BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Amendment of Chapters 4901:1-10 and 4901:1-21, Ohio Administrative Code, Regarding Electric Companies and Competitive Retail Electric Service, to Implement 2014 Sub. S.B. No. 310	Case No. 14-1411-EL-ORD

OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY
AND THE TOLEDO EDISON COMPANY'S MEMORANDUM CONTRA
APPLICATIONS FOR REHEARING

I. INTRODUCTION

Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, "Companies") hereby file their Memorandum Contra to the Applications for Rehearing ("Application") of The Environmental Law & Policy Center, Ohio Environmental Council, Sierra Club and Natural Resources Defense Council (collectively, "Environmental Group"), The Ohio Manufacturers' Association Energy Group ("OMAEG"), the Retail Energy Supply Association ("RESA") and The Dayton Power and Light Company ("DP&L").

First, the Commission should deny the Environmental Group's Application, which argues that the Commission unreasonably and unlawfully failed to accept its recommendation that the Commission include an inappropriate and inaccurate bill message regarding cost disclosures. As discussed below, not only has the Environmental Group failed to make any new arguments in support of this proposition, substantively the

Commission should deny its Application because it lawfully and reasonably rejected the Environmental Group's recommendation.

Second, the Commission should reject OMAEG's Application because the Commission in its order in this proceeding ("Order") lawfully and reasonably included the costs of shared savings in the costs of compliance with energy efficiency ("EE") and peak demand reduction ("PDR") requirements. As discussed below, and as the Commission properly found, shared savings is a customer cost of compliance. The Commission also properly rejected OMAEG's recommendation that the Commission include certain information on its website related to EE and PDR. OMAEG has not raised anything new on rehearing to reverse its order. Moreover, OMAEG's request that the Commission clarify that electric distribution utilities ("EDUs") may not use banked savings should be rejected as it is outside the scope of this proceeding.

Last, the Companies respond to the Applications filed by DP&L and RESA. Specifically, the Companies agree with DP&L and RESA that the Commission modify Rule 4901:1-10-35(B) to permit an EDU to utilize the EDU's renewable compliance costs not the competitive retail electric service ("CRES") provider's costs. The Companies also agree with RESA that the Commission's Order is inconsistent with the language contained in Rule 4901:1-10-35. For those reasons, the Companies agree with RESA's proposed modification of Rule 4901:1-10-35(B).

I. THE COMMISSION SHOULD DENY THE ENVIRONMENTAL GROUP'S APPLICATION.

The Environmental Group argues that the Commission's Order is unreasonable or unlawful because the Commission failed to "consider whether an explanation of the costs to be disclosed under R.C. 4928.65 is necessary to ensure customer bills are accurate,

clear, and understandable as required by Ohio Admin. Code. 4901:1-10-22, 4901:1-21-14, and 4901:1-10-33."[1] As an initial matter, The Environmental Group simply repeats their previous comments[2] raised earlier that were expressly rejected by the Commission.[3] As the Commission has held on countless occasions, a party's mere repetition of an argument that was previously thoroughly considered is not grounds for granting rehearing.[4]

The repetitive arguments of the Environmental Group must fail again for the same reasons. First, the Environmental Group incorrectly states that the Commission "rejected all proposals to require some explanation of the costs being disclosed"[5] and that "customers will simply view these costs as additional charges that add to the overall amount of their bill."[6] The Commission did not reject all proposals to require an explanation. Rather, the Commission accepted the Office of Ohio Consumers' Counsel's ("OCC") recommendation to include a bill message to indicate that the costs are not new charges.[7] This will alleviate customer confusion as to whether the costs or additional

[1] Environmental Group Application at 1.
[2] Environmental Group Comments at 4-7.
[3] Order at 6 ("The Commission finds that these recommendations should not be adopted.)
[4] *E.g., Wiley v. Duke Energy Ohio, Inc.*, Case No. 10-2463-GE-CSS, 2011 Ohio PUC LEXIS 1276, *6-7 (Nov. 29, 2011) (rejecting an application for rehearing where "the application for rehearing simply reiterates arguments that were considered and rejected by the Commission"); *In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO, 2011 Ohio PUC LEXIS 543, *15-16 (May 4, 2011) (rejecting an application for rehearing that "raises nothing new"); *City of Reynoldsburg v. Columbus Southern Power Co.*, Case No. 08-846-EL-CSS, 2011 Ohio PUC LEXIS 680, *19-20 (June 1, 2011) (holding that no grounds for rehearing existed where no new arguments had been raised); *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, No. 08-1344-GA-EXM, 2011 Ohio PUC LEXIS 1184, *9-10 (Nov. 1, 2011) (denying application for rehearing because applicant "raised nothing new on rehearing that was not thoroughly considered" in the Commission order at issue).
[5] Environmental Group Application at 1.
[6] *Id.* at 2.
[7] Order at 5.

charges. Moreover, by allowing EDUs to place these costs in a bill message, rather than in the current charges section of the bill, the Commission has mitigated any concern that customers will be confused.

On the other hand, the Environmental Group's recommended bill messages (both the shorter one proposed in its Application and the lengthy disclosure contained in its comments) are neither clear nor accurate. While EE/PDR programs may, under certain circumstances, may save money on a participating customer's electric bill, given the costs associated with EE/PDR mandates and the fact that generally only the small fraction of customers who take advantage of EE/PDR programs may actually save money on their bills, the Environmental Group's recommendation is not accurate.

