision of competitive retail electric service (that is, generation) and the provision of non-electric service are one and the same. But they are not. Nevertheless, the Appellant recites statutory language and quotes from this Court's opinions to show that generation service (that is, competitive retail electric service) must be separated from distribution and transmission services. Appellant's Merit Brief, pp. 3-4.

The Appellant further confuses the matter by focusing on the Commission's approval of the stipulation in the Company's last electric security plan proceeding. *In the Matter of the Application of Duke Energy Ohio for Auth. To Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, *et al.*, Opinion and Order (Nov. 22, 2011). As the Appellant stated, the stipulation – and the Commission's approval thereof – required the Company to transfer its generating assets to an affiliate. The Company has done so. But transferring the generating assets is just a red herring. It is noteworthy that the Commission's order in that case – as quoted by the Appellant – merely talks about **generation:** "[T]he transmission and distribution assets of Duke will continue to be held by the distribution utility and all of Duke's **generation assets** will be transferred to an affiliate." Appellant's Merit Brief, pg. 5 (emphasis added).

Neither the referenced stipulation nor the Commission's approval thereof says anything at all about non-electric services. They are simply irrelevant to this appeal.

Proposition of Law 2:

The Commission Appropriately Exercised its Discretion to Approve the Amendment of the Company's Corporate Separation Plan Under R.C. 4928.17(D).

The Appellant incorrectly contends that Commission's Order is unlawful. The Appellant's arguments are founded on its mistaken belief that the Commission was required to base its decision on the provisions of R.C. 4928.17(A)(1) and (C). Contrary to those assertions, it is R.C. 4928.17(D) that was applicable in this proceeding and under which the Commission made its decision. This is evident from the language of the statute, from the application filed by Duke Energy Ohio in this case, and from the Commission's prior considerations of corporate separation plan amendments. When the statute as a whole is considered, the Appellant's argument fails.

A. Division (D) of R.C. 4928.17 Addresses Amendments to Corporate Separation Plans.

Looked at very broadly, each of the five divisions of R.C. 4928.17 has a distinct purpose. They provide a general rule for separation, require the Commission's promulgation of rules, explain the circumstances under which the Commission should approve a corporate separation plan, allow for the amendment of a plan, and prohibit the transfer of generating assets without Commission approval. As Duke Energy Ohio has had an approved corporate separation plan in place from the inception of electric deregulation, the amendment language in division (D) – ignored entirely by the Appellant – should be considered first.

That division reads, in total, as follows:

> Any party may seek an amendment to a corporate separation plan approved under this section, and the commission, pursuant to a request from any party or on its own initiative, may order as it considers necessary the filing of an amended corporate separation plan to reflect changed circumstances.

There should be no dispute as to the meaning of this division. Where a corporate separation plan has been approved "under this section" (with "section" meaning the entirety of R.C. 4928.17), division (D) allows the Commission to order such amendments "as it considers necessary" under the "changed circumstances" that may then exist. Duke Energy Ohio's existing corporate separation plan was approved under R.C. 4928.17. The Commission issued an order having the effect of amending that plan, as it currently deems necessary, based on its expertise and its understanding of the relevant facts and circumstances.

The language of division (D) makes no reference whatsoever to any specific standards that must be applied by the Commission in its consideration of such an amendment. In contrast, division (A) of that section (on which the Appellant improperly relies), addresses only the establishment of a corporate separation plan. It requires that a utility wishing to offer both noncompetitive services (*e.g.*, distribution) and competitive retail electric services or non-electric services must first "implement" a corporate separation plan that meets certain identified criteria.

Similarly, the Commission's administrative rules treat amendments separately from applications for approval of plans. Amendments are covered by O.A.C. 4901:1-37-06, which rule addresses how an amendment is to be filed and provides that it is to be deemed automatically approved if not acted upon within 60 days. This is in stark contrast to the many substantive requirements for new corporate separation plans and emphasizes their different treatment under the statute.

By ignoring division (D) of R.C. 4928.17 entirely, the Appellant hopes to apply the requirements for **implementation** of a corporate separation plan to the Company's request for an **amendment**. But it cannot ignore the statutory language. The divisions of R.C. 4928.17 must be read and analyzed *in pari materia*, construed in such a way to give proper force and effect to

each so as to attempt to read them harmoniously and carry out the legislative intent. *See, e.g., United Telephone Co. v. Limbach*, 71 Ohio St.3d 369, 372, 643 N.E.2d 1129 (1994)(discussion of standard principles of statutory construction)(citations omitted). If the requirements of divisions (A) and (C) of R.C. 4928.17 were read to apply to amendments, in addition to applications for approval of a plan to be implemented, there would have been no need for the legislature to include a separate division allowing a utility to "seek an amendment" after it already had "a corporate separation plan approved under this section."

The appropriate interpretation of the divisions, read *in pari materia*, must give effect to all of the divisions. Amendments sought under division (D), therefore, must not be evaluated as if they were applications for new corporate separation plans.

B. Division (D) of R.C. 4928.17 Must Be Read as it Was Intended by the Legislature.

It is black-letter law that language included by the Ohio General Assembly in a statute must be read to mean what the legislators intended it to mean. "The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the law-making body which enacted it." *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, ¶ 11, (*quoting Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902)(Syllabus ¶ 1)).

Thus, the question of primary importance is how to determine the legislative intent of a statute. "It is a cardinal rule that a court must first look to the language of the statute itself to determine the legislative intent." *The Provident Bank v. Wood, et al.*, 36 Ohio St.2d 101, 105, 304 N.E.2d 378 (1973)(citation omitted). Where the statutory language "conveys a meaning which is clear, unequivocal and definite, at that point the interpretative effort is at an end, and the statute must be applied accordingly." *Id.* at 105-106 (citation omitted). *See also Meeks v. Papadopulos*, 62 Ohio St.2d 187, 190, 404 N.E.2d 159 (1980)("An unambiguous statute is to be

applied, not interpreted.")(*quoting Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413, syllabus ¶ 5 (1944); *Bernardini v. Bd. of Ed. Conneaut Area City School District*, 58 Ohio St.2d 1, 4, 387 N.E.2d 1222 (1979)("a statute that is free from ambiguity and doubt is not subject to judicial modification under the guise of interpretation")(*citing Crowl v. Deluca*, 29 Ohio St.2d 53, 58-59, 278 N.E.2d 352 (1972); *Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902)).

This Court has also considered the crucial question of how to determine whether a statute is ambiguous. Noting that some courts determine that there is ambiguity when it is possible to find alternative readings, this Court has pointed out that this approach creates "confusion and uncertainty."

> When confronted with allegations of ambiguity, a court is to objectively and thoroughly examine the writing to attempt to ascertain its meaning. Only when a definitive meaning proves elusive should rules for construing ambiguous language be employed. Otherwise, allegations of ambiguity become self-fulfilling. *The State of Ohio v. Porterfield*, 106 Ohio St.3d 5, 2005-Ohio-3095, 829 N.E.2d 690, ¶ 11 (citation omitted).

And in making that objective and thorough examination, the Court must read the words and phrases in context, construing them according to the rules of grammar and common usage. R.C. 1.42. *See also Symmes Township Board of Trustees v. Smyth*, 87 Ohio St.3d 549, 554, 721 N.E.2d 1057 (2000).

There is no ambiguity in the single sentence comprising division (D). The legislature granted the Commission the authority to amend corporate separation plans "as it considers necessary . . . to reflect changed circumstances." Division (D) says absolutely nothing that would require amendments, under (D), to be considered by the Commission under the parameters of divisions (A) or (C), as the Appellant would suggest is necessary. With an unambiguous statute, there is no basis on which to insert such a limitation.

