

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	Case No. 09-1820-EL-ATA
Illuminating Company, and The Toledo)	Case No. 09-1821-EL-GRD
Edison Company for Approval of Ohio Site)	Case No. 09-1822-EL-EEC
Deployment of the Smart Grid)	Case No. 09-1820-EL-AAM
Modernization Initiative and Timely)	
Recovery of Associated Costs.)	

**APPLICATION FOR REHEARING OF
OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON COMPANY**

Pursuant to R.C. 4903.10 and Rule 4901-1-35, Ohio Administrative Code, Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI") and The Toledo Edison Company ("Toledo Edison") (collectively, the "Companies"), hereby file their Application for Rehearing of the Opinion and Order entered in the journal on June 30, 2010 in the above-captioned case, on the ground that the Commission's Opinion and Order is unreasonable and unlawful in failing clearly to provide that the Companies' could recover the actual costs incurred (and not reimbursed by the Department of Energy) as a result of implementing and maintaining the Ohio Site Deployment. The Companies accept and thus do not make part of this Application for Rehearing the Commission's decision to defer specific issues regarding how such costs shall be recovered (including the period of time over which costs shall be recovered), until such time that the Commission addresses the stipulation and recommendation filed in Case No. 10-388-EL-SSO. However, the determination that the Companies have authority to recover the remaining costs not addressed in Case No. 10-388-EL-SSO must be unambiguously provided in this docket.

An explanation of the basis for the ground of the Companies' Application for Rehearing is more fully set out in the accompanying Memorandum in Support filed herewith.

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**MEMORANDUM IN SUPPORT OF
OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON COMPANY**

I. INTRODUCTION

Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, the “Companies”), in furtherance of their commitment in their initial Electric Security Plan, submitted their Smart Grid Modernization Initiative to the Department of Energy on August 6, 2009 (with a copy to the Commission filed on August 14, 2009, in Case No. 07-646-EL-UNC).¹ The Companies’ submittal to the Department of Energy sought approval of their Smart Grid Modernization Initiative and receipt of matching grant funds in the amount of approximately \$57 million (approximately \$36 million allocated for the Ohio Site Deployment). On October 27, 2009, the Department of Energy notified the Companies that their Smart Grid Modernization Initiative had been selected for award negotiations to receive the full amount of approximately \$57 million. On November 18, 2009, the Companies filed an application in this proceeding for Commission approval of both the Ohio Site Deployment of their Smart Grid Modernization Initiative *and* recovery of the actual costs incurred (and not reimbursed by the Department of Energy) as a result of implementing and maintaining the Ohio Site Deployment (the “Smart Grid Filing”). On June 30, 2010, the Commission approved the

¹ The Companies’ initial Electric Security Plan refers to the Stipulation and Recommendation for an Electric Security Plan approved by the Commission on March 25, 2009, in Case No. 08-935-EL-SSO.

Companies' Smart Grid Filing but deferred for future ruling approval of certain cost recovery issues.

II. ARGUMENT

- A. *The Commission's Opinion and Order is unreasonable and unlawful in failing clearly to provide that the Companies are authorized to recover the actual costs incurred (and not reimbursed by the Department of Energy) as a result of implementing and maintaining the Ohio Site Deployment.*

Despite the fact that the Companies' application sought approval of both the Ohio Site Deployment *and* cost recovery, the Commission's Opinion and Order in the above-captioned case failed to unambiguously approve cost recovery. There is no question that the Companies requested cost recovery in this docket. In fact, the Commission found so itself, stating in part,

On November 18, 2009, FirstEnergy filed an application in this proceeding for approval of the following:

- (d) recovery of actual costs incurred, but that are not reimbursed by DOE, for implementing and maintaining the Ohio Site Deployment through revised Rider AMI;

(Opinion and Order, p. 2.)

However, the Commission unreasonably and unlawfully appears to have deferred one of the most important issues and the very purpose of the filing – clear approval of certain cost recovery – for future ruling in the Companies' pending Electric Security Plan ("Second ESP").² This is not an issue of preferring one docket over the other. It is an issue of one docket, the Smart Grid Filing, requesting recovery of *all* actual costs incurred for implementing and maintaining the Ohio Site Deployment (that are not reimbursed by the Department of Energy), and another docket, the Second ESP, clarifying only certain issues related to how such costs will be recovered and requesting recovery of incremental operating expenses. The two dockets are

² See Case No. 10-388-EL-SSO.

not interchangeable, but rather they are interdependent. The applicable language is set forth in Section E. 1. of the Companies' Second ESP and provides the following:

