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 Approval of a Decoupling Mechanism	)))))	Case No. 19-2080-EL-ATA Case No. 19-2081-EL-AAM

REPLY COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY

Respectfully submitted,

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I. Introduction

On November 21, 2019, pursuant to R.C. 4928.471, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies") filed their verified Application for Approval of a Decoupling Mechanism ("Application"). R.C. 4928.471 prescribes a process for the Public Utilities Commission of Ohio (the "Commission") to approve the Companies' Application within sixty days of filing, provided it satisfies two unambiguous requirements: (1) the decoupling mechanism is designed to recover the electric distribution utility's ("EDU") 2018 annual revenues as defined in R.C. 4928.471(A); and (2) the decoupling rate design is aligned with the rate design of the utility's existing base distribution rates.[1] Further, if the decoupling mechanism would result in a double recovery, the Commission must cure the double recovery before approving the Application.[2] The Application and associated workpapers easily satisfy the two requirements above, and the Companies' contemporaneously-filed Rider DSE update ensures that no double recovery will occur. Thus, the Commission should approve the Application so that the Companies may implement the decoupling mechanism effective February 1, 2020.

By enacting R.C. 4928.471, the General Assembly determined that decoupling the base distribution rates for residential and commercial customers to 2018 levels is in the best interest of customers and the Companies. Indeed, the Companies' decoupling mechanism, the Conservation Support Rider ("Rider CSR"), breaks the link between the amount of electricity customers consume and the amount of revenue the Companies collect, thus mitigating concerns about decreases in revenue needed to maintain safe and reliable service as a result of energy efficiency efforts. This allows the Companies to work with customers to help them use electricity efficiently

[1] R.C. 4928.471(B).
[2] R.C. 4928.471(D).

without concern about financial harm. Decoupling also gives customers greater stability and certainty about the cost of the electricity they use. While the merits of decoupling are not at issue here, given the General Assembly's express approval of them, the merits are nevertheless obvious.

The Commission solicited comments on the Application. Few comments were submitted, which is not surprising given the straightforward nature of the decoupling approval process prescribed in R.C. 4928.471. Only the Ohio Hospital Association ("OHA"), the Office of the Ohio Consumers' Counsel ("OCC"), and the Ohio Manufacturers' Association Energy Group ("OMAEG") (collectively, "Commenters") filed comments. And the objections that were asserted generally either ignore the statutory scheme or attempt to bring confusion and unnecessary complexity to what is an unambiguous requirement to verify the Companies' calculations and rate design alignment.

While certain Commenters claim there is inadequate information to verify compliance with the statute, they have no basis for contesting the verified information included in the Application and, incredibly, chose not to serve any discovery in this proceeding.[3] Others object to the use of forecasts, attempt to prevent the decoupling to 2018 revenues as defined in R.C. 4928.471(A), or suggest approval of a "placeholder" rider instead of a decoupling mechanism, but these objections simply ignore the plain language of the statute. OCC complains that Rider CSR will result in a charge to customers in 2020, while ignoring other offsetting bill impacts due to Rider CSR in 2020 and the fact that Rider CSR could result in a credit to customers in future years.[4] Policy questions raised by Commenters are also a moot point. The General Assembly has made a policy

[3] OCC did serve discovery in the Companies' related Rider DSE update case, Case No. 19-1904-EL-RDR, on November 27, 2019, which the Companies fully answered on December 17 and 18, 2019.
[4] *See* Application at 4.

determination to promote decoupling, thus mooting the Commenters' after-the-fact attempts to advance competing policy arguments.

II. Reply Comments

A. The Companies provided ample information to verify compliance with R.C. 4928.471.

1. <u>The Application more than satisfies the Companies' burden of proof under the statute</u>.

OCC and OMAEG claim that the Application is deficient and does not allow the Commission to rule out double recovery or verify that the rate design is aligned with the Companies' existing base distribution rates.[5] R.C. 4928.471(B) requires the Companies' Application to do two things: (1) provide a decoupling mechanism that would decouple base distribution revenues for residential and commercial customers to the level of base distribution revenue and lost distribution revenue ("LDR")[6] for residential and commercial customers for calendar year 2018; and (2) provide a rate design that aligns with existing base distribution rates.