Furthermore, by ignoring the existence of division (D), the Appellant effectively deletes that entire provision. "It is the duty of this court to give effect to the words used, not to delete words used or to insert words not used." *Columbus-Suburban Coach Lines v. Pub. Util. Comm.*, 20 Ohio St.2d 125, 127, 254 N.E.2d 8 (1969). The Appellant should not be asking the Court to amend the law, regardless of its view of the legislature's wisdom in enacting it. "[W]hether an act is wise or unwise is a question for the General Assembly and not this court." *Bernardini v. Bd. of Ed. Conneaut Area City School District*, 58 Ohio St.2d 1, 4-5, 387 NE.2d 1222 (1979)(*citing Olin Mathieson Chemical corp. v. Ontario Store*, 9 Ohio St.2d 67, 70, 223 N.E.2d 592 (1967)).

The language of R.C. 4928.17, read comprehensively and according to ordinary meanings, undeniably shows the legislature's intention to allow amendments to corporate separation plans to be approved by the Commission under division (D).

C. If the Court Finds that Division (D) is Ambiguous, Appropriate Statutory Construction Still Results in the Conclusion that the Commission's Had the Power to Exercise Discretion Regarding the Company's Amendment.

As demonstrated above, R.C. 4928.17 is not ambiguous and the intent of the legislature must be given effect, based upon the clear language that it employed. And in that regard, the Commission was afforded discretion to amend existing corporate separation plans. Such discretion was rightfully exercised in respect of Duke Energy Ohio's fourth, and current, plan. However, should the Court find otherwise, the rules of statutory construction support the Commission's decision. If a court concludes that the language of a statute is ambiguous, such that it cannot conclusively determine legislative intent, it must then look to the rules of statutory construction. These rules are set forth in the Revised Code, as well as in legal precedent. R.C. 1.49 sets forth six factors that may be considered by a court in an attempt to determine legislative intent:

(A) The object sought to be attained;

(B) The circumstances under which the statute was enacted;

(C) The legislative history;

(D) The common law or former statutory provisions, including laws upon the same or similar subjects;

(E) The consequences of a particular construction;

(F) The administrative construction of the statute.

Accord Symmes Township Board of Trustees v. Smyth, 87 Ohio St.3d 549, 721 N.E.2d 1057 (2000).

The object sought to be attained, the circumstances of enactment, and the history of the legislation must be found from the state policies that were codified in the same bills. Ohio does not record legislative history, leaving the expressed policies as most indicative of the legislators' goals.

Those policies, set forth in R.C. 4928.02, include several provisions addressing the separation of competitive retail electric service – that is, generation – from regulated distribution and transmission services. However, as reviewed above, this case is not about generation. It is about non-electric services. And, of the fourteen codified policies, there are only three that do not specifically reference retail electric service, generation, or energy. Of those three, only one single policy mentions non-electric services. That policy, in division (H), provides that it is the policy of Ohio to:

> [E]nsure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.

It is important, in the application of this policy to the understanding of R.C. 4928.17(D), to recognize what the policy says and what it does not say. The division starts out by addressing

"effective competition." It also mentions "product[s] or service[s] other than retail electric service" (which the Company has been referring to as "non-electric service"). It does **not**, however, say anything about ensuring effective competition in the provision of non-electric services. Rather, the sentence indisputably states that anticompetitive subsidies – which might flow between a regulated electric service and a non-electric service – should be avoided, in order to ensure effective competition in the provision of retail electric service. This is crucial: The legislators said nothing in R.C. 4928.17 about protection of, or support for, competition in the non-electric service market. Protection of that industry was not part of the intent of the legislature in adopting this law. It is only retail electric service competition that is to be protected.

With that policy in mind, then, it is possible to look back to the words of R.C. 4928.17(D) in order to evaluate legislative intent. The legislature was aiming to protect the incipient competitive retail electric service market. It did so, in R.C. 4928.17, by setting forth a number of requirements for appropriate corporate separation. But it also recognized that circumstances would change over time, in unpredictable ways. The legislators had no way to know how quickly or thoroughly that market might develop. And so, to protect it appropriately, it allowed a great deal of deference to the Commission, which would have its hands on the pulse of that competition as time went on, to amend corporate separation plans to account for changed circumstances.

As noted above, a court may also consider the "administrative construction of the statute." R.C. 1.49(F). This Court has, similarly, concluded that it "may rely on the expertise of a state agency in interpreting a law when 'highly specialized issues' are involved and 'where agency expertise would, therefore, be of assistance in discerning the presumed intent of our

General Assembly.'" *Elyria Foundry Co. v. Pub. Util. Comm.*, 114 Ohio St.3d 305, 2007-Ohio-4164, ¶ 14 (*quoting Consumers' Counsel v. Pub. Util. Comm.*, 58 Ohio St.2d 108, 110, 388 N.E.2d 1370 (1979). The Commission has amended corporate separation plans, without discussing compliance with divisions (A) and (C), many times since R.C. 4928.17 was enacted. *See, e.g., In the Matter of the Application of The Cincinnati Gas & Elec. Co. to Modify its Nonresidential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish an Alternative Competitive-Bid Service Rate Option Subsequent to the Market Development Period*, Case No. 03-93-EL-ATA, Opinion and Order (Sep. 29, 2004), PUCO App. at 21-22; *In the Matter of the Application of Duke Energy Ohio for Approval of an Elec. Security Plan*, Case No. 08-920-EL-SSO, *et al*, Opinion and Order, pg. 20 (Dec. 17, 2008), PUCO App. at 25; *In the Matter of the Application of Duke Energy Ohio for Approval of the Second Amended Corporate Separation Plan Under Section 4928.17, Revised Code and 4901:1-37 Ohio Adm. Code*, Case No. 09-495-EL-UNC, Opinion and Order, pg. 1 (Apr. 5, 2011), PUCO App. at 27; *In the Matter of the Application of Duke Energy Ohio for Auth. To Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, *et al.*, Opinion and Order, pp. 45-46 (Nov. 22, 2011), PUCO App. at 41-42. Evidently, the Commission has read division (D) as allowing the substantial discretion that is has exercised.

Continuing the consideration of legislative history, if the General Assembly had disagreed with the Commission's interpretation of the discretion allowed to it under division (D), it could easily have amended that division as part of SB 221, in 2008. It did not do so. This further supports the Commission's construction of the language in question.

Division (D) allows the Commission to amend corporate separation plans as it considers necessary to reflect changed circumstances.

D. The Commission's Exercise of Discretion under Division (D) Was Reasonable and Appropriate.

The controlling statute, R.C. 4928.17(D), is entirely silent with regard to any restrictions by which the Commission must evaluate corporate separation plan amendments that are submitted to it for authorization. While the legislature has provide specific parameters in some areas regulated by the Commission, certain other areas have been left to the Commission's discretion. As this Court has recently noted in a natural gas utility case, "'where a statute does not prescribe a particular formula, the PUCO is vested with broad discretion." The General Assembly left it to the Commission to determine how best to carry out the state's policy goals . . .." *Ohio Consumers' Counsel v. Pub. Util. Comm. of Ohio,* 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261, ¶ 40 (citations omitted). This is precisely such a situation. Exercising its discretion, the Commission must use its expertise and understanding of both facts and state policy to reach a reasonable outcome. And this is precisely what it has done.

In its Order, the Commission explained the parties' various arguments and then proceeded to evaluate the proposed amendment. In doing so, the Commission imposed requirements upon Duke Energy Ohio in connection with its provision of non-electric products and services, thereby ensuring that it would receive no competitive advantage or disadvantage:

- To ensure that customers fully understand that the services in question are unregulated and competitive, the Commission required Duke Energy Ohio to include a statement to the effect in any work order, which statement must be signed by each customer. Finding and Order, pg. 6, IGS App. at 11.

- The Commission explained that it is "of paramount importance" that services be provided at a rate that is no less than the Company's fully allocated cost. It specifically emphasized "that none of the costs associated with the services and products may be passed on by Duke to the regulated utility's customers." Finding and Order, pg. 6, IGS App. at 11.
- The Order mandates that the Company establish agreements and processes to guarantee that it will have access to all information necessary to prove that "no costs associated with these products or services are being borne by the regulated utility's customers." Finding and Order, pg. 6, IGS App. at 11.
- The Commission also required modifications in the tariff language in order to ensure its readability. Finding and Order, pg. 6, IGS App. at 11.

