BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Toledo Edison Company, and The Cleveland Electric Illuminating Company to Revise their Energy Efficiency Riders	)))))	Case No. 19-1904-EL-RDR

MEMORANDUM CONTRA APPLICATION FOR REHEARING BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

The Commission should deny the Application for Rehearing by The Office of the Ohio Consumers' Counsel ("OCC") ("OCC AFR") filed on January 31, 2020 regarding the Rider DSE update tariffs ("Rider DSE" and "Rider DSE update") filed by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively the "Companies") on November 21, 2019. According to its terms and because there was no Commission order to the contrary, the Companies' Rider DSE update went into effect on a service rendered basis on January 1, 2020.

The Commission's automatic approval of the Rider DSE update was reasonable and lawful, and rehearing is not appropriate here. The Companies continue to follow their Commission-approved rider update and audit process that has been in place for years. They also provided the Rider DSE workpapers and calculations to OCC in discovery. Despite having the workpapers, OCC cannot point to any aspect of the Rider DSE rate that would make its approval unreasonable or unlawful. Instead, OCC mischaracterizes a purported filing requirement, makes a flawed attack on the impact to residential customers, and inexplicably suggests that there could be double

recovery between Rider DSE and the Companies' decoupling mechanism ("Rider CSR") even though the Companies' workpapers clearly show there is none, and the Commission has already determined that no double recovery exists. The Commission should reject OCC's three assignments of error and deny OCC's AFR.

II. ARGUMENT

A. Response to Assignment of Error 1: The Companies' Rider DSE update was reasonably and lawfully approved in accordance with Commission-approved rider update and audit procedures, and the Companies provided supporting documentation to OCC.

In its first assignment of error, OCC argues that the Companies violated the Commission's order in the Companies' third electric security plan ("ESP III")[1] by providing no supporting documentation with their Rider DSE update.[2] This argument, however, ignores or misunderstands the Companies' Commission-approved rider update and audit process. As the Companies explained in their reply comments to their decoupling application,[3] this rider update process was approved in the Companies' ESP III proceeding[4] and continued in the ESP IV proceeding,[5] as OCC, a participant in both ESPs, is well-aware. According to this process and the approved Rider DSE tariff, the Companies update Rider DSE semi-annually approximately thirty days prior to its effective date and provide the workpapers to Staff. Additionally, the Companies file an annual application for an audit of the Rider DSE rates for the prior calendar year, which filing includes the supporting workpapers.

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[1] Case No. 12-1230-EL-SSO.

[2] OCC AFR, Memorandum in Support ("Mem. in Support") at 2.

[3] Case Nos. 19-2080-EL-ATA and 19-2081-EL-AAM, Dec. 27, 2019 Reply Comments.

[4] *See* Case No. 12-1230-EL-SSO, July 18, 2012 Opinion and Order, p. 44.

[5] *See* Case No. 14-1297-EL-SSO, August 16, 2017 Eighth Entry on Rehearing.

OCC argues that the Commission's order in ESP III[6] requires the Rider DSE update filing to include workpapers,[7] but OCC mischaracterizes the Commission's order. The Commission specified that the Companies should file annual audit applications for certain riders, including Rider DSE. Further, the Companies were directed to work with the Commission Staff to develop a schedule of the annual audit applications. As part of this schedule, the Companies make semi-annual Rider DSE update filings and provide the workpapers to Staff. The annual applications would be used to audit "all filings adjusting the riders listed on Attachment B [in the ESP III Stipulation]" from the prior calendar year, and would include the filing of the rider workpapers that are subject of the audit, consistent with the schedule developed by the Companies and Commission Staff. Therefore, the filing of workpapers concurrent with each rider adjustment filing for these riders is unnecessary, duplicative, and would run counter to the intent of the ESP III Order to establish a streamlined schedule for the rider audits. For all other riders not specified for an annual audit application in the ESP III Order, the Companies continue to file rider adjustments and include the workpapers in those rider adjustment filings. The Companies have met all of these requirements and have followed this Commission-approved process for years, including for Rider DSE. Thus, the Companies' Rider DSE update was filed and approved reasonably, lawfully, and pursuant to Commission orders. Accordingly, there is no violation of R.C. 4905.54.

