PUCO directs FirstEnergy to refund millions to ratepayers and adopts three percent cost cap methodology

August 14, 2013

The Public Utilities Commission of Ohio (PUCO) ruled last week that Akron-based utility FirstEnergy Corp., which for more than a year led the charge against the state's energy efficiency requirements, "overcharged its Ohio customers by $43.3 million for electricity generated by wind and solar," The Plain Dealer reports.

From 2009 to 2011, the company's unregulated subsidiary FirstEnergy Solutions paid up to 15 times the market price" for renewable energy credits (RECs) when it purchased electricity for the Illuminating Co., Ohio Edison and Toledo Edison (collectively, known as FirstEnergy), The Plain Dealer reports. According to PUCO's opinion and order, FirstEnergy then passed these excessive costs on to customers. FirstEnergy plans to appeal the order.

The RECs dispute began two years ago when PUCO opened a new docket to review FirstEnergy's alternative energy rider (AER) and determined whether the company's cost of meeting the state's renewable requirement exceeded the cost of producing electricity from non-renewable sources by at least three percent. Under Ohio's renewable portfolio standard (RPS), a utility does not have to comply with a particular renewable energy benchmark to the extent the costs of compliance exceed the cost cap. However, in this case, FirstEnergy did not seek a waiver from the requirement.

Two independent audits commissioned by PUCO and released in August 2012 – the Goldenberg Schneider, LPA audit report and the Exeter Associates, Inc. audit report – determined that FirstEnergy Solutions spent "millions of dollars more than it should have" between late 2009 and the end of 2011 to purchase RECs that were then purchased by FirstEnergy Corp. The Exeter Associates' audit found that the prices paid by FirstEnergy were well above prices customarily seen in any of the other REC markets throughout the country.

Additionally, PUCO's ruling last week established the proper method for calculating the three percent cost cap, which largely adopts PUCO staff's recommendation. As provided in PUCO's order, the three percent cost cap should be calculated as follows:

Sales baseline in MWhs for the applicable compliance year (an average of the utility's annual Ohio retail sales from the three preceding years)	x	A "reasonably expected" dollar per MWh figure for the compliance year (weighted average of the cost of SSO supply for delivery net of distribution system losses)	x 3% =	The maximum funds available to be applied toward compliance resources for that compliance year

According to PUCO's order, its determination was based on "the plain language of the statute" and noted that the cost of compliance was a "very small percentage of the [FirstEnergy's] cost of SSO generation, even at prices argued by intervenors to be significantly high."

While battling PUCO over REC prices, in November 2012, FirstEnergy Corp. abandoned its lobbying campaign aimed at persuading Ohio lawmakers to pass a measure that would freeze efficiency standards at existing levels and cancel increases that are part of the state's energy efficiency standards. In February 2013, Ohio Sen. Bill Seitz (R-Cincinnati), chair of the Senate Public Utilities Commission, introduced Senate Bill 58 to review and possibly modify the state's energy efficiency and renewable energy requirements. During testimonies held in April 2013, FirstEnergy Corp. spoke out vehemently against the energy efficiency requirements, arguing that the formula used to analyze the cost of utilities' energy efficiency efforts was flawed.

Possible modifications to Ohio's renewable energy and energy efficiency laws are expected when the legislature resumes session in September, which among other topics, will possibly include the cost cap.

If you have questions regarding Senate Bill 58 or Ohio's energy efficiency and renewable energy portfolio standards, contact Maria Armstrong at (614) 227-8821 or marmstrong@bricker.com.

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