And, finally, the Commission concluded that there was no "substantiated reason" to believe that the amendment did not comply with state policy. Finding and Order, pg. 6, IGS Supp. at 11.

The Commission's discussion of, and reliance on, state policy statements is key. This Court has recently explained that "policy statements are 'guideline(s) for the commission to weigh' in evaluating utility proposals to further state policy goals, and it has been 'left . . . to the commission to determine how best to carry (them) out.'" *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 62. It is evident that the legislature provided the Commission with discretion in the area of amendments, and that the Commission lawfully and reasonably exercised that discretion. It decision was not contrary to law.

The Commission was fully aware of the requirements of R.C. 4928.17 and the state policies set forth in R.C. 4928.02. Its order was specifically designed to address those issues. It protects regulated ratepayers, placing requirements on Duke Energy Ohio that, while reasonable,

do not similarly burden potential non-utility market participants such as the Appellant. This is an appropriate balance of the regulatory interests of the Commission and the ratepayers and the business interests of the Company. The Appellant has not shown that the Commission's exercise of discretion under R.C. 4928.17(D) was unreasonable.

Proposition of Law 3:

Even if Considered under Divisions (A) and (C) of R.C. 4928.17, the Commission Appropriately Allowed the Company to Offer Non-Electric Service.

A. **The Commission Was Given Discretion, by the Legislature, To Determine Good Cause Under Division (C).**

R.C. 4928.17, when it was enacted, changed the landscape for electric utility regulation. It required those utilities to begin the process of separating the regulated distribution and transmission parts of their business away from their generation businesses. To accomplish the start of that transition, it established parameters for corporate separation plans such that non-regulated business would only occur within the utility entity under the watchful eye of the Commission. Division (A) set forth those parameters and division (C) allowed the Commission latitude to deviate temporarily from the general parameters for good cause. The "good cause" that is encompassed within division (C) is the ultimate in Commission discretion, requiring only that the Commission's decision be reasonable and lawful. *See, e.g., Small v. Pub. Util. Comm.*, 113 Ohio St. 650, 652, 150 N.E. 37 (1925)("while a wide discretion is lodged in the commission in determining 'good cause,' the order of the commission must in any event be reasonable and lawful"). And it is important to recognize that such a determination of good cause is a factual determination. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 109 Ohio St.3d 328, 2006-Ohio-2110, ¶ 37 ("This is a factual determination, and this court has consistently refused to substitute its judgment for that of the PUCO on factual matters.").

The only portion of the statute that does not, on its face, include an element of Commission discretion is division (A)(3), which ends with the following sentence: "Notwithstanding any other division of this section, a utility's obligation under division (A)(3) of this section shall be effective January 1, 2000." What does division (A)(3) cover? In line with the state policy expressed in R.C. 4928.02(H), division (A)(3) supplies details around the prohibition against allowing regulated ratepayers to subsidize either competitive retail electric service or non-electric service. Because that sentence specifically excluded any exceptions that might apply based on other divisions of the section, the legislature made it clear that this mandate was in place immediately, with the advent of deregulation, and regardless of subsequent amendment.

Thus, the only aspect of R.C. 4928.17(A) that could not be eliminated under division (C) is the financial separation between the regulated and non-regulated businesses. The Commission's decision here properly addressed that concern by adding requirements around record-keeping and processes that must be established before Duke Energy Ohio can enter the market for non-electric service. The Commission was indisputable guided by the objectives of protecting ratepayers and protecting competition in the market for competitive retail electric service in its order.

B. Commission Precedent and Legislative History Instruct that an Electric Distribution Utility May Offer Non-Electric Service under the Terms of R.C. 4928.17(A), Even Without a Waiver under Division (C).

In the 1999 Commission proceeding to establish an electric transition plan for the FirstEnergy utilities, the Commission approved a corporate separation plan that included the ability for those utilities to offer certain, identified non-electric services. *In the Matter of the Application of FirstEnergy 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 Authorization to Collect Transition Revenues, Case No. 99-1212-EL-ETP, *et al.* Opinion and Order, pp 23, 26 (Jul. 19, 2000), Duke App. at Appendix 10. The list of non-electric services allowed to be offered by those electric utilities is extremely similar to the list that was approved by the Commission in the case below, for Duke Energy Ohio. And the concept is identical.

Although the FirstEnergy utilities' corporate separation plans, as a whole, included an end date, there was no specific end date for the permission to offer non-electric services. And as time has gone on, now 15 years later, that grant of authority is still in place. *See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a New Service*, Case No. 14-1980-EL-ATA, *et al.*, Application (Nov. 12, 2014), Duke App. at Appendix 1. The Commission must therefore have believed that the "interim period" requirement that is included in division (C) was not applicable, as the non-electric services could be offered by the utilities without a waiver.

As previously explored with regard to the appropriate reading of division (D), the legislative intent is crucial. Here, it must be understood that the General Assembly could have amended R.C. 4928.17 to prohibit such a determination by the Commission in the process of passing SB 221. Although the non-electric services being offered by the FirstEnergy utilities were no secret, the legislature allowed this aspect of the statute to remain unchanged. The Commission's reading of the law must, then, have been reasonable. And that same law, applied to the Company's almost identical proposal, had to result in the same outcome. Certainly this precedent suggests that R.C. 4928.17 does not prohibit an electric utility from offering non-electric services.

Nevertheless, the Appellant seeks to manufacture a claim on the basis that the Commission did not explicitly or expressly grant the Company a waiver. And Appellant argued that "good cause" for granting a "waiver" under R.C. 4928.17(C) did not exist in this case. Appellant's Merit Brief, pg. 11. Importantly, however, there is no requirement for such a waiver. The Appellant argued that "Ohio law is pro-competitive." *Id.* at pg. 12. The Appellant asserted – only on appeal – that "there are businesses in the market (such as [the Appellant]) that are already offering non-commodity services to customers in Duke's service territory." *Id.* at 13. This is a fact-based assertion by the Appellant, but is not something that it ever stated in its filings before the Commission in this case. In its initial comments, the Appellant said nothing about other market participants offering similar services. In its reply comments, the Appellant stated that "there are market participants that are already willing and able to offer [non-electric services]" but did **not** indicate that they were actually doing so or that the Appellant itself was among those unnamed market participants. Appellant's Reply Comments, pg. 3, Duke Supp. at 1. This is not the place to add purported facts to the record.

Even if the Court chooses to consider this issue, the Appellant's argument is misleading. Although state policy certainly supports competition in the retail electric service market, there is no legislatively mandated effort to support or protect competition in the market for non-electric services. As discussed above, the state policies set forth in R.C. 4928.02 include only one specific reference to non-electric services, in division (H) thereof. And that language requires the protection of retail electric service competition by ensuring that regulated services do not subsidize non-electric service. There is no special protection afforded to those entities that compete in the offering of non-electric service.

The Commission, properly, did not base its decision on potential competition in the market for non-electric service. Rather, it stressed the exact topic that is addressed by the state policy that references such service. As noted, division (H) of R.C. 4928.02 effectively prohibits subsidies of a non-electric service by regulated ratepayers. The Commission repeatedly explained its focus on this issue. In the Finding and Order, the Commission stressed that the Company's "commitment to ensure that [the non-electric services] will be provided at a rate negotiated with the customer, but no less than Duke's fully-allocated cost, is of paramount importance." In order to ensure that no costs associated with the non-electric services are ever passed on to regulated customers, the Commission directed the Company "to establish the necessary agreements and processes to guarantee that . . . Duke has access to the information to prove that no costs associated with these products or services are being borne by the regulated utility's customers." Finding and Order, pg. 6, IGS App. at 6. On rehearing, the Commission restated its protective requirements and indicated that possible violations would be dealt with through its standard complaint process, on a case-by-case basis, or through an informal review.

Reading divisions (A) and (C) of R.C. 4928.17 with and understanding of state policy and legislative intent, it is clear that a specific waiver was not required.

