Public Law & Finance

Tucker Ellis & West LLP

PUCO Rejects FirstEnergy's Proposal To Negotiate Electricity Rates in an Open Market.

Ohioans can expect to see significant increases on their electric bills as the current Rate Stabilization Plans (RSPs) expire at the end of this year. In anticipation of the expiration, the Ohio General Assembly passed SB 221, the State's energy policy, which was signed into law on May 1, 2008.

SB 221 allowed Ohio's electric utilities to simultaneously make application for an Electric Security Plan (ESP), maintaining a regulated rate environment, or a Market Rate Option (MRO), allowing the utilities to sell power at market-based rates. FirstEnergy, like many providers across the State, made application for both an ESP and an MRO. However, the Public Utilities Commission of Ohio (PUCO) rejected FirstEnergy's MRO.

In rejecting FirstEnergy's MRO application, the PUCO ruled that the proposal did not satisfy the requirements of SB 221 in several key areas:

1. The competitive solicitation process for selecting bids for market rates was not an "open, fair, and transparent competitive solicitation";
2. FirstEnergy's application was not well defined to allow potential bidders to understand and properly assess the risks of bidding;
3. The bidders in the market option were not evaluated on their ability to supply retail electric service only on price;
4. The manager of the competitive bid process was not an independent third party;
5. The Regional Transmission Organization (RTO), which in this case was MISO, the Midwest Independent Transmission System Operator, would have the ability to monitor the market and take mitigation measures if necessary;
6. The application and the record in the case did not specify what published sources of public information would be made available that identify pricing information for traded electricity as prescribed in SB 221;
7. The rate design for the MRO as proposed did not advance the interests of the state pursuant to Ohio Revised Code Section 4928.02; and
8. The MRO could not be approved by the Commission absent a proposal for compliance with energy-efficiency programs and peak demand reduction requirements as set forth in ORC 4928.66.

PUCO Chairman Alan R. Schriber indicated that the Commission may still be able to establish a long-term ESP by December 31, 2008, and may not need to utilize a short-term plan as it had previously anticipated. Final briefs have been filed in the ESP proceeding, which is still pending decision by the PUCO.

FirstEnergy was critical of the rejection of its MRO application, stating that “the Commission does not seem interested in supporting an open-market rate plan for electricity prices within the state.”

Businesses in Northeast Ohio are actively anticipating the conclusion of these proceedings as they finalize operating budgets for 2009. Unknown electricity prices for the next calendar year are hampering forecasts for next year and beyond.

Tucker, Ellis and West is working closely with the PUCO to urge the swift implementation of a long-term ESP that provides for stable electric prices for the next several years.

If you have any questions or concerns regarding the PUCO’s decision or the potential impacts of electric pricing in 2009 or beyond, please contact Eric Weldele at eric.weldele@tuckerellis.com (614) 358-9301.