The Companies' Application and exhibits, as well as supporting workpapers provided to Staff, demonstrate that Rider CSR meets the requirements of R.C. 4928.471(B). The Application's exhibits detail the Companies' level of 2018 baseline revenue, as well as the Companies' actual and projected level of 2019 revenue. The supporting workpapers authenticate the levels of 2018 revenues and 2019 revenues. Further, the Companies' base distribution rate design is well-established. The rate design of base distribution rates under Rate RS and Rate GS[7] was established in Case No. 07-551-EL-AIR, went into effect in 2009, and was continued as part of numerous

[5] OCC Comments at 1-2, 5-7; OMAEG Comments at 5-6.
[6] R.C. § 4928.471 refers to "revenue resulting from implementation of section 4928.66 of the Revised Code, excluding program costs and shared savings." For simplicity, this is referred to herein as "lost distribution revenue" or "LDR."
[7] As explained in the Companies' Application, residential and commercial customers include customers on rate schedules Rate RS and Rate GS.

other regulatory proceedings, *i.e.*, Electric Security Plans ("ESP"), in which all Commenters have been active participants. And the Application demonstrates that the rate design of Rider CSR is aligned with the base distribution rate design in Rate RS and Rate GS for residential and commercial customers, respectively. This more than satisfies the Companies' burden of proof under the statute.[8]

2. <u>The Companies have removed from Rider DSE all LDR for customers impacted by Rider CSR</u>.

The question of "double recovery" under R.C. 4928.471(D) is not directly an issue for this Application and this proceeding because, to avoid double recovery, any LDR that is recovered in Rider CSR should not also be recovered in Rider DSE. Thus, the Commission can satisfy R.C. 4928.471(D) simply by ordering in this proceeding that any LDR recovered in Rider CSR not also be recovered in Rider DSE. Indeed, the Commission can take administrative notice of the fact that the Companies filed in Case No. 19-1904-EL-RDR on November 21, 2019 to remove all LDR from Rider DSE2 for customers served under Rate RS and Rate GS specifically to prevent any possible double recovery.

OCC asserts that the Companies' update to Rider DSE in Case No. 19-1904-EL-RDR lacks support to confirm LDR was removed and suggests that the update filing was incomplete.[9] To the contrary, the update filing follows the Companies' approved rider update and audit process. This rider update process was approved in the Companies' ESP III proceeding[10] and continued in the ESP IV proceeding,[11] as OCC, a participant in both ESPs, is well-aware. According to this process

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[8] OMAEG suggests that the Commission must determine that the calculation is "just and reasonable." OMAEG Comments at 8. Satisfying R.C. § 4928.471's two requirements means that the Application is just and reasonable or, more accurately tracking the actual language of the statute, the Application is not unjust and unreasonable. There is no other "just and reasonable" test for the Commission to apply here.
[9] OCC Comments at 5-6.
[10] *See* Case No. 12-1230-EL-SSO, July 18, 2012 Opinion and Order, p. 44.
[11] *See*, Case No. 14-1297-EL-SSO, August 16, 2017 Eighth Entry on Rehearing.

and the approved Rider DSE tariff, the Companies update Rider DSE approximately thirty days prior to its effective date. Additionally, the Companies file an annual application for an audit of the Rider DSE rates for the prior calendar year, which includes the supporting workpapers.

In their November 21, 2019 Rider DSE filing,[12] the Companies removed LDR for customers on Rate RS and Rate GS from Rider DSE2, as clearly demonstrated in the Companies' supporting workpapers. OCC served discovery in the Rider DSE case on November 27, 2019, and the Companies' responses on December 17 and 18, 2019 confirm the removal of LDR.[13]

Additionally, as shown on Rider CSR,[14] the Companies are reconciling the LDR collected in 2019 to 2018 levels, as R.C. 4928.471 intended. For all except Rate RS for CEI, this results in a credit to customers because LDR collected in 2019 exceeded 2018 levels.[15] Overall, the reduction in Rider DSE2 charges due to the removal of LDR is more than the charges under Rider CSR in 2020. Thus, Rate RS and Rate GS customers in total will be paying less in 2020 due to the implementation of the decoupling mechanism than they otherwise would.