Proposition of Law No. 4:

The Commission's Order Is Legally Sufficient Under R.C. 4903.09.

The Appellant accuses the Commission of issuing an Order that failed to state findings of fact and reasons for its decision, as mandated under R.C. 4903.09. Its convoluted reasoning appears to start from the premise that the Order did not grant a waiver under R.C. 4928.17(C). The Appellant then notes that it raised this issue on rehearing and the Commission still did not grant a waiver. According to the Appellant, this creates a violation of R.C. 4903.09.

But the appellant misunderstands the purpose behind R.C. 4903.09. As this Court has repeatedly stated, the purpose of this requirement is "to enable this court to review the action of the commission without reading the voluminous records in Public Utilities commission cases." *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 32 Ohio St.3d 306, 311, 513 N.E.2d 337 (1987) (*quoting Commercial Motor Freight, Inc. v. Pub. Util. Comm.*, 156 Ohio St. 360, 363-364, 102 N.E.2d 842 (1951)). The purpose of the statute is **not** to bootstrap another attack on a Commission order, simply because the Commission did not eventually agree with the appealing party. Here, the Commission clearly explained the facts in the case and clearly explained its rationale. It met the requirements of the law.

Furthermore, to the extent that the Commission's Order and Entry on Rehearing did not include sufficient rationale, this is only a technical defect. R.C. 4905.09 specifically states that "substantial compliance by the public utilities commission with the requirements of Chapters . . . 4903. . . . of the Revised Code is sufficient to give effect to all its rules and orders. Those rules and orders shall not be declared inoperative, illegal, or void for an omission of a technical nature." Duke App. at Appendix 19. This Court has specifically found that a technical defect under R.C. 4903.09 does not mandate reversal, when "sufficient and compelling" reasons for the decision appear in the record. *East Ohio Gas Co. v. Pub. Util. Comm.*, 45 Ohio St.2d 86, 92, 341 N.E.2d 585 (1976).

Finally, the Company notes that the Appellant has alleged no prejudice as a result of any lack of explanation of its rationale. Even where this Court has found that an order by the Commission was in clear violation of R.C. 4903.09, it still would not reverse where the appellant had not shown any prejudice as a result of that violation. "[W]e will not reverse a commission order unless the party seeking reversal demonstrates the prejudicial effect of the order." *Elyria*

Foundry Co. v. Pub. Util. Comm., 114 Ohio St.3d 305, 2007-Ohio-4164, ¶ 31 (*citing Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 92, 706 N.E.2d 1255 (1999), *citing Holladay Corp. v. Pub. Util. Comm.*, 61 Ohio St.2d 335, 402 N.E.2d 1175 (1980), at syllabus).

The Appellant has not even attempted to demonstrate prejudice; the Appellant only complains about problems that **might** occur. Duke Energy Ohio might not charge correctly for the non-electric services. Duke Energy Ohio might not retain adequate records. The Appellant might offer similar services and it might be negatively impacted by competition with Duke Energy Ohio. But speculation is not enough. In *Elyria, supra*, this Court concluded that any prejudice was speculative, where, among other things, the Commission had provided for a subsequent process to review deferred expenses. *Elyria,* 114 Ohio St.3d 305, 2007-Ohio-4164, ¶ 33. Similarly, here, the Commission has provided a process whereby it may review any claimed violations of corporate separation requirements. And the Appellant never alleged, before the Commission, that it was actually in a competing business. Any prejudice to the Appellant that might result from this decision is no more than speculation.

V. CONCLUSION

The Commission decided the case below pursuant to appropriately applied legal parameters, exercising its informed discretion on the basis of the facts and circumstances before it. Its rationale was carefully spelled out. It decision should be upheld.

Respectfully submitted,

Jeanne W. Kingery /EW

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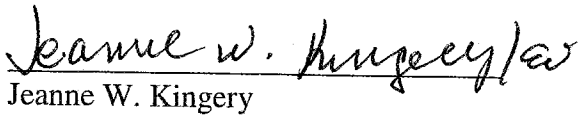
CERTIFICATE OF SERVICE

The undersigned certifies that, on this 17th day of February, 2015, a copy of the foregoing Merit Brief of Intervening Appellee, Duke Energy Ohio, Inc., was served by ordinary mail, on the following:



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APPENDIX

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Application Not for an Increase in Rates, pursuant to Section 4909.18 Revised Code

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a New Service	)) 14-1980-EL-ATA) 14-1981-EL-ATA) 14-1982-EL-ATA)

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1. APPLICANT RESPECTFULLY PROPOSES: (Check applicable proposals)

_____	New Service	X	Change in Rule or Regulation
_____	New Classification	_____	Reduction Rates
_____	Change in Classification		Correction of Error
_____	Other, not involving increase in rates		
_____	Various related and unrelated textual revision, without change in intent		

2. DESCRIPTION OF PROPOSAL: Proposal to permit Applicants to arrange for the offering of insurance products and related services to customers by insurance companies and insurance producers. Applicants will not offer any insurance products or services.

3. TARIFFS AFFECTED: (If more than 2, use additional sheets) See attached

4. Attached hereto and made a part hereof are: (Check applicable Exhibits)

X Exhibit A - existing schedule sheets (to be superseded) if applicable

X Exhibit B - proposed schedule sheets

_____ Exhibit C-1

a) if new service is proposed, describe;
Description included on attached Exhibit C-1.

b) if new equipment is involved, describe (preferably with a picture, brochure, etc.) and where appropriate, a statement distinguishing proposed service from existing services;

c) if proposed service results from customer requests, so state, giving if available, the number and type of customers requesting proposed service.

___X___ Exhibit C-2 - if a change of classification, rule or regulation is proposed, a statement explaining reason for change.

_____ Exhibit C-3 - statement explaining reason for any proposal not covered in Exhibits C-1 or C-2.

5. This application will not result in any increase in any rate, joint rate, toll, classification, charge or rental.

6. Applicants respectfully request the Commission to approve the new tariff sheet attached hereto and authorize Applicants to file same in final form, and to be in the form and content shown in Exhibit B.

/s/ Carrie M. Dunn
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Attorney for Applicants Ohio Edison Company, The
Cleveland Electric Illuminating Company and
The Toledo Edison Company

EXHIBIT A

ELECTRIC SERVICE REGULATIONS

Any customer desiring protection against interruptions in service, variations in service characteristics, high or low voltage, phase failure, phase reversal, the use of electrical appliances or the presence of the Company's property on the customer's premises, shall furnish, at the customer's expense, any equipment desired by the customer for such purpose. Interruptions in service shall not relieve the customer from any charges provided in the rate schedule.

C. Special Customer Services: The Company may furnish customers special customer services as identified in this section. No such special customer service shall be provided except where the Company has informed the customer that such service is available from and may be obtained from other suppliers. A customer's decision to receive or not receive special customer services from the Company will not influence the delivery of competitive or non-competitive retail electric service to that customer by the Company. Such special customer services shall be provided at a rate negotiated with the customer, but in no case at less than the Company's fully allocated cost. Such special customer services shall only be provided when their provision does not unduly interfere with the Company's ability to supply electric service under the Schedule of Rates and Electric Service Regulations.

Such special customer services include: design and construction of customer substations; resolving power quality problems on customer equipment; providing training programs for construction, operation and maintenance of electrical facilities; performing customer equipment maintenance, repair or installation; providing service entrance cable repair; providing restorative temporary underground service; providing upgrades or increases to an existing service connection at customer request; performing outage or voltage problem assessment; disconnecting a customer owned transformer at customer request; loosening and refastening customer owned equipment; determining the location of underground cables on customer premises; disconnecting or reconnecting an underground pedestal at customer request; covering up lines for protection at customer request; making a generator available to customer during construction to avoid outage; providing pole-hold for customer to perform some activity; opening a transformer at customer request for customer to install an underground elbow; providing a "service saver" device to provide temporary service during an outage; resetting a customer-owned reclosure device; providing phase rotation of customer equipment at customer request; conducting an evaluation at customer request to ensure that customer equipment meets standards; or upgrading the customer to three phase service.

