

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Commission's
Review of its Rules for Competitive
Retail Electric Service Contained in
Chapters 4901:1-21 and 4901:1-24 of the
Ohio Administrative Code**

Case No. 12-1924-EL-ORD

**MEMORANDUM CONTRA OF OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND
THE TOLEDO EDISON COMPANY TO APPLICATIONS FOR REHEARING
FILED BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, THE
OHIO POVERTY LAW CENTER AND THE RETAIL ENERGY SUPPLY
ASSOCIATION**

I. INTRODUCTION

This proceeding concerns amendments to the rules for Competitive Retail Electric Service ("CRES") contained in Chapters 4901:1-21 and 4901:1-24 ("Chapters"), Ohio Administrative Code. On November 7, 2012, the Commission issued an Entry seeking comments on Staff-proposed changes on the rules contained in those afore-mentioned Chapters. On January 7, 2013 and February 6, 2013 respectively, numerous parties submitted comments on the Staff-proposed changes as well as requested several changes of their own to those rules. The Office of the Ohio Consumers' Counsel and The Ohio Poverty Law Center (collectively "OCC") and The Retail Energy Supply Association ("RESA") are among those stakeholders who submitted extensive comments.

On December 18, 2013, the Commission issued a finding and order ("Order"), adopting a number of revisions to the rules contained in those Chapters as well as rejecting a number of proposed changes. On January 17, 2014, OCC and RESA filed applications for rehearing ("AFRs") on several of their rejected suggestions.

Applications for Rehearing are governed by Section 4903.10, Ohio Revised Code and Rule 4901-1-35, Ohio Administrative Code. Under those authorities, applications for rehearing are to be granted only where a Commission order is “unreasonable,” “unlawful,” “unjust or unwarranted.” Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, “Companies”) hereby file their Memorandum Contra on two issues that OCC and RESA raised in their AFRs. As set forth below, the Order issued in this case is not “unreasonable,” “unlawful,” “unjust or unwarranted.” OCC and RESA’s AFRs fail to meet those standards. Thus, the Commission should deny rehearing.

II. THE COMMISSION DID NOT UNREASONABLY OR UNLAWFULLY REJECT OCC’S RECOMMENDATION TO ADD THE TOTAL ANNUAL ELECTRIC COSTS TO CUSTOMERS’ BILLS.

In seeking rehearing, OCC asserts that the Commission erred by not requiring that total annual electric costs be included on customers’ bills under Rule 4901:1-21-18, Ohio Administrative Code. In its Order, the Commission rejected OCC’s recommendation finding, in agreement with the Companies, that the recommendation “could add to customer confusion and a customer could obtain this information through other means, making it of little value.”¹ Rehearing is not warranted because the Commission’s finding was not unlawful or unreasonable.

As the Companies stated in their reply comments, “assuming the total annual costs would apply for distribution and generation, the annual cost would have to be listed separately for each, which adds to customer confusion.”² In its AFR, OCC argues that customer confusion would actually be remedied by this breakdown because “[c]ertainly

¹ Order at 51 (quoting Companies’ Reply Comments).

² Companies’ Reply Comments at 13.

customers can understand that their total electric costs are made up of several components.”³ Just as certain is that customers understand that they can obtain this information from readily available sources, without having to add even more information to bills. OCC provided no evidence that customers even desire this information on bills. Given that the Companies are the entities that field the bulk of questions from customers relating to their electric bills, the Companies may be in a better position to assess the expected level of customer confusion arising due to changes on bills. In any event, the Commission’s rejection of the recommendation because of its potential to add to customer confusion is not unreasonable.

As stated, even if customer confusion was not an issue, the Commission appropriately rejected OCC’s recommendation because customers have the ability to obtain this information either on the Companies’ website or by request as provided for in Rules 4901:1-10-12 and 4901:1-10-24, Ohio Administrative Code. In reviewing changes to the rules, the Commission must take into consideration Governor’s Executive Order 2011-01K, whereby the Commission must: “[a]mend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.” Because there is no added value to placing this item on the bills especially in light of the fact that the information is available to customers through other means, the Commission lawfully and reasonably rejected OCC’s recommendation. The Commission should deny OCC’s AFR.

³ OCC AFR at 5.

III. THE COMMISSION DID NOT UNREASONABLY OR UNLAWFULLY REJECT RESA’S RECOMMENDATION TO ADD A DEFINITION OF SMALL COMMERCIAL CUSTOMER IN CHAPTER 4901:1-21.

In seeking rehearing, RESA asserts that it “disagrees” with the Commission’s finding that a definition of small commercial customer is not needed as an addition to Chapter 4901:1-21 because it is more “appropriately addressed by the electric distribution utilities (“EDUs”) in their individual tariffs.”⁴ In its initial comments, RESA recommended that the Commission add the definition of “small commercial customer:” “a commercial customer that has a demand of 25 kilowatts or less.”⁵ In its Order, the Commission declined to adopt RESA’s proposed change to this definition on “the basis that the concerns of RESA/IGS are more appropriately addressed by the... EDUs in their individual tariffs.”⁶ In its AFR, RESA argues that the decision as to what constitutes a small commercial customer should not be delegated to the six Ohio EDUs.⁷ However, by maintaining the criteria for small commercial customers in the EDUs’ tariffs, the Commission is not delegating authority to the EDUs because the Commission still approves those tariffs and any subsequent changes to those tariffs. For similar reasons, RESA’s argument that the Commission’s finding leaves the EDUs to “control the debate” is unfounded.⁸

As discussed in the Companies’ initial comments, adding a definition of a small commercial customer may be a valid recommendation; however, it would be difficult for the Companies to apply the definition since their system is not designed to recognize customers at this particular demand level. Further such a change would be problematic if

⁴ Order at 6; RESA AFR at 7.

⁵ RESA Comments at 5

⁶ Order at 6.

⁷ RESA AFR at 7.

⁸ *Id.*

a customer's demand level hovers above and below 25 kW from month to month.⁹ The EDU and the CRES provider may not know from one month to the next whether a customer qualified as a "small commercial customer" or not. The Commission's resolution of this issue, to leave it to an EDU's individual tariff, was reasonable and lawful. Therefore, the Commission should deny RESA's AFR on this issue.

IV. CONCLUSION

For all of the foregoing reasons, the Commission should deny OCC and RESA's AFRs.

Respectfully submitted,

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⁹ Companies' Initial Comments at 2-3.

CERTIFICATE OF SERVICE

On January 27, 2014, the foregoing document was filed on the Public Utilities Commission of Ohio's Docketing Information System and is available for viewing by any interested party.

/s/ Carrie M. Dunn
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Summary: Memorandum Ohio Edison, The Cleveland Electric Illuminating Company, and Toledo Edison Memorandum Contra Application for Rehearing electronically filed by Mr. Robert M. Endris on behalf of Ms. Carrie Dunn