While OCC complains that the Companies did not support their rates with workpapers, OCC fails to clarify that the Companies responded to OCC's discovery requests and provided the calculations and workpapers supporting Rider DSE. In fact, OCC fails to mention that it has filed

[6] *See* Case No. 12-1230-EL-SSO, July 18, 2012 Opinion and Order.

[7] Mem. in Support at 2-3.

a significant number of those workpapers in this docket.[8] Disregarding the process set forth above and the normal discovery procedure for rider update filings,[9] on November 27, 2019, OCC propounded discovery requests upon the Companies in this case. Although the requests were premature rendering responses unnecessary, the Companies responded[10] not only to provide information regarding Rider DSE, but also as a courtesy in anticipation of OCC's likely participation in the Companies' application for a decoupling mechanism.[11] After negotiating a protective agreement with OCC, the Companies provided confidential documents, including detailed workpapers and calculations regarding the Rider DSE update, to OCC.[12] Thus, OCC, the only "party"[13] to this proceeding to serve discovery, has received all of the workpapers and calculations associated with the Rider DSE update.

OCC's references to the energy efficiency filings of other EDUs[14] and to the Dominion Energy[15] case are inapposite here. The Companies have followed their Commission-approved

[8] *See* December 21, 2019 Objections by The Office of the Ohio Consumers' Counsel ("OCC Objections"), at Attachment C.

[9] *See* Case No. 17-2474-EL-RDR, Nov. 1, 2018 Entry at ¶ 15 (denying OCC's motion to compel and finding that discovery was premature until after the filing of the rider audit report).

[10] The Companies' responses were provided subject to objections. *See, e.g.*, OCC Objections at Attachment A. The Companies objected stating that "OCC is not entitled to discovery at this time." The Companies asserted this objection in response to each interrogatory and request for production.

[11] *See* Case Nos. 19-2080-EL-ATA and 19-2081-EL-AAM. The Companies application for a decoupling mechanism was filed contemporaneously with the Rider DSE update on November 21, 2019. The Companies' decoupling mechanism, Rider CSR, was approved by the Commission on January 15, 2020 and allows the Companies to recover "revenue resulting from implementation of section 4928.66 of the Revised Code, excluding program costs and shared savings, and recovered pursuant to an electric security plan for residential (Rate RS) and commercial (Rate GS) customers. As a result, and in conformance with R.C. 4928.471(D), the Companies removed LDR for Rate RS and Rate GS customers in Rider DSE2.

[12] *See generally*, OCC Objections at Attachments B and C.

[13] OCC's Motion to Intervene in this case has not been granted as of the filing of this Memorandum Contra.

[14] Mem. in Support at 3.

[15] *Id*. *See also*, Case No. 17-1372-GA-RDR.

process, and the resulting approval of the Rider DSE update was both reasonable and lawful. OCC's first assignment of error should be denied.

B. Response to Assignment of Error 2: The Companies have demonstrated that the rates are just and reasonable pursuant to R.C. 4905.22, and there is no evidence to the contrary.

In its second assignment of error, OCC asserts that the Companies have not met their burden of proving that the updated Rider DSE rates are just and reasonable.[16] To the contrary, the Companies have demonstrated that the rates in their Rider DSE update filing are just and reasonable through their supporting workpapers and calculations. In its AFR, OCC misrepresents the amounts that the Companies will charge to residential customers under Rider DSE2.[17] Contrary to OCC's claim, the charge to Ohio Edison Rate RS customers under Rider DSE2 is $14.00 per year; for CEI Rate RS customers, the charge is $22.00 per year; and for Toledo Edison Rate RS customers, the charge is $60.00 per year.[18] In fact, Rider DSE2 rates represent a decrease for residential customers on Rate RS, as the Companies' work papers plainly show.[19] OCC's argument is premised upon its own mistaken beliefs and erroneous calculations of the Companies' rates and should be disregarded. The Companies have demonstrated that the Rider DSE rates are just and reasonable, and despite having received all of the Companies' workpapers, OCC fails to point to any way in which the rates are unjust or unreasonable.

