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 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**

OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY'S MEMORANDUM CONTRA APPLICATION FOR REHEARING OF THE RETAIL ENERGY SUPPLY ASSOCIATION

I. INTRODUCTION

RESA's recent Application for Rehearing[1] is a delinquent attempt to revise the terms of Rider ELR to RESA's advantage at the expense of common sense and the language of the rider itself. Rider ELR has historically included a minimum bill provision.[2] The Stipulation made Rider ELR available to shopping customers, but did not remove the minimum bill provision.[3] To effectuate the minimum bill requirement, the Companies submitted proposed tariffs which fully implemented the Commission's Opinion and Order of March 31, 2016 (the "March 31st Order"). In order to allow the Companies to verify that the minimum bill requirements were satisfied, the proposed tariffs made Rider ELR available to: (1) non-shopping customers; and (2) those shopping customers taking service under consolidated billing. This is consistent with the language of the Stipulation. It is also the only practical way to administer Rider ELR because

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[1] RESA Application for Rehearing (the "Application").

[2] Application, Ex. B, Attachment 1, p. 4 of 7 (page 13 of PDF).

[3] *Id.*

the Companies need timely access to billing data in order to administer the minimum bill provision. No Signatory Party (including several large customer groups) objected to this treatment, and the Commission approved the Companies' proposed tariffs in its Finding and Order of May 25, 2016 (the "May 25th Order").

In addition to the practical issues, RESA's delinquent argument is not supported by any legal theory. RESA is not a signatory party to the Stipulation, and no Signatory Party has adopted RESA's position. RESA did not raise this argument prior to hearing or at hearing. RESA also did not raise this argument in post-hearing briefing or in response to the March 31st Order. It is only now, well after the Rider ELR tariff has been approved, that RESA asks for an entirely new process which would allow dual billing customers to participate in Rider ELR. Because there is no record or legal support for this position, RESA's delinquent argument should be rejected.

II. ARGUMENT

Under Stipulated ESP IV as approved by the Commission, Rider ELR is available to shopping customers for the first time.[4] Importantly, the Stipulations approved by the Commission did not remove the minimum bill provision of Rider ELR.[5] Those provisions were left unchanged, which accordingly required the Companies to have timely customer billing data for customers in the programs. Specifically, Rider ELR's minimum bill provision provides that

[4] March 31st Order, p. 72.

[5] *See* Companies Ex. 2 (Dec. 22, 2014 Stipulation and Recommendation), pp. 7-8; Companies Ex. 3 (May 26, 2015 Supplemental Stipulation and Recommendation), pp. 2-3. *See also* Application, Ex. B, Attachment 1, p. 4 of 7.

the average total bill charge cannot be lower than $0.02 per kWh.[6] For the Companies to verify this requirement has been met, the Companies need access to the billing detail in order to implement the Commission-approved minimum bill provision.

The Commission, in approving ESP IV, did not remove the minimum bill provision of Rider ELR.[7] Accordingly, the Companies submitted proposed tariffs which made Rider ELR available only to non-shopping customers and to shopping customers on consolidated billing. Those proposed tariffs were approved by the Commission in the May 25th Order.

RESA's Application claims that Rider ELR should not be limited to shopping customers taking service under consolidated billing. RESA argues that the Companies did not include this limitation in the Stipulation or in the testimony supporting the Stipulation, and therefore the limitation should not have been included in the tariff which was approved by the Commission.[8] But, as noted, there is no dispute that the minimum bill provision remained a part of Rider ELR because it was unchanged by any stipulation or Commission order. Given the need to verify the minimum bill using total billing detail, Rider ELR can be made available only to shopping customers with consolidated billing.

Apparently acknowledging that shopping customers seeking to qualify for Rider ELR must show that they meet the requirements for the rider (e.g., the minimum bill requirement), RESA merely offers half-baked suggestions for workarounds which allegedly would allow the

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[6] Application, Ex. B, Attachment 1, p. 4 of 7.

[7] *See* March 31st Order, pp. 79, 94.

[8] Application, p. 4.

Companies to implement the minimum bill provision.[9] These suggestions are infeasible, and they anticipate processes which are not in place, using mechanisms which do not exist, in order to operate. RESA suggests that customers could be required to give the Companies a copy of their CRES bill so that the Companies could verify the minimum bill provision. But this would be labor intensive, occur after the Rider ELR credit was given to the customer, depend on customers providing this information to the Companies, and require a costly and inefficient manual review by the Companies of dual billing. Indeed, for some customers, CRES bills could include facilities both in and outside of the service territory or even the state. Untangling such bills would be an administrative nightmare.

RESA also baldly suggests that the Companies could "work with" CRES providers to ensure compliance. But this suggestion is not explained in any way and is completely unsupported by record evidence. Further, RESA's suggestions were not what the Signatory Parties agreed to in the Stipulation. RESA has not identified any reason why the Commission should grant rehearing solely to consider RESA's suggestions. RESA further provides no reason why its suggestions were not offered during the hearing process. They are inappropriate and unworkable, particularly at this late date.

RESA also argues that the March 31st Order provides that Rider ELR universally applies to "all" customers, and is not limited to only shopping customers taking service under consolidated billing.[10] But the Rider ELR approved by the May 25th Order is available to "all" customers who qualify. Dual billing customers are still eligible to participate in Rider ELR; they

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[9] Application, p. 6.

[10] Application, p. 4.

simply are not able to participate in **both** rider ELR and dual billing programs. They must choose one. There is nothing discriminatory about customers taking service under different circumstances being reasonably treated differently.[11] Here, there is a minimum bill provision which the Companies are obligated to verify. It is not discriminatory for the Companies to include the mechanics allowing them to meet that obligation in order to receive the benefits of Rider ELR.

RESA was not a Signatory Party to any stipulation presented in this case. RESA did not raise any issue about the minimum bill requirements or the manner in which those requirements would be verified when the Stipulation regarding Rider ELR was filed. RESA remained silent on this issue through the supplemental stipulations, the hearing process, post-hearing briefing, and in response to the March 31st Order.

RESA's delinquent argument lacks support in the record or otherwise. No Signatory Party or customer has objected to the language of Rider ELR. There is no record evidence that the Companies agreed to make Rider ELR available to dual billing customers, or to create any of the procedures suggested for the first time by RESA in its Application. In light of RESA's delinquent behavior, for RESA to now rely on non-record evidence to claim that the Companies should have created a "work around" for dual billing customers in the Stipulation is not credible.

[11] *Weiss v. Pub. Util. Comm.*, 90 Ohio St.3d 15, 19 (2000).

III. CONCLUSION

RESA has failed to show that the May 25th Order was unreasonable or unlawful. Therefore, for the reasons stated above, the Commission should deny RESA's Application.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that this Memorandum Contra was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 5th day of July, 2016. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties. Further, a courtesy copy has been served upon parties via electronic mail.

/s/ N. Trevor Alexander
One of Attorneys for the Companies

Summary: Memorandum Contra RESA Application for Rehearing electronically filed by Mr. Nathaniel Trevor Alexander on behalf of Ohio Edison Company and The Cleveland Illuminating Company and The Toledo Edison Company