E. Energy Efficiency/Demand Response, AMI & Smart Grid

1. The following issues in the Companies' proposal for cost recovery, Case No. 09-1820-EL-ATA, for the Ohio site deployment of the smart grid initiative shall be approved as set forth below. All other issues pending in that proceeding will be decided in that proceeding.
 - i. Collected from customers of Ohio Edison, CEI and Toledo Edison, exclusive of GT customers.
 - ii. *All costs approved in Case No. 09-1820-EL-ATA* associated with the project will be considered incremental for recovery under Rider AMI.
 - iii. *Recovery of the costs approved in Case No. 09-1820-EL-ATA* shall be over a ten (10) year period for recovery under Rider AMI. The recovery of costs over a 10 year period is limited to this ESP and shall not be used as precedent in any subsequent AMI & Smart Grid proceeding.
 - iv. Return on the investment shall be at the overall rate of return from the Companies' last distribution rate case.
 - v. Rate base is defined as plant in service, depreciation reserve and accumulated deferred income taxes.
 - vi. All reasonably incurred incremental operating expenses associated with the project will also be recovered.
 - vii. The Companies agree that during the term of this ESP the deployment of the smart grid initiative will not include prepaid smart meters and that there will be no remote disconnection for nonpayment without complying with the requirements of O.A.C. 4901:1-18-05.
 - viii. The Companies shall not complete any part of the Ohio Site deployment that the DOE does not match funding in an equal amount. Therefore cost recovery from customers will remain at 50% of total project cost even if the DOE reduces the funding.

(Second ESP, p. 22-23; Emphasis added.)

The Companies' Smart Grid Filing and the Companies' Second ESP are consistent in their request for cost recovery in the Smart Grid Filing. As stated above, and emphasized here below, the Companies made this request in their Second ESP, stating,³

- ii. *All costs approved in Case No. 09-1820-EL-ATA associated with the project will be considered incremental for recovery under Rider AMI.*
- iii. *Recovery of the costs approved in Case No. 09-1820-EL-ATA shall be over a ten (10) year period for recovery under Rider AMI. The recovery of costs over a 10 year period is limited to this ESP and shall not be used as precedent in any subsequent AMI & Smart Grid proceeding.*

(Second ESP, p. 23; Emphasis added.)

The Stipulation and Recommendation filed in the Companies' Second ESP sets forth the signatory parties' agreement to resolve certain issues regarding *how* costs would be characterized and recovered not whether such costs would be recovered. The Second ESP assumes that the costs have already been approved in the Companies' Smart Grid Filing. It is critical that the Commission approve how costs are to be characterized and recovered (which is provided in the Companies' Second ESP and pursuant to the Commission's Opinion and Order will be addressed in that case) *and* clearly provide approval for the actual costs incurred (and not reimbursed by the Department of Energy) as a result of implementing and maintaining the Ohio Site Deployment. The Companies simply cannot go forward with their Ohio Site Deployment absent both levels of approval.

The Commission's Opinion and Order provides that the issue of cost recovery will be deferred for future ruling in the Companies' Second ESP, stating,

³ The only approval for cost recovery requested in the Companies' Second ESP was for all reasonably incurred incremental operating expenses associated with the project. See Section E.1.vi. of the Second ESP. This language was added to clarify that the Companies were also seeking approval for incremental operating expenses.

The Commission further notes that the other Staff recommendations accepted by FirstEnergy appear to address the remaining concerns raised in the comments filed in this proceeding, except for those related to cost recovery. As stated above, the Commission will address those cost recovery issues when we consider the stipulation filed in the *FirstEnergy Second ESP Case*.

(Opinion and Order, p. 2.)

This provision of the Opinion and Order suggests that all cost recovery issues, including whether the Companies have authority for cost recovery, are deferred until the Commission decides the Companies' Second ESP. However, as established above, certain issues of cost recovery are not ever raised in the Companies' Second ESP, rather it is assumed that the Commission approved such costs in the Companies' Smart Grid Filing. By not unambiguously granting cost recovery in the Smart Grid Filing, and leaving that question to a docket in which ultimate cost recovery was not requested, it is unclear whether the Companies will have cost recovery for the Ohio Site Deployment. It is unreasonable and unlawful for the Commission to defer recovery of actual costs incurred (that are not reimbursed by the Department of Energy) for implementing and maintaining the Ohio Site Deployment to a docket that does not address this issue.

The Companies are not challenging or seeking rehearing on the Commission's decision to defer ruling on certain components of how such costs will be recovered. Specifically, the Companies believe that the limited issues set forth in Section E.1. of the Companies' Second ESP cannot be properly resolved in this docket and that it is appropriate for the Commission to defer ruling on those limited issues and decide such issues in its Opinion and Order for the Second ESP. However, all other issues, including authority to recover costs, should be decided in this docket.

The Companies therefore request that the Commission issue an Entry on Rehearing that clearly authorizes recovery of actual costs incurred (that are not reimbursed by the Department of

Energy) for implementing and maintaining the Ohio Site Deployment through revised Rider AML.

I. CONCLUSION

For the rationale set forth in this Memorandum in Support of Application for Rehearing, the Companies respectfully request the Commission grant the foregoing limited entry on rehearing.

Dated: July 30, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company was delivered to the following persons, this 30th day of July 2010:

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