

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Edison Company, the Cleveland Electric)
Illuminating Company and the Toledo Edison) Case No. 14-1297-EL-SSO
Company for Authority to Provide a Standard)
Service Offer Pursuant to R.C. 4928.143 in)
the Form of an Electric Security Plan.)

**MOTION IN OPPOSITION TO THE COMPLIANCE TARIFFS OF THE OHIO
EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY,
AND THE TOLEDO EDISON COMPANY AND
OBJECTIONS TO THE STAFF REPORT AND RECOMMENDATION
BY
THE OHIO MANUFACTURERS' ASSOCIATION ENERGYGROUP**

The Ohio Manufacturers' Association Energy Group (OMAEG) hereby files a motion in opposition to the compliance tariff filings of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (the Companies) filed on May 13, 2016 with the Public Utilities Commission of Ohio (Commission). Specifically, OMAEG objects to the Retail Rate Stability Rider (Rider RRS) tariff filed and established with no value.¹ OMAEG also submits its objections to the Staff report and recommendation to approve said compliance tariffs.

¹ Companies' Tariff Filing, Attachment 2, Rider RRS (P.U.C.O. No. 11, Original Sheet 127) (May 13, 2016) (Rider RRS Tariff).

The reasons for the motion and objections are set forth in the accompanying memorandum in support.

Respectfully submitted,

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Standard Service Offer Pursuant to R.C.)
4928.143 in the Form of an Electric Security)
Plan.)

MEMORANDUM IN SUPPORT

I. BACKGROUND

On March 31, 2016, the Commission issued an Opinion and Order in this case involving the Companies' application for authority to provide a standard service offer (SSO) in the form of an electric security plan (ESP). Specifically, the Commission approved, with modifications, the Companies' ESP for a term of eight years, including the proposed Rider RRS.² Under Rider RRS, the Commission authorized the Companies to flow through the net effects of purchasing generation output from the W.H. Sammis plant and the Davis-Besse Nuclear Power Station plant and FirstEnergy Solutions' (FES) entitlement to the output of the Ohio Valley Electric

² *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order (March 31, 2016) (March 31, 2016 Order).

Corporation (OVEC) pursuant to a purchase power agreement between the Companies and its unregulated affiliate, FES.³

On April 27, 2016, the Federal Energy Regulatory Commission (FERC) issued an Order rescinding an earlier waiver provided to the Companies regarding affiliate sales restrictions. FERC found that prior to allowing the Companies to enter into a transaction under the PPA, the PPA must be submitted to FERC for review and approval under the *Edgar* and *Allegheny* test.⁴

On May 2, 2016 the Companies, OMAEG, and numerous other parties filed applications for rehearing of various aspects of the Commission's Order. In its application for rehearing and accompanying rehearing testimony of Companies' witness Eileen Mikkelsen, the Companies' proposed a new Rider RRS, couched as a modified mechanism, which will operate to charge customers significant costs.

Subsequently, the Attorney Examiners issued an Entry, directing the Companies to file proposed tariffs consistent with the Commission's March 31, 2016 Order by May 13, 2016.⁵ The Companies filed Compliance Tariffs on May 13, 2016. On May 20, 2016, Staff filed a report and recommendation to approve the compliance tariffs, with an effective date of June 1, 2016.

II. DISCUSSION

Under Section 4905.30, Revised Code, all public utilities "shall print and file with the public utilities commission schedules showing all rates * * * and charges for service of every kind furnished by it."⁶ Further, "[n]o public utilities shall charge, demand, exact, receive, or

³ Id. at 78-79.

⁴ *Electric Power Supply Assn., et. al. v. FirstEnergy Solutions Corp., et. al.*, 155 FERC ¶ 61,101 at P 53 (April 27, 2016) (FERC Order).

⁵ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Attorney Examiner Entry (May 10, 2016).

⁶ Section 4905.30, Revised Code.

collect a different rate * * * or charge for any service rendered, or to be rendered, than that applicable to such service as specified in its schedule filed with the public utilities commission.”⁷

Thus, as indicated by the various sections in the Ohio Revised Code, the General Assembly has provided the Commission with oversight of electric distribution utility tariff filings, including rights related to the procedural process for adjudicating complaints involving customer rates and services.⁸ The Supreme Court of Ohio has held that under Ohio regulations, utility rates are established by the Commission based on hearings and evidence, and only those rates “found to be fair and reasonable after such hearings may be lawfully charged.”⁹

The Companies’ Rider RRS tariff filings fail to meet these standards. Although the Companies assert that the tariffs were filed “[i]n response to and compliance with” the Commission’s March 31, 2016 Order,¹⁰ the tariff filing for Rider RRS appears to relate more to the Companies’ new proposed Rider RRS contained in its application for rehearing and in anticipation of approval of the new Rider RRS, rather than the Rider RRS approved by the Commission in its March 31, 2016 Order. Instead of recognizing that they cannot charge customers pursuant to Rider RRS until and unless FERC reviews and approves the affiliate PPA that is the basis for the costs associated with the Commission-authorized Rider RRS by filing a tariff rate of zero (\$0.00), the Companies unreasonably and unlawfully left the kWh rate value blank in the tariff filings, presumably to be consistent with their new proposed Rider RRS and to allow future implementation of such.