XI. COLLECTION OF PAST DUE BILLS AND DISCONNECTION OF SERVICE

A. **Procedures:** The Company's procedures for collecting past due bills and disconnecting service are set forth in the Ohio Administrative Code, except as permitted by the Order in Case No. 02- 1944-EL-CSS.

B. **Field Collection:** When a customer has a delinquent bill, as defined in Chapter 4901:1-18 of the Ohio Administrative Code, the Company may make a field collection visit to attempt to collect the delinquent amount.

Whenever a field collection visit is made by a Company employee or authorized agent of the Company, the Field Collection Charge included in the Company's Tariff Sheet 75, Miscellaneous Charges, shall either be collected during the field collection visits, or assessed on the customer's next bill. Such Field Collection Charges shall be limited to once per billing cycle.

ELECTRIC SERVICE REGULATIONS

Any customer desiring protection against interruptions in service, variations in service characteristics, high or low voltage, phase failure, phase reversal, the use of electrical appliances or the presence of the Company's property on the customer's premises, shall furnish, at the customer's expense, any equipment desired by the customer for such purpose. Interruptions in service shall not relieve the customer from any charges provided in the rate schedule.

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Any customer desiring protection against interruptions in service, variations in service characteristics, high or low voltage, phase failure, phase reversal, the use of electrical appliances or the presence of the Company's property on the customer's premises, shall furnish, at the customer's expense, any equipment desired by the customer for such purpose. Interruptions in service shall not relieve the customer from any charges provided in the rate schedule.

C. **Special Customer Services:** The Company may furnish customers special customer services as identified in this section. No such special customer service shall be provided except where the Company has informed the customer that such service is available from and may be obtained from other suppliers. A customer's decision to receive or not receive special customer services from the Company will not influence the delivery of competitive or non-competitive retail electric service to that customer by the Company. Such special customer services shall be provided at a rate negotiated with the customer, but in no case at less than the Company's fully allocated cost. Such special customer services shall only be provided when their provision does not unduly interfere with the Company's ability to supply electric service under the Schedule of Rates and Electric Service Regulations.

Such special customer services include: design and construction of customer substations; resolving power quality problems on customer equipment; providing training programs for construction, operation and maintenance of electrical facilities; performing customer equipment maintenance, repair or installation; providing service entrance cable repair; providing restorative temporary underground service; providing upgrades or increases to an existing service connection at customer request; performing outage or voltage problem assessment; disconnecting a customer owned transformer at customer request; loosening and refastening customer owned equipment; determining the location of underground cables on customer premises; disconnecting or reconnecting an underground pedestal at customer request; covering up lines for protection at customer request; making a generator available to customer during construction to avoid outage; providing pole-hold for customer to perform some activity; opening a transformer at customer request for customer to install an underground elbow; providing a "service saver" device to provide temporary service during an outage; resetting a customer-owned reclosure device; providing phase rotation of customer equipment at customer request; conducting an evaluation at customer request to ensure that customer equipment meets standards; or upgrading the customer to three phase service.

XI. COLLECTION OF PAST DUE BILLS AND DISCONNECTION OF SERVICE

A. **Procedures:** The Company's procedures for collecting past due bills and disconnecting service are set forth in the Ohio Administrative Code, except as permitted by the Order in Case No. 02- 1944-EL-CSS.

B. **Field Collection:** When a customer has a delinquent bill, as defined in Chapter 4901:1-18 of the Ohio Administrative Code, the Company may make a field collection visit to attempt to collect the delinquent amount.

Whenever a field collection visit is made by a Company employee or authorized agent of the Company, the Field Collection Charge included in the Company's Tariff Sheet 75, Miscellaneous Charges, shall either be collected during the field collection visits, or assessed on the customer's next bill. Such Field Collection Charges shall be limited to once per billing cycle.

EXHIBIT B

PUCO No. 11, Electric Service Regulations, Original Sheet 4, page 13 of 24 (Ohio Edison)
PUCO No. 13 Electric Service Regulations, Original Sheet 4, page 13 of 24 (CEI)
PUCO No. 8 Electric Service Regulations, Original Sheet 4, page 13 of 24 (Toledo Edison)

X. Customers Wiring, Equipment, and Special Services

C. Special Customer Services: The Company may furnish customers special customer services as identified in this section. No such special customer service shall be provided except where the Company has informed the customer that such service is available from and may be obtained from other suppliers. A customer's decision to receive or not receive special customer services from the Company will not influence the delivery of competitive or non-competitive retail electric service to that customer by the Company. Such special customer services shall be provided at a rate negotiated with the customer, but in no case at less than the Company's fully allocated cost. Such special customer services shall only be provided when their provision does not unduly interfere with the Company's ability to supply electric service under the Schedule of Rates and Electric Service Regulations.

Such special customer services include: design and construction of customer substations; resolving power quality problems on customer equipment; providing training programs for construction, operation and maintenance of electrical facilities; performing customer equipment maintenance, repair or installation; arranging for the offering of insurance products and related services to customers by insurance companies or producers; providing service entrance cable repair; providing restorative temporary underground service; providing upgrades or increases to an existing service connection at customer request; performing outage or voltage problem assessment; disconnecting a customer owned transformer at customer request; loosening and refastening customer owned equipment; determining the location of underground cables on customer premises; disconnecting or reconnecting an underground pedestal at customer request; covering up lines for protection at customer request; making a generator available to customer during construction to avoid outage; providing pole-hold for customer to perform some activity; opening a transformer at customer request for customer to install an underground elbow; providing a "service saver" device to provide temporary service during an outage; resetting a customer-owned reclosure device; providing phase rotation of customer equipment at customer request; conducting an evaluation at customer request to ensure that customer equipment meets standards; ~~or~~ and upgrading the customer to three phase service.

EXHIBIT C-2

Description of Change in Rule or Regulation

This tariff filing is designed to permit Applicants to work with insurance companies and insurance producers to permit the insurance companies and insurance producers[1] to make available to customers insurance products and related services. Such products may include, by way of example, the following:

- Disaster Protection Plan: pays insurance deductible reimbursement, emergency cash payments, and locksmith services in the event of damage to the customer's home.

- Personal Disaster Recovery Plan: pays mortgage payments, insurance deductible reimbursement, and other benefits while the customer's home is temporarily uninhabitable.

Such products and services will provide customers with additional options to protect themselves from the financial hardships associated with unforeseen emergency expenses, thus enhancing a customer's choice of products and services available to them. Such products will be part of a utility program to bring options to their customers for the purchase of products and services and will be administered in a similar fashion. Pricing for the insurance products and related services will be established by the insurance companies or insurance producers. The Applicants will not set the pricing for the products or services. The Applicants will provide no subsidy for the products or services. Costs incurred in the conduct of the program will be borne by the insurance companies and insurance producers, and the Applicants will receive compensation for billing and administrative services they provide to the insurance companies in connection with the program. Further, a disclaimer will be included in program literature that the insurance products and services are not being offered by the Applicants, but are offered to customers by the insurance companies and insurance producers, and that such products are available from other vendors and do not have to be purchased in order to receive electric service. Similar language is already in use and is set forth in the Applicant's tariff as set forth in Exhibit B.

Applicants are not proposing to offer or sell any insurance product or service as part of this Application. Customers will be under no obligation to purchase any insurance products or related services, and if a customer does purchase an insurance product or related service, the customer may cancel the product at any time without penalty or charge.

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[1] An insurance producer may also be referred to as an insurance agent.

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in

Case No(s). 14-1980-EL-ATA, 14-1981-EL-ATA, 14-1982-EL-ATA

Summary: Application for Approval of a New Service electronically filed by Ms. Carrie M Dunn on behalf of The Toledo Edison Company and The Cleveland Electric Illuminating Company and Ohio Edison Company

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 Illuminating Company, and The Toledo Edison Company for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues.	)	Case No. 99-1212-EL-ETP Case No. 99-1213-EL-ATA Case No. 99-1214-EL-AAM

OPINION AND ORDER

The Commission, coming now to consider the stipulations, testimony. and other evidence presented in this proceeding, hereby issues its opinion and order. .