3. Rider CSR will ultimately be based entirely on actual costs via the reconciliation provision, and R.C. 4928.471 necessarily contemplated the use of projections for implementation of a decoupling mechanism for the 2019 calendar year.

OMAEG argues that the calculation of Rider CSR must be based entirely on actual costs, not projections.[16] In doing so, OMAEG overlooks or ignores the reconciliation process outlined

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[12] Case No. 19-1904-EL-RDR.
[13] *See* OCC Set 1-INT-001 Attachment 2 Confidential, showing Lost Distribution Revenue values of "$0" for January through June 2020 for Rate RS and Rate GS.
[14] Attached to the Application as Ex. B.
[15] *See* Exhibit A to the Application, pages 1-3, lines 19-31.
[16] OMAEG Comments at 9.

in the statute[17] and reflected in the Companies' Application[18] and proposed Rider CSR tariffs.[19] This reconciliation process ensures that Rider CSR will ultimately include only actual revenues. Additionally, R.C. 4928.471 explicitly provides for applications to be filed as soon as November 21, 2019, provides for a 60-day review period, and provides for the decoupling mechanism to be implemented for the 2019 calendar year (and each calendar year thereafter). Thus, it necessarily contemplated the use of projections for a portion of the 2019 calendar year in the Commission's analysis. While OMAEG proposes a reconciliation requirement and OCC proposes refund language,[20] both proposals are superfluous given the statutory requirement, reflected in the Companies' proposed Rider CSR, for an annual reconciliation of any over or under recovery.[21]

4. A "placeholder" rider is not permitted under R.C. 4928.471.

OCC recommends that rather than meet the 60-day deadline in R.C. 4928.471(B) to verify the calculations and issue an order approving Rider CSR, the Commission should simply approve a placeholder rider within the 60 days, and then conduct an audit and schedule hearings.[22] This is not allowed under the statute. R.C. 4928.471 requires approval of a decoupling mechanism to recover 2018 annual revenues, not a placeholder rate that recovers nothing.

Further, the Commission has provided more than adequate process by soliciting comments and reply comments. An evidentiary hearing is not required unless mandated by statute, and R.C. 4928.471 imposes no such mandate. The Ohio Supreme Court has "repeatedly held that there is no constitutional right to notice and hearing in rate-related matters if no statutory right to a hearing

[17] *See* R.C. §4928.471(B) ("The decoupling mechanism shall be adjusted annually thereafter to reconcile any over recovery or under recovery from the prior year. . . .").
[18] *See* Application at ¶10.
[19] *See* proposed tariffs, attached to the Application as Ex. B, at the paragraph entitled "Rider Updates."
[20] OMAEG Comments at 9; OCC Comments at 8.
[21] *See* R.C. 4928.471(B).
[22] OCC Comments at 2, 8.

exists."[23] Where an evidentiary hearing is not required by statute, the Commission has broad discretion to adopt a notice and comment process to receive comments from interested parties.[24] Since an evidentiary hearing is not required by R.C. 4928.471 (which instead directs the Commission to issue an order approving a decoupling application not later than 60 days after the application is filed) the Commission's solicitation of comments provides ample process. Further, since the Commission's review of a decoupling application is limited to verifying (1) that the rate schedules are designed to recover the EDU's 2018 annual revenues, and (2) that the decoupling rate design is aligned with the rate design of the EDU's existing base distribution rates, no proceeding is required other than the filing of an application, the Commission's verification of the EDU's calculations, and the Commission's issuance of an order.

OCC also complains that the Companies have filed no testimony.[25] However, R.C. 4928.471 requires none. Nevertheless, the Companies verified the Application and exhibits with a sworn affidavit. In addition, OCC asserts that other EDUs' decoupling mechanisms had more due process.[26] OCC overlooks the fact that no other EDU has availed itself of this statutorily-authorized decoupling process.