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[16] Mem. in Support at 4-5.

[17] Mem. in Support at 4.

[18] *See* OCC Objections, Attachment C at 1-3, line 10. *See also*, revised tariff pages filed in this docket on 11/21/2019, showing that Ohio Edison Rider DSE charges for the first and second quarters of 2020 for Rate RS customers are 0.1183 cents for all kWh per kWh; thus, assuming an average monthly usage of 1,000 kWh: $.001183 x 1000 kWh x 12 months = $14 per year (*not* $21 as asserted by OCC). For CEI: $.001798 x 1000 kWh x 12 months = $22 per year (*not* $29 as asserted by OCC). For Toledo Edison: $.005002 x 1000 kWh x 12 months = $60 per year (*not* $67 as asserted by OCC).

[19] *See* OCC Objections, Attachment C at 1-3. (Compare Line 11 "Third and Fourth Quarter 2019 Rate (cents / kWh)" with Line 10 "First and Second Quarter 2020 Rate (cents / kWh)").

OCC argues that customers are inadequately protected from paying rates that are too high, because the Commission's audit process takes too long.[20] As OCC aptly notes, however, pursuant to the Companies' Commission-approved rider update and audit process, the Companies will file an annual application for an audit of the Rider DSE rates for the prior calendar year.[21] Additionally, Rider DSE itself provides that it is "subject to reconciliation. . ." based solely upon the results of Commission audit.[22] OCC's argument notably fails to account for the fact that an audit could reveal that customers were paying rates that were too low, meaning that the Companies under-recovered – not that customers overpaid. Moreover, when the Commission completes its audit of a previous rider does not have any impact on the timing or method of implementing the current rider. In short, there is no basis to grant rehearing on the Companies' update to Rider DSE because OCC is dissatisfied with the timeline for the audits of other riders. This process was approved by the Commission and has been in effect for years.

The approval of the Companies' Rider DSE update was both reasonable and lawful, and OCC's second assignment of error should be denied.

C. Response to Assignment of Error 3: There is no legitimate basis for OCC to continue to argue that Rider DSE is duplicative of Rider CSR given not only the Companies' workpapers, but also the Commission's finding on this issue.

In its third assignment of error, OCC argues that the Companies have failed to prove that their energy efficiency rates are not duplicative of charges recovered through their Commission-approved decoupling mechanism.[23] Rider DSE2 will not double recover lost distribution revenue

[20] Mem. in Support at 5.

[21] Mem. in Support at 5.

[22] Rider DSE at 2, P.U.C.O. No. 11, P.U.C.O. No. 13, and P.U.C.O. No. 8.

[23] Mem. in Support at 6-7.

("LDR") from residential or commercial customers, and OCC's concern[24] is unfounded. In the Rider DSE update, the Companies removed LDR for both residential (Rate RS) and commercial (Rate GS) customers, as is clearly shown on the documents OCC attached to its Objections in this case – specifically Attachment C.[25] Rate RS and Rate GS are the rate schedules that are subject to the Companies' decoupling mechanism in Rider CSR.[26] Thus, there is no double recovery of LDR between Rider CSR and Rider DSE2. The Commission concluded there was no double recovery when it approved the Companies' decoupling application on January 15, 2020;[27] thus, this issue has been resolved.

OCC contradicts itself where, despite arguing that there is "potential for double collection,"[28] it also acknowledges that the Companies' discovery responses show that Rider DSE2 will not collect LDR for residential customers for the six month period from January 2020 through June 2020.[29] OCC then claims that it is unclear what the Companies intend to do for the rest of the year.[30] This argument completely ignores the Companies' rider update process, as described above, and the update provision that is set forth in Rider DSE itself. As set forth in the Companies' Commission-approved tariffs, Rider DSE provides (in the section entitled "Rider Updates") that: "The DSE2 charges set forth in this Rider **shall be updated and reconciled semi-annually**. No later than **December 1st and June 1st of each year**, the Compan[ies] shall file with the PUCO a

[24] *Id*.