APPEARANCES:

Arthur E. Korkosz, Stephen L. Feld, James W. Burk, and Gary D. Benz, FirstEnergy Corp., 76 South Main Street, Akron, Ohio 44308; Jones, pay, Reavis & Pogue, by Paul T. Ruxin and Helen L. Liebman, 1900 Huntington Center, 41 South High Street, Columbus, Ohio 43215; Calfee, Halter & Griswold, LLP, by . Kevin M. Sullivan, 1400 McDonald Investment Center, 800 Superior Avenue, Cleveland, Ohio 44114-2688; and Morgan, Lewis & Griswold, LLP, by Thomas P. Gadsden, 1701 Market Street, Philadelphia, Pennsylvania 19103-2921, on behalf of the FirstEnergy operating companies.

Betty D. Montgomery, Attorney General of the State of Ohio, by Duane W . Luckey, Section Chief, and William L. Wright and Robert A. Abrams, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, Columbus, Ohio 43215-3793, on behalf of the staff of the Public Utilities Commission of Ohio.

Robert S. Tongren, Ohio Consumers' Counsel, and Barry Cohen, Evelyn R . Robinson, David C. Bergmann, and John Smart, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215-3485, on behalf of the residential customers of the FirstEnergy operating companies.

McNees, Wallace & Nurick, by Samuel C. Randazzo, Gretchen J. Hummel, and Kimberly J. Wile, Fifth Third Center, 21 East State Street, Suite 1700, Columbus, Ohio 43215-4228, on behalf of Industrial Energy Users-Ohio.

Boehm, Kurtz & Lowry, by Michael L. Kurtz, 2110 CBLD Center, 36 East Seventh Street, Cincinnati, Ohio 45202, on behalf of the Kroger Company.

Lawrence J. Stelzer, Jr., 50 West Broad Street, Suite 2020, Columbus, Ohio 43215, on behalf of the Ohio Council of Retail Merchants.

in the capacity reservation charge, the customer possessing a self-generation facility will be held captive to FirstEnergy, contrary to the intent of S.B. 3.

While we do not disagree that transmission and distribution facilities must be dedicated to stand ready to provide service, it is apparent that some portion of the capacity reservation charge is also compensation for generation facilities that are dedicated to stand ready in the event of an unscheduled outage of a customer's own generation. If a customer is not requiring FirstEnergy to have "generation" in reserve, because the customer has utilized an alternative supplier, the customer should not be required to pay the full capacity reservation charge. All capacity reservation charges should be unbundled such that an appropriate portion, consistent with the unbundling of other capacity charges, is attributed to generation and subject to being applied to the shopping credit.

E. Corporate Separation

FirstEnergy has proposed an interim corporate separation plan. The plan consists of a new organizational structure, a code of conduct and practices for affiliate transactions and cost accounting. Under its plan, FirstEnergy would divide its operations into three separate business units: a Competitive Services Unit, a Corporate Support Services Unit and a Utility Services Unit (hereinafter the "Competitive Unit," the "Support Unit" and the "Utility Unit" respectively) (FirstEnergy Ex. 9, at 13 and FirstEnergy Ex. 14, at 4-5). The proposed interim plan provides that the Utility Unit will own, operate, and control all FirstEnergy transmission and distribution facilities (FirstEnergy Ex. 9, at 19). The Support Unit will provide centralized and common services to the other units *(Id.* at 23). Such services will include, but not be limited to, accounting, legal, auditing, finance, human resources and industrial relations, communications, real estate, information services, and other shared functions *(Id.)*. Under the interim plan, the FirstEnergy operating companies will transfer operating and functional control over all their competitive assets, including their generating plants, to the Competitive Unit, effective no later than January 1, 2001 *(Id.* at 13 and FirstEnergy Ex. 14, at 4, 14-15).

FirstEnergy claims that, because it cannot practically unwind the financial obligations and associated liens on its operating utility companies' property, it will not be able to provide competitive retail services through a fully separated affiliate. Therefore, the company has presented and requested Commission approval of an interim corporate separation plan, pursuant to Section 4928.17(C), Revised Code, and Rule 4901:1-20-16(G)(1)(d), O.A.C., that would functionally separate its utility and competitive retail operations. FirstEnergy has requested specific waivers and clarifications of the statutory and rule requirements where it believes a conflict exists. In addition, FirstEnergy has made general waiver requests to the extent that its proposed plan, as described in its testimony and exhibits and in the settlement, is deemed not to be in accord with the applicable requirements (FirstEnergy Ex. 9, at 5 and FirstEnergy Ex. 14, at 2).

Under FirstEnergy's interim plan, the separation of the business activities of the company into the three distinct units described above will take place by January 1, 2001. Accordingly, under FirstEnergy's corporate separation plan, the functions of providing competitive retail and utility services will be separated and provided by distinct FirstEnergy business units. Although operating control of all competitive assets, primarily generating units, will be transferred to the Competitive Unit by the starting date of competitive retail electric service, the transfer of legal ownership of such assets will not be accomplished immediately. FirstEnergy contends that its plan provides an economically reasonable means for accomplishing the goals of corporate separation without creating additional transition costs to be absorbed by ratepayers.

The company claims that, during the interim period, the Competitive Unit will be responsible for operating and maintaining the transferred assets (FirstEnergy Ex. 14, at 5). Under the interim plan, operational and financial responsibilities will include the obligation to pay all operating and maintenance expenses, taxes, and capital costs fairly attributable to the value of the transferred assets (FirstEnergy Ex. 9, at 13). The company states that the Competitive Unit will also enter into an agreement with the Utility Unit to provide the full electric requirements of the Utility Unit necessary to fulfill that unit's electric supply obligations to its retail customers (*Id*. at 14-16; FirstEnergy Ex. 14, at 5-6).

FirstEnergy witness Navin testified that it would be fiscally impractical, if not impossible, to fully separate the ownership of the FirstEnergy generating facilities by January 1, 2001 (FirstEnergy Ex. 14, at 3-4, 9-12). According to Mr. Navin, the generating assets, along with the other assets of the FirstEnergy operating companies, are subject to secured first mortgage bonds, secured notes, pollution control notes, credit lines, and various letters of credit originally issued by the operating utilities (*Id*. at 10). Mr. Navin stated that, in order to release the generating facilities from the liens of those utility company obligations, and thereby effect a total structural separation of FirstEnergy's utility and competitive assets, it would be required to implement a substitution of collateral, retirement of debt and preferred stock, and tendering for outstanding mortgage bonds (*Id*. at 13-16 and FirstEnergy Ex. 14-S at 2). Mr. Navin contends that the FirstEnergy operating utilities would incur significant costs to secure the release of the liens created by the utility debt obligations, because the operating companies would be forced to tender for bonds that are not currently callable. Mr. Navin also claims that the operating companies would be required to issue higher-cost unsecured debt to provide the requisite amount of retired bonds and cash needed to effect the release of owned assets from liens and/or to finance the tender for outstanding debt (FirstEenrgy Ex. 14, at 11-12). Additionally, according to Mr. Navin, the operating companies have entered into sale/leaseback arrangements that prevent the actual transfer of certain units or the underlying lease agreements without obtaining the lessors' consent, which is entirely discretionary (*Id.* at 3). FirstEnergy argues that the interim plan is intended to separate the operational activities from the Utility Unit, and to make the Competitive Unit responsible for the operating costs and

its share of the lease expenses associated with those assets. FirstEnergy states that this arrangement would stay in place until the leases can be economically terminated.