5. <u>The statutory timeline for filing a decoupling application in R.C. 4928.471 necessarily results in Rider CSR only being effective for eleven months in 2020</u>.

OCC argues that the rates charged in Rider CSR in 2020 will be higher if, as proposed in the Application, they are collected over eleven months (February through December 2020) rather than twelve months (January through December 2020). However, what the Companies have

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[23] *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213, ¶ 20.
[24] *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 38 Ohio St. 3d 266, 270, 527 N.E.2d 777 (1988).
[25] *See, e.g.*, OCC Comments at 6, 7.
[26] OCC Comments at 8, n. 19.

proposed is what the statute requires. Under R.C. 4928.471, the earliest day for an eligible EDU to file a decoupling application is 30 days after the statute's effective date. It also provides for a 60-day review period after the application is filed. The Companies filed the Application on November 21, 2019, the earliest day they were authorized to do so by R.C. 4928.471, and the 60-day review period will terminate on January 20, 2020. Therefore, in the Application, the Companies proposed that Rider CSR will be effective for service rendered beginning February 1, 2020. This is a reasonable and practical way to implement the statute for an EDU that files on the earliest date permitted under R.C. 4928.471. The Companies did not set the schedule in R.C. 4928.471; the General Assembly did. Consequently, this is not an issue that the Commission or the Companies can or should remedy in this proceeding. Notably, the 11-month recovery period only impacts the initial Rider CSR rates to be effective in 2020; as described in the Companies' Application and proposed Rider CSR tariffs, subsequent annual Rider CSR updates will be based on 12-month recovery periods.

B. The amount of lost distribution revenue collected through the Companies' decoupling mechanism is dictated by R.C. 4928.471.

R.C. 4928.471(A) dictates the amount of lost distribution revenue an EDU may collect through a decoupling mechanism. It provides, in pertinent part, that "the base distribution rates for residential and commercial customers shall be decoupled to the base distribution revenue and revenue resulting from implementation of section 4928.66 of the Revised Code, excluding program costs and shared savings, and recovered pursuant to an approved electric security plan under section 4928.143 of the Revised Code, as of the twelve-month period ending on December 31, 2018." While the Commenters question the amount of lost distribution revenue the Companies would collect through Rider CSR, their arguments are meritless in the face of this clear statutory language.

1. R.C. 4928.471 does not limit the amount of lost distribution revenue the Companies may collect through Rider CSR to the incremental revenue lost as a result of energy efficiency measures taken in 2018.

OMAEG argues that R.C. 4928.471 limits the 2018 lost distribution revenue to which the Companies may decouple to only the revenue lost as a result of energy efficiency measures taken in 2018 to meet the 1% incremental energy efficiency requirement for 2018 provided for in R.C. 4928.66.[27] But this contorted view conflicts with R.C. 4928.471, which directs that "the base distribution rates for residential and commercial customers shall be decoupled to the base distribution revenue and revenue resulting from implementation of section 4928.66 of the Revised Code, excluding program costs and shared savings, and ***recovered*** pursuant to an approved electric security plan under section 4928.143 of the Revised Code, as of the twelve-month period ending on December 31, 2018."[28] Nowhere in the statute is decoupling limited to, or in any way related to, energy efficiency measures taken only in 2018. Instead, the decoupling statute requires that the Companies collect in 2019 and future years the same amount of LDR revenue as was ***recovered*** in calendar year 2018. This benefits customers, as LDR was otherwise expected to increase annually with the energy efficiency mandates.

OMAEG also argues that adjustments for mercantile self-direct exemptions and large user opt-outs should be excluded from lost distribution revenue.[29] This contention is similarly flawed, because R.C. 4928.471 authorizes an EDU to lock in a specific revenue level, rather than enumerating the specific subcategories of lost distribution revenue to be included in that revenue

[27] OMAEG Comments at 8. OMAEG also misstates the relationship between the Companies' Rider CSR and Rider DSE. OMAEG asserts that while Rider DSE is in effect, Rider CSR must exclude the lost distribution revenue recovered through Rider DSE. To the contrary, once Rider CSR is in effect, Rider DSE must exclude the lost distribution revenue incorporated into the Rider CSR rate design. As discussed previously, the Companies' Application and recent update to Rider DSE clearly demonstrate this.
[28] R.C. 4928.471(A) (emphasis added).
[29] OMAEG Comments at 8.