As the Companies stated in their reply comments, the Environmental Advocates proposed a lengthy (more than a page long) disclosure.[8] For the most part, they proposed information that is either already available on the Commission's website (e.g. cites to Ohio law, the Companies' annual reports) or on the Companies' websites. Moreover, they may not appreciate that there are space and cost constraints in changing an EDU's bill format and providing bill disclosures. Lengthy bill messages increase printing costs and the size of bills requiring new costs. Changes to the Companies' billing system would also impact operations in other states, which further increases costs and is inefficient. Therefore, the Commission's Order rejecting this recommendation was lawful and reasonable. For all of those reasons, the Environmental Group's Application must be denied.

[8] Environmental Advocates at 5-6.

III. THE COMMISSION SHOULD DENY OMAEG'S APPLICATION.

Similar to the Environmental Group, OMAEG raises the same issues that the Commission previously rejected. Specifically, OMAEG argues that the Commission "erred in determining that shared savings incentives paid to utilities should be disclosed and represented to customers as a cost of compliance with the EE and PDR requirements."[9] Namely, OMAEG again incorrectly argues that shared savings incentives "are not essential elements of compliance with the EE and PDR benchmarks."[10] The Commission properly rejected OMAEG's comments. Shared savings incentives are costs that arise directly from the EE/PDR programs that the Companies implement to achieve the statutory mandates. Moreover, the Commission has authorized their recovery in the applicable tariff riders in accordance with Rule 4901:1-39-07, O.A.C.:

> With the filing of its proposed program portfolio plan, the electric utility may submit a request for recovery of an approved rate adjustment mechanism, commencing after approval of the electric utility's program portfolio plan, of costs due to electric utility peak-demand reduction, demand response, energy efficiency program costs, appropriate lost distribution revenues, and shared savings. Any such recovery shall be subject to annual reconciliation after issuance of the commission verification report issued pursuant to this chapter.

Lastly, as the Commission correctly found "if an EDU over complies with the statutory EE and PDR requirements as a result of budgeted and approved EE and PDR programs, causing a shared savings expense, it is reasonable to count that shared savings expense as part of the cost of compliance in the year it is incurred."[11] Therefore, the inclusion of these costs in the disclosure to customers is appropriate and in accordance with the

[9] OMAEG Comments at 2-3; OMAEG Application at 4.
[10] OMAEG Application at 5.
[11] Order at 19.

statutory mandate that an "individual customer['s] cost of the utility's compliance" be disclosed. The Commission's Order rejecting OMAEG's recommendation was not unreasonable or unlawful.

Second, OMAEG also repeats its comments that the Commission should include on its website items such as the benefits provided by EE and PDR and a comparison of EE and PDR costs associated with other electricity resources.[12] Because adopting such a recommendation would be inconsistent with the statute and is premature, the Commission's rejection of the recommendation was reasonable and lawful. As indicated in Section 4 of S.B. 310, this is one of the issues that the Energy Mandates Study Committee is investigating. Moreover, disclosing costs based on the EE/PDR Rider provides a known, specific and quantifiable calculation while a calculation based on potential benefits is speculative, at best, and not contemplated by the statute. Further, a customer only realizes benefits through program participation while non-participants do not receive energy savings but still pay the costs. There is not a reasonable and accurate way to individualize each customer's benefit, on a customer by customer basis. Presenting such highly-variable and speculative benefits against known and true costs that customers pay through their utility bills is not appropriate, and attempting to do so would lead to greater customer confusion. Clearly, the General Assembly did not include a costs versus benefit approach to the calculation prescribed in S.B. 310.

Last, the Commission should reject OMAEG's third assignment of error that the "Commission should clarify that EDUs may not use banked savings to meet and exceed

[12] OMAEG Application at 6; OMAEG Comments at 9.

the statutory EE and PDR requirements in the same year."[13] OMAEG's request is completely outside the scope of this proceeding. An individual EDU's EE/PDR portfolio plan case or rules proceeding is the more appropriate forum for this contention. Moreover, as it relates to the Companies, the Commission has already found that: (1) "The Commission agrees with the Companies that utilities may apply surplus energy savings, or banked savings, toward the applicable benchmarks in subsequent years;"[14] and (2) "The Commission finds that banked savings shall only be counted toward shared savings in the year it is banked."[15] For all of those reasons, the Commission should deny OMAEG's Application.

IV. THE COMMISSION SHOULD GRANT RESA AND DP&L'S APPLICATIONS.

Both RESA and DP&L urge the Commission to reverse its Order and instead of requiring CRES suppliers to send to EDUs their cost of compliance with renewable mandates, permit the EDUs to utilize the EDU's cost of compliance with renewable energy mandates on consolidated bills. The Companies agree with this approach. Indeed, as pointed out by DP&L and RESA, R.C. 4928.65(A)(1) does not require the EDU to calculate the CRES provider charges. The EDU's cost of compliance is what is contemplated by the statute and would make implementation easier as discussed by RESA. The Companies agree with RESA that the Commission's Order is inconsistent with the language contained in proposed Rule 4901:1-10-35. For those reasons, the Companies agree with RESA's proposed modification of Rule 4901:1-10-35(B) and the Commission should grant rehearing and modify the rule.

[13] OMAEG Application at 7.
[14] Case No. 12-2190-EL-POR, *et seq.*, Opinion and Order at 10 (March 20, 2013).
[15] *Id.* at 16.

V. CONCLUSION

For all of the foregoing reasons, the Commission should deny the Environmental Group and OMAEG's Applications and grant RESA and DP&L's Applications.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this Application for Rehearing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 26th day of January, 2015. The PUCO's e-filing system will electronically serve notice of the filing of this document on all parties of record. Courtesy email copies have also been sent to:

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Summary: Memorandum Contra Applications for Rehearing electronically filed by Ms. Carrie M Dunn on behalf of The Toledo Edison Company and The Cleveland Electric Illuminating Company and Ohio Edison Company