Under the proposed interim plan, all other generating asset interests will be transferred to the Competitive Unit by the end of 2005. As the generating assets are released from the liens of the mortgage during the market development period, the operating utility companies will sell those assets to the Competitive Unit and title will be passed to the latter unit (FirstEnergy Ex. 14, at 4, 14 and Attach. TCN-25 and 45). The Utility Unit will receive cash and/or a note secured by a lien on the transferred assets (FirstEnergy Ex. 14-S at 4). The company requests a waiver, to the extent that this process requires a waiver of the Commission's rules (Rule 4901:1-20-16(G)(3), O.A.C.) (*Id.* at 4).

Mr. Navin's testimony set out a timeline over the market development period during which these obligations would be unwound and the generating assets released from the liens of the operating utility company debt (FirstEnergy Ex. 14, Attach. TCN-2 and 4; FirstEnergy Ex. 14-S, Attach. TCN-25). The company states that all of the generating assets will be fully transferred to the Competitive Unit by January 1, 2006, with the exception of the interests in the sale and leaseback units described above.

FirstEnergy argues that these financial entanglements currently preclude any total structural separation and provide the required "good cause" for Commission approval of an interim, functional separation of FirstEnergy's operations and assets. The company claims that the interim separation plan, along with implementation of the code of conduct and accounting procedures, provide consumer protections equivalent to full separation in preventing subsidies and undue competitive advantages flowing to FirstEnergy's Competitive Unit. According to the company, the interim plan also benefits consumers by avoiding the significant costs that would be recovered as transition costs if the financial obligations were unwound immediately.

FirstEnergy claims that it has committed to conduct each business unit's operations in strict compliance with a code of conduct that complies with the Commission's rules (FirstEnergy Ex. 9-S at 8 and FirstEnergy Ex. 9, Attach. MSH-1). FirstEnergy witness Hyrnick described the manner in which FirstEnergy will comply with the Commission's code of conduct and corporate separation rules. According to the company's proposal, FirstEnergy will permit its utility operating companies to transfer information, share resources and coordinate their operations among themselves in order to achieve efficient, safe and reliable operation of their transmission and distribution systems (FirstEnergy Ex. 9, at 9-11). The company claims that information sharing with, and the use of centralized functions provided by the Support Unit, will enable the Utility Unit to provide centralized system dispatch and control, and customer information and billing functions, that will also promote the efficient and economic operation of the Utility Unit. Mr. Hyrnick testified that the Competitive Unit would not be involved in such activities or obtain any undue advantage therefrom.

According to Mr. Hyrnick, FirstEnergy's code of conduct will prevent its Competitive Unit from having access to customer information (unless authorized by the customer), or to information related to the Utility Unit's system operational status, condition or readiness (FirstEnergy Ex. 9, at 11). However, interactions between unregulated affiliates of FirstEnergy not involving the Utility Unit would not be subject to the provisions of the code of conduct *(Id.* at 7). Mr. Hyrnick explained that the company's practices would protect consumers from unreasonable sales practices, market deficiencies and market power abuses. He contends that FirstEnergy's advertising and marketing will be conducted in a manner that will provide consumers with accurate, factual and nonmisleading information regarding the products and services offered by FirstEnergy companies (FirstEnergy Ex. 9-A, at 5). Mr. Hyrnick asserts that the company will not engage in any misleading or unreasonable sales practices, and that it has no plans to market competitive retail electric service using the names of the electric utility operating companies *(Id.)*. He testified that, if FirstEnergy uses the name of one of its utility companies in the advertising by a retail electric marketing affiliate, it would include a disclaimer that the affiliate is not the utility *(Id.)*.

The use of a common name or logo is also the subject of Rule 4901:1-20- 16(G)(4)(h), O.A.C. The logo for each FirstEnergy company is the name of the entity in combination with a curved line and the words, "A FirstEnergy Company," that appear under that entity's name (FirstEnergy Ex. 9-A at 6). FirstEnergy argues that the use of logos by companies in a competitive market is pro-competitive in that logos convey useful and truthful information to consumers *(Id.)*. The company claims that S.B. 3 specifically provides that the corporate separation provisions in the statute do not prohibit the common use of employee benefit plans, facilities, equipment or employees, subject to proper accounting and compliance with the code of conduct.

FirstEnergy witness Clark testified that the Utility Unit will provide, as part of its tariffed distribution services, the design, construction, operation, and maintenance of customers' distribution and transmission systems (FirstEnergy Ex. 18-S). The services offered will include substation design and construction, customer equipment maintenance and repair, customer distribution equipment service upgrades, power quality maintenance and improvement, and power systems and safety training *(Id.* at 3-5 and FirstEnergy Ex. 9, at 20-22). The company claims that customers will be informed that such services are available from other contractors (FirstEnergy Ex. 9, at 21 and FirstEnergy Ex. 18, at 10).

FirstEnergy has also established cost accounting procedures and documentation that it claims will allow the appropriate division of costs to the various units. Mr. Hyrnick testified that, under the affiliate pricing rules, Utility Unit services to the other units will be charged at fully loaded embedded costs (i.e., fully allocated costs), or at tariff rates if such service is tariffed (FirstEnergy Ex. 9-S at 3-5). Mr. Hyrnick asserts that asset transfers from the Utility Unit will also be priced to avoid any cross-subsidy, and nongenerating assets will be priced at net book value plus associated transfer costs.

Generation assets will be transferred at the lower of net book or market to reflect the treatment of such asset values in the determination of transition charges *(Id.* at 4).

Mr. Hyrnick stated that services provided to the Utility Unit by the Support Unit would be set at levels that recover the costs of rendering the service *(Id.* at 3). Services provided by the Competitive Unit to the Utility Unit will be priced at market, except to assure that the Utility Unit is not subsidized, the generation service provided during the market development period will be at fully allocated costs *(Id.)*. According to Mr. Hyrnick, any assets transferred to the Utility Unit by the Support Unit will be at net book cost and assets transferred from the Competitive Unit will be at market value *(Id.* at 4). FirstEnergy asserts that these practices will ensure that no cross subsidization occurs and that no undue preference is provided because the service provider recovers its cost or market value.

FirstEnergy argues that its cost accounting and tracking systems will also protect against anti-competitive subsidies to the Competitive Unit. The pricing conventions, as well as the accounting procedures for transactions involving the Utility Unit, will be set forth in its cost allocation manual (CAM) (FirstEnergy Ex. 9, at 28-29 and FirstEnergy Ex. 9-S at 2). FirstEnergy claims that it will maintain separate accounting records for its electric utility operating companies and their affiliates, as required by Section 4928.17(A)(l), Revised Code. Mr. Hyrnick testified that the company would use its cost accounting and tracking systems not only to directly assign costs to a business unit, but also to accurately allocate costs among the business units (FirstEnergy Ex. 9, at 24 and FirstEnergy Ex. 9-S at 3). He claims that these practices will provide the means for FirstEnergy to properly identify and allocate costs among all of its business units (FirstEnergy Ex. 9, at 25). FirstEnergy contends that, when combined with the functional separation and code of conduct, all of these practices will prevent the creation of both anti-competitive subsidies and unfair competitive advantages.

The National Electrical Contractors Association, Ohio Conference (NECA), the Ohio Mechanical Contracting Industry (OMCI), and the Associated Builders and Contractors (Ohio ABC) (collectively the contractors), argue that FirstEnergy's corporate separation plans do not meet the requirements of Section 4928.17 Revised Code, in that they permit both the regulated and nonregulated entities to perform competitive functions. According to the contractors, this would allow for unfair cross subsidy and preferential treatment of nonregulated competitive affiliates. The Staff Report of Exceptions and Recommendations, filed in this case, is referred to as supporting the argument that the utility business unit should not be providing other negotiated services. The contractors further assert that the utility being first to arrive and respond to the customer, and its exemption from licensing and permitting requirements, provide an unfair business advantage. The contractors also believe that the company's plan to notify customers as to their ability to purchase services from other entities, and the company's plan to provide utility owned equipment and services to competitive affiliates and nonaffiliates on the same terms, as discussed above, is legally insufficient and unworkable (Tr. III, 180-185). In addition, the contractors claim the use of the

company logo by competitive and noncompetitive entities will only promote the confusion and provide an unfair advantage.