level. OMAEG's reading also overlooks the fact that lost distribution revenue is cumulative in nature. OMAEG's argument would lead to the absurd result that the Companies would not recover distribution revenue lost as a result of activities prior to 2018, even though customers have not reversed their past energy efficiency measures since inception of the energy efficiency mandates, during which time the Companies have foregone this revenue while operating under a Commission-ordered base distribution rate freeze. Finally, while not entirely clear what "adjustments" OMAEG is suggesting in its Comments, its references to "mercantile self-direct exemptions and large user opt-outs" appear to be largely misplaced since proposed Rider CSR would apply only to residential and commercial customers. Thus, OMAEG makes no argument justifying modification of the Companies' decoupling mechanism.

2. R.C. 4928.471 expressly allows the Companies to decouple to base distribution revenue and lost distribution revenue collected in 2018.

OMAEG and OHA both question the reasonableness of the Companies collecting 2018 lost distribution revenue. OMAEG complains that Rider CSR would collect an amount of lost distribution revenue that exceeds the Companies' cost of EE/PDR programs.[30] OHA questions whether it is reasonable for customers to pay lost distribution revenue through Rider CSR after Company-sponsored EE/PDR programs have ceased.[31] But how the level of lost distribution revenue for 2018 compares to what the Companies spent on energy efficiency programs, or whether Company-sponsored energy efficiency programs continue in the future, is irrelevant to the straightforward statutory calculation in R.C. 4928.471(A). These comments also overlook the very purpose of decoupling, which is to break the link between the amount of electricity that customers consume and the amount of revenue an EDU collects, thus mitigating concerns about

[30] OMAEG Comments at 6-7.
[31] OHA Comments at 2.

decreases in revenue needed to maintain safe and reliable service as a result of energy efficiency efforts. Indeed, decoupling allows utilities to work with customers to help them use electricity efficiently without concern about financial harm. And OMAEG and OHA cannot alter the fact that, regardless of the termination of R.C. 4928.66 programs, the impact of historical energy efficiency programs will continue into future years while customers continue to adopt voluntary energy efficiency measures.

3. The Companies do not propose, and R.C. 4928.471 does not allow, the lost distribution revenue the Companies collect through Rider DSE to shift to Rider CSR.

OMAEG also claims that if Rider DSE ends in 2021, all lost distribution revenue collected through Rider DSE will shift to Rider CSR, meaning that customers who opted out of EE/PDR programs will bear those costs, with no additional benefits.[32] This again shows a misunderstanding of the purpose of R.C. 4928.471 and the decoupling mechanism it authorizes. OMAEG's concerns about customers who opted out of EE/PDR programs are misplaced, since Rider CSR will not apply to those customers. Rider CSR applies to customers on rate schedules Rate RS and Rate GS. Only customers on rate schedules Rate GSU, Rate GT, and Rate GP are eligible to opt out of EE/PDR pursuant to R.C. 4928.66 and Senate Bill 310.[33] Further, R.C. 4928.471 does not authorize, and Rider CSR does not provide for, the shifting of any lost distribution revenue from Rider DSE to Rider CSR in 2021 or any year. The Companies are decoupling to 2018 base distribution revenue and lost distribution revenue for residential and commercial customers, and that same LDR will not be recovered through Rider DSE. As customers continue to implement energy efficiency measures, the Companies will remain decoupled to 2018 revenues.[34]

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[32] OMAEG Comments at 8.
[33] *See* Section 8 of S.B. 310 of the 130th General Assembly.
[34] OMAEG's Comments assume that energy efficiency will go away entirely in 2021, but this is not true. Only Company-mandated programs will go away.

III. Conclusion

The Companies appreciate the opportunity to provide Reply Comments and urge the Commission to approve the Application on or before January 20, 2020 pursuant to R.C. 4928.471.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Reply Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company were filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 27th day of December, 2019. The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

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