[25] *See* OCC Objections, Attachment C at 1-3 (showing Lost Distribution Revenue values of "$0" for January through June 2020 for Rate RS and Rate GS for each of the Companies).

[26] *See generally*, Case No. 19-2080-EL-ATA.

[27] Case No. 19-2080-EL-ATA, 1/15/2020 Finding and Order at ¶ 30.

[28] Mem. in Support at 6.

[29] Mem. in Support at 7. While not raised by OCC in its AFR, the Companies' discovery responses also show that LDR will be zero for commercial customers (*i.e.*, customers on Rate GS).

[30] *Id*.

request for approval of these charges which, unless otherwise ordered by the PUCO, shall become effective on a service rendered basis on **January 1st and July 1st of each year**. . . ."[31]

Thus, the rates reflected in the Companies' November 21, 2019 Rider DSE update are calculated only for the six-month period January through June 2020. When the Companies file future rates (*e.g.*, in their next filing not later than June 1, 2020), LDR will likewise not be included for the period July 1, 2020 through December 31, 2020 for customers on Rate RS and Rate GS, consistent with the current filing.

OCC claims not to know if the Companies are referring to LDR in their Rider DSE cover letter where the Companies indicate that "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, is being removed from Rider DSE2."[32] However, this claim overlooks the plain language of the Companies' approved Rider DSE tariff, which allows the Companies to recover three types of costs: (1) the program costs associated with energy efficiency and peak demand reduction programs, (2) shared savings, and (3) lost distribution revenue. R.C. 4928.471, in turn, allows an EDU to decouple its revenue to "the base distribution revenue and revenue resulting from implementation of section 4928.66 of the Revised Code, *excluding program costs and shared savings*[.]"[33] Thus, of the three categories of recovery related to energy efficiency measures included in R.C. 4928.66, two are not included in the Companies' decoupling mechanism, and the remaining category – LDR – is necessarily removed from Rider DSE. It is puzzling that OCC raised this concern, given the Companies' contemporaneous filing of their

[31] Rider DSE at 2, P.U.C.O. No. 11, P.U.C.O. No. 13, and P.U.C.O. No. 8 (emphasis added).

[32] Mem. in Support at 6.

[33] R.C. 4928.471 (emphasis added).

decoupling application along with the Rider DSE update, which itself included a cover letter tracking the language of R.C. 4928.471. This "concern" is completely unfounded.

OCC also argues that the Companies' Rider DSE tariffs improperly indicate that the Companies will recover "lost distribution revenue."[34] This argument is baseless. The Rider DSE tariffs continue to include reference to "lost distribution revenue" because the Companies will continue to recover LDR through Rider DSE for customers on rate schedules other than Rate RS and Rate GS. As the Companies have now explained multiple times, and as reflected in their workpapers provided to OCC in discovery in this case, LDR has been removed from Rider DSE2 for customers on Rate RS and Rate GS effective January 1, 2020.

The Companies have affirmatively demonstrated that there will be no double recovery, and the Commission so-held when it approved the Companies' decoupling mechanism.[35] There is no basis for OCC's continued arguments to the contrary, or for their suggestion that Companies' riders should be set to zero.[36] The approval of the Companies' Rider DSE update was both reasonable and lawful, and OCC's third assignment of error should be denied.

III. CONCLUSION

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

[34] Mem. in Support at 7.

[35] Case No. 19-2080-EL-ATA, 1/15/2020 Finding and Order at ¶ 30.

[36] Mem. in Support at 7.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to the Application for Rehearing by The Office of the Ohio Consumers' Counsel was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 10th Day of February, 2020. 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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Summary: Memorandum Contra Application for Rehearing electronically filed by Ms. Christine E. Watchorn on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company