

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's	)	
Investigation of the Financial	)	Case No. 18-47-AU-COI
Impact of the Tax Cuts and Jobs Act of 2017	)	
on Regulated Ohio Utility Companies.	)	

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OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY,  
AND THE TOLEDO EDISON COMPANY'S MEMORANDUM CONTRA THE  
APPLICATION FOR REHEARING BY THE OFFICE OF OHIO CONSUMERS' COUNSEL

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The Commission should deny the Application for Rehearing filed by the Office of Ohio Consumers' Counsel ("OCC"), which contests two findings in the Commission's Finding and Order entered on October 24, 2018 (the "Order"). OCC's first assignment of error belatedly seeks to participate in utility company decisions that already have been made, and OCC's second assignment of error improperly asks the Commission to prejudge questions unique to Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (the "Companies"). Because neither assignment of error has merit, the Application for Rehearing should be denied.

**A. OCC's First Assignment of Error Is Moot as to the Companies and Other Utility Companies.**

OCC's first assignment of error seeks "equal participation" in deciding the form of proceeding that each Ohio rate-regulated utility company may file to address issues raised by the Tax Cuts and Jobs Act of 2017 ("TCJA"). In paragraph 29 of the Order, the Commission directed Ohio rate-regulated utility companies to file applications in new proceedings to "allow for a more deliberate and thorough analysis for each utility's individual circumstances," and "to pass along to consumers the tax savings resulting from the TCJA." OCC's assignment of error focuses on

the Commission’s statement later in that paragraph that the “Commission is open to any alternative proposals by the utilities.” OCC apparently wants to make its own proposals. However, OCC’s complaint is moot as to the Companies and several other utilities. The Companies already have complied with paragraph 29 of the Order by filing Case No. 18-1604-EL-UNC on October 30, 2018 and Case No. 18-1656-EL-ATA on November 9, 2018. Likewise, as the Order notes, AEP Ohio has filed Case Nos. 18-1007-EL-UNC and 18-1451-EL-ATA. Duke Energy has filed Case Nos. 18-1185-EL-UNC and 18-1186-EL-ATA. Regardless of how many other examples may be found, OCC’s first assignment of error is moot as to the Companies and several other utilities.<sup>1</sup>

**B. OCC’s Second Assignment of Error Unreasonably Asks the Commission to Prejudge a Utility-Specific Issue in a Generic Proceeding.**

OCC’s second assignment of error asks the Commission to decide in this all-utilities proceeding a question that is unique to the Companies; namely, the extent to which the Companies’ base distribution rate freeze approved by the Commission in Case No. 14-1297-EL-SSO (the “ESP IV case”) affects tax savings resulting from the TCJA. The Companies, OCC and other parties provided comments to the Commission addressing whether utility-specific questions should be addressed in this generic proceeding.<sup>2</sup> Indeed, both the Companies and OCC specifically commented on the impact that the Companies’ base distribution rate freeze might have on the Companies’ provision of TCJA relief.<sup>3</sup> The Commission correctly determined that utility-specific

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<sup>1</sup> Even if OCC’s assignment of error were not moot, OCC lacks statutory authority to choose the form of proceeding commenced by a utility company.

<sup>2</sup> See, e.g., Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (Feb. 15, 2018); Comments of Ohio Power Company (Feb. 15, 2018); Comments and Recommendations to Reduce Ohioans’ Utility Bills as a Result of the Federal Tax Cuts And Jobs Act Of 2017 by The Office Of The Ohio Consumers’ Counsel (Feb. 15, 2018); Reply Comments by The Office of the Ohio Consumers’ Counsel (March 7, 2018).

<sup>3</sup> Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, pp. 4-12 (Feb. 15, 2018); Reply Comments by The Office of the Ohio Consumers’ Counsel, pp. 13-18 (March 7, 2018).

issues, including the Companies' utility-specific issues, are best addressed in utility-specific proceedings. Order ¶¶ 28, 32. OCC offers no reason, and no new arguments, in its Application for Rehearing that would justify the Commission changing course.

It is well settled that the Commission will deny applications for rehearing that "simply reiterate[] arguments that were considered and rejected by the Commission."<sup>4</sup> Indeed, the Commission has held on numerous occasions that the mere restatement of arguments already addressed in a previous order does not provide grounds for rehearing.<sup>5</sup> OCC repeats in its second assignment of error the same arguments made in its comments regarding the Companies' base distribution rate freeze. This alone is reason for denying OCC's second assignment of error.

In addition, because the Companies have complied with the Commission's Order by filing applications in newly initiated proceedings to resolve TCJA savings questions,<sup>6</sup> any complaint OCC has is best addressed in those proceedings. Indeed, OCC's second assignment of error is a rather transparent attempt to have the Commission prejudge issues in this proceeding that the Companies and several parties already have sought to address by Stipulation in those proceedings.<sup>7</sup> The Commission's rehearing process is not the appropriate mechanism for launching a collateral

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<sup>4</sup> *Wiley v. Duke Energy Ohio, Inc.*, Case No. 10-2463-GE-CSS, 2011 Ohio PUC LEXIS 1276, \*6-7 (Nov. 29, 2011).

<sup>5</sup> See, e.g., *Id.*; *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 "raised nothing new"); *City of Reynoldsburg v. Columbus Southern Power Co.*, Case No. 08-846-EL-CSS, 2011 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).

<sup>6</sup> See Case No. 18-1604-EL-UNC and Case No. 18-1656-EL-ATA.

<sup>7</sup> See Stipulation and Recommendation filed Nov. 9, 2018 in Case Nos. 16-481-EL-UNC, 17-2436-EL-UNC, 18-1604-EL-UNC and 18-1656-EL-ATA.

attack on a stipulation in a separate proceeding. Thus, the Commission should deny OCC's second assignment of error.

For the foregoing reasons, the Commission should deny OCC's Application for Rehearing.

Respectfully submitted,

/s/ James F. Lang

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I certify that this Memorandum Contra was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 3rd day of December, 2018. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ James F. Lang  
One of Attorneys for the Companies

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Summary: Memorandum Contra Application for Rehearing by the Office of Ohio Consumers' Counsel electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The Toledo Edison Company and The Cleveland Electric Illuminating Company