FirstEnergy's reply to these arguments is that the contractors offered no testimony in support of their objections and that the staff, subsequent to the filing of its report, signed and filed a brief in support of the stipulations that include the corporate separation plan. The company offers that the provision of these special services have long been a tariffed service that makes efficient use of company resources while expeditiously returning customers to service in cases of outages (Tr. III, 176-177, 182- 184, 186, Tr. IV, 99-101). Most importantly, the company may provide these services at no less than fully allocated cost and will notify the customer of their option to receive the services from other suppliers, thereby eliminating any unfair advantage (Tr. IV, 105,108, 109). In regard to being first to arrive, many of the services do not relate to service interruptions and it will be the customer who determines who will respond. Where service has been interrupted, the company asserts that customers should have the option of being returned to service as quickly as possible. Further, the company states that it will inform the customer that their choice of supplier will not affect the service they receive from FirstEnergy (Tr. IV, 104-105).

FirstEnergy asserts that it will make its facilities and equipment available on a nondiscriminatory basis and at a price that recovers fully allocated cost (Tr. III, 188-189). All transactions will be recorded and priced under applicable rules set out in the CAM and these records will be subject to independent audit (Tr. III, 191). In regard to the use of the logo, the company offers that each company would separately identify itself while stating that it was a FirstEnergy company (Tr. III, 206). Thus, the identification of the entity's affiliation through the logo would eliminate rather than cause confusion. The company further argues that the contractors have failed to provide any record evidence that supports a differentiation in licensing requirements providing the company with any competitive advantage.

The contractors also argue that the activities to be performed by the corporate support unit fail to fully separate the competitive and noncompetitive entities and specifically allows for flow of competitive and monopoly information through this common corporate support entity. The contractors assert that FirstEnergy has not met its burden to establish that its functional separation has the integrity to prevent anti- competitive information flow.

FirstEnergy offered as its reply that all competitive information would be safeguarded. Although the company will employ common computer systems, in order to achieve operating efficiencies, it was taking steps to isolate those portions of the systems and databases that could provide inappropriate access to competitive information (Tr. III, 117). Additional protection would be provided by the company's code of conduct and its program to educate all employees as to the requirements of that code (Tr. III, 115).

The city argues that the corporation separation plan fails to impose a schedule on the company that requires structural separation at a designated point in time when the financial consequences are no longer as onerous. Toledo further argues that the company's regulated unit should not offer competitive services while it is only functionally separated. Thus, according to the city, the utility service unit should be denied the right to provide most of the special services, as an incentive to structurally separate at the earliest possible time.

FirstEnergy points to Mr. Navin's testimony as the schedule for structural separation (FirstEnergy Ex. 14, at 4, 14 and Attach. TCN-2 and TCN-4). The transfer schedule concludes at the end of the market development period, except for certain property subject to sale and leaseback obligations, and nuclear decommissioning trust obligations (Tr. VI, 12 14, 37, 38). *The* company further refutes the need for incentives for full structural separation as the functional separation prevents the preferences and subsidization prohibited by S.B. 3 and the Commission rules.

FirstEnergy has presented an interim corporate separation plan for Commission approval pursuant to Section 4928.17(C), Revised *Code.* Since the corporate separation plan does not provide for structural separation, in order for this Commission to approve an interim plan, the company must show "good cause" pursuant to Section 4928.17(C), Revised *Code.* This section provides that an interim plan must be consistent with such functional separation requirements as is authorized for *the* interim period, and that the plan must provide for ongoing compliance with the policy set out in Section 4928.02, Revised Code. Section 4928.17(A)(2), Revised Code, also requires that all plans satisfy the public interest in preventing unfair competitive advantage and abuse of market power. The plan must also be sufficient to ensure that no undue preference or advantage is extended to or received by the competitive retail affiliate from the utility affiliate (Section 4928(A)(3), Revised Code). The Commission's rules also address interim plans and require that such plans set out a detailed timeline of progression to full structural separation, and that they be subject to periodic Commission review (Rule 4901:1-20-16(G}(l)(d), O.A.C.).

We find that FirstEnergy has constructed its interim plan in a manner that achieves, to the extent reasonably practical, the structural separation contemplated by Section 4928.17(A)(l), Revised Code, and the corresponding Commission rules. The company has shown that the provision of special services by the utility unit will allow customers an expeditious return from service interruptions and an additional consumer option. FirstEnergy has provided a sufficient timeline for its transition to full structural separation. Therefore, the company has met its burden of showing "good cause" for this Commission to approve the interim functional separation plan. However, the Commission reserves the right to invoke its authority to *preserve* fair competition, for both interim and permanent arrangements.

FirstEnergy has made general waiver requests to the extent that its proposed plan, as described in its testimony and exhibits and in the settlement, is deemed not to

be in accord with the applicable requirements (FirstEnergy Ex. 9, at 5 and FirstEnergy Ex. 14, at 2). The company also requests a waiver, to the extent that its financial separation process, discussed above, requires a waiver of the Commission's rules (Rule 4901:1-20-16(G)(3), 0.A.C.) (*Id* . at 4). As to the latter request for a waiver, the financial entanglements of the company, many of which were approved by this Commission in prior cases, do necessitate the granting of the waiver from the provisions of Rule 4901:1-20-16(G)(3) 0.A.C. In regard to the request for a general waiver for wherever the company's plan is not in exact compliance with the statutory or rule requirements, we find that the unique circumstances faced by the company in implementing the transition plan do establish a basis for granting the waiver. However, we reserve the right to closely monitor the implementation of the plan to avoid competitive inequality, unfair competitive advantage or abuse of market power. We believe that through the periodic commission review of the interim separation plan, through audit of the company's books and records, including the cost allocation manual, and the complaint process, this Commission may ensure that the corporate separation plan is implemented in accordance with the policy enunciated in S.B. 3.

F. Employee Assistance Plan (EAP)

FirstEnergy's EAP was presented in the testimony of James A. Bowers, FirstEnergy's Manager of Human Resources. Mr. Bowers referred to FirstEnergy's programs for providing assistance to employees adversely affected by restructuring as transition programs. The EAP, which the company claims, will apply to employees who are involuntarily terminated as a result of restructuring, is only one of those programs (FirstEnergy Ex. 13, at 1). According to Mr. Bowers, the companies' human resource representatives throughout their service territories will be trained regarding the details of the transition programs *(Id* . at 2). The EAP, when it becomes effective, will be the subject of a special written notice that will be sent to all of the companies' employees, explaining the existence of the EAP and the services available under the plan *(Id .).* The notice will indicate that the plan is available on the FirstEnergy Intranet site dedicated to human resource matters. Meetings may also be held to explain the plan if there is sufficient interest in such meetings *(Id .).* The other elements of the transition programs will be explained to the eligible employees at the time they become eligible (Id.).

Mr. Bowers also explained that, before considering involuntary terminations, the company would first look at special voluntary retirement or reassignment. Mr. Bowers stated that, in evaluating whether to offer a special voluntary retirement program, the company would look at the number of employees at the particular location who might qualify for an early retirement program, to see if the program could significantly mitigate the need for involuntary reductions. The company will also look at the effect on operations of the retirement of those who were qualified *(Id.* at 3). Based on those factors, the company will evaluate whether to offer the special voluntary retirement program *(Id* . at 4). Mr. Bowers described the typical voluntary retirement program benefits and stated that the actual benefits that may be offered to

R.C. 4905.09 Substantial compliance.

A substantial compliance by the public utilities commission with the requirements of Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., and 4927. of the Revised Code is sufficient to give effect to all its rules and orders. Those rules and orders shall not be declared inoperative, illegal, or void for an omission of a technical nature . And, those chapters do not affect, modify, or repeal any law fixing the rate that a company operating a railroad may demand and receive for the transportation of passengers.

Amended by 128th General Assembly File No.43, SB 162, §1, eff. 9/13/2010.

Effective Date: 10-01-1953