⁷ Section 4905.32, Revised Code.

⁸ *Hull v. Columbia Gas of Ohio*, 110 Ohio St.3d 96, 2006-Ohio-3666, 850 N.E.2d 1190, 1193 (2006) (quoting *Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St.3d 147, 151, 573 N.E.2d 655 (1991).

⁹ *In re Complaint of Reynoldsburg*, 134 Ohio St.3 29, 2012-Ohio-5270, ¶41.

¹⁰ Correspondence filed with Companies’ Tariff filing (May 13, 2016).

This new proposed Rider RRS, however, is materially different from the initial Rider RRS proposed by the Companies and authorized by the Commission. Specifically, the initial Rider RRS approved by the Commission included an underlying PPA and periodic reviews,¹¹ both of which are noticeably absent from the Companies' Rider RRS tariff filings.¹² Rather, the tariff filings include a charge to all customers, beginning June 1, 2016, with no kWh value assigned to the tariff rate.¹³ According to the language of the tariffs (and as explained by Companies' witness Mikkelsen in her unlawful rehearing testimony), the Companies may propose rates on a quarterly basis, which will be determined through an entirely different calculation based on projected costs and actual revenues.¹⁴ The Companies' Rider RRS tariff filings, therefore, reflect the new proposed Rider RRS and anticipated future quarterly filings of said rider rate, and not the Commission-authorized Rider RRS.

Thus, the Companies' filings are improper, unfair, and unreasonable. The filings do not comply with the Attorney Examiner's Entry, requiring the Companies to file their proposed tariffs consistent with the March 31, 2016 Order given the Commission's Order was based on the Companies' initial Rider RRS. Moreover, the tariff filings are not based on any hearings or record evidence as the new proposed Rider RRS was not proposed by the Companies until long after the hearing in this proceeding concluded. Instead, the Companies have improperly attempted to use the tariff filings to advance their new proposed Rider RRS, thereby circumventing the regulatory process established by the General Assembly and upheld by the Supreme Court of Ohio.

¹¹ March 31, 2016 Order at 20, 89-90 ("The Commission has always provided for the periodic review and reconciliation of riders created under ESPs.").

¹² Rider RRS Tariff.

¹³ Id.

¹⁴ Id.; Rehearing Testimony of Eileen Mikkelsen at 8.

The Companies purposefully chose to leave the kWh rate value blank in the Rider RRS tariff filings, rather than place the tariffs at a rate of zero (\$0.00) to accurately reflect that under the Rider RRS mechanism authorized by the Commission in its Order, the Companies can recover no costs from customers associated with the affiliate PPA without FERC's review and approval. Additionally, the Companies are not authorized to collect costs from customers associated with the new proposed Rider RRS unless and until the Commission holds a hearing on the new proposed rider and the Commission reviews and considers whether the rider rate is just and reasonable and in compliance with Ohio law.

Notably, the Companies are distinguishing Rider RRS filed with a missing rate value from other tariff filings filed with a rate of zero (\$0.00). For example, the Companies filed tariffs for the Government Directives Recovery Rider (Rider GDR) at a rate of zero (\$0.00).¹⁵ Placing the Rider RRS tariffs at a rate of zero would have shown a good faith commitment by the Companies to not charge customers pursuant to Rider RRS unless or until FERC reviews and approves the affiliate PPA or the Commission approved the Companies' new Rider RRS and its terms and conditions. Under the current tariff filings, the Companies have made no such commitment to customers, leaving open the possibility that they may unilaterally populate Rider RRS at any point, based on the new proposal and new calculations, and recover costs from customers. As such, OMAEG objects to the Companies' tariff filings with regard to Rider RRS.

OMAEG further objects to the Staff report and recommendation filed on May 20, 2016 to approve the Companies' compliance tariffs specific to Rider RRS without modification.¹⁶ Staff failed to recommend that Rider RRS be filed with a rate of zero (\$0.00), instead of a missing rate value, unless or until FERC reviews and approves the affiliate PPA or the Commission approves

¹⁵ Companies' Tariff Filing, Attachment 2, Rider GDR (P.U.C.O. No. 11, Original Sheet 126)(May 13, 2016).

¹⁶ Staff Review and Recommendation (May 20, 2016).

the Companies' new proposed Rider RRS at the terms and conditions set forth in the filed tariffs. As such, the filed tariffs are inconsistent with the Commission's March 31, 2016 Order and unlawfully assume that the new Rider RRS proposal will be approved and implemented.

III. CONCLUSION

For all of the foregoing reasons, the Commission should reject the Companies' Rider RRS tariff filings and Staff's recommendation as inconsistent with the Commission's March 31, 2016 Order and the recognition that FERC review and approval is required prior to transacting under the affiliate PPA and collecting costs from customers associated with said transaction. Additionally, implementing Rider RRS that is consistent with the Companies' new Rider RRS proposal is unlawful, unfair, and unreasonable. The tariff filings are an improper attempt by the Companies to pursue their new proposed Rider RRS and circumvent the process established by the Commission as it relates to establishing utility rates. The Companies' attempt should be rejected and the Commission should require Rider RRS to be refiled consistent with the terms and conditions of the Commission-authorized Rider RRS and with a rate of zero (\$0.00).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on May 24, 2016.

/s/ Danielle M. Ghiloni

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