

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Filing by Ohio Edison )  
Company, The Cleveland Electric ) Case No. 16-481-EL-UNC  
Illuminating Company, and The Toledo )  
Edison Company of a Grid Modernization )  
Business Plan. )

In the Matter of the Filing by Ohio Edison )  
Company, The Cleveland Electric )  
Illuminating Company, and The Toledo ) Case No. 17-2436-EL-UNC  
Edison Company of an Application for )  
Approval of a Distribution Platform )  
Modernization Plan. )

In the Matter of the Application of Ohio )  
Edison Company, The Cleveland Electric )  
Illuminating Company, and The Toledo )  
Edison Company to Implement Matters ) Case No. 18-1604-EL-UNC  
Relating to the Tax Cuts and Jobs Act of )  
2017. )

In the Matter of the Application of Ohio )  
Edison Company, The Cleveland Electric )  
Illuminating Company, and The Toledo ) Case No. 18-1656-EL-ATA  
Edison Company for Approval of a Tariff )  
Change. )

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

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**I. INTRODUCTION**

The Commission should deny the Office of the Ohio Consumers’ Counsel (“OCC”) Application for Rehearing of the Commission’s November 16, 2023 Opinion and Order (“Order”). OCC’s assignments of error repeat arguments OCC already made in its Comments or Reply Comments, arguments the Commission substantively considered, addressed, and rejected. OCC’s

Application for Rehearing adds no arguments that would render the Order unreasonable or unlawful. Therefore, OCC's Application for Rehearing should be denied.<sup>1</sup>

## II. ARGUMENT

### **A. The Commission's decision to proceed with consideration of Grid Mod II is consistent with the Approved Grid Mod I Stipulation and Supplemental Stipulation. (Response to Assignment of Error No. 1)**

Repeating its Reply Comments, OCC claims the Companies<sup>2</sup> have not demonstrated operational benefits<sup>3</sup> of Grid Mod I to customers, and therefore consideration and implementation of Grid Mod II should be "halted."<sup>4</sup> However, the Commission already considered and rejected this argument, concluding in the Order that rather than delay Grid Mod II, "recommendations proposed by the auditor can and should be implemented in Grid Mod II."<sup>5</sup>

The Commission's decision is consistent with the process set forth in the Grid Mod I Supplemental Stipulation, which OCC signed as a non-opposing party, and which allows for the results of reviews to be incorporated into future deployment of the Companies' grid modernization investments.<sup>6</sup> Specifically, the Supplemental Stipulation provides that, "[t]he results of the reviews may also be incorporated into future deployment of the Companies' grid modernization investment to ensure the goals of the investments are being met."<sup>7</sup> OCC fails to demonstrate how the Commission's Order is unlawful or unreasonable.

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<sup>1</sup> See *Disc. Cellular, Inc. v. Pub. Util. Comm'n*, 112 Ohio St.3d 360, 375 (2007); *Columbus & S. Ohio Elec. Co. v. Pub. Util. Comm'n*, 10 Ohio St.3d 12, 13 (1984) ("The General Assembly did not intend for a rehearing to be a *de novo* hearing.").

<sup>2</sup> "Companies" refers to Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

<sup>3</sup> OCC's Application for Rehearing does not define "operational benefits." For example, to the extent OCC means operational savings, OCC is incorrect to suggest the Companies have not demonstrated any. The Companies provided the auditor with achieved operational savings in connection with AMI meter reading totaling more than \$3.9 million through June 2022. Companies' Comments, p. 6 (citing DM Set 3-DR-015 and Attachments 1-3). Additionally, the Companies track DA operational savings related to truck rolls avoided. Companies' Comments, p. 6.

<sup>4</sup> See OCC Comments, p. 8; see also OCC Reply Comments, p. 7.

<sup>5</sup> Order, ¶ 33.

<sup>6</sup> Supplemental Stipulation and Recommendation filed on January 25, 2019 ("Supp. Stip."), p. 9.

<sup>7</sup> *Id.*

OCC also argues that the Companies failed to provide data necessary for the auditor to complete an assessment of Grid Mod I's operational benefits.<sup>8</sup> Again, the Commission already heard and rejected this argument. The Commission found that the Companies tracked the metrics agreed upon in the Stipulation (which OCC did not oppose), and that it is appropriate to require the Companies to better track metrics moving forward, as recommended by the Auditor.<sup>9</sup>

**B. Grid Mod I investments are already reviewed to determine whether they are used and useful and prudently incurred. (Response to Assignment of Error No. 2)**

In its second assignment of error, OCC repeats claims that the Commission allowed the Companies to proceed with Grid Mod II without demonstrating that Grid Mod I investments are used and useful and prudently incurred, and that the Commission should hold an evidentiary hearing.<sup>10</sup> The Commission has also considered and rejected these arguments, and OCC has demonstrated no grounds upon which the Order may be considered unlawful or unreasonable.<sup>11</sup> The Commission's Order explained that the Grid Mod I investments have been subject to reviews through annual audits of Rider AMI performed by Commission Staff, including a verification that Grid Mod I investments are prudently incurred.<sup>12</sup>

Reviews in annual Rider AMI audits to determine whether Grid Mod I investments are used and useful and prudently incurred is the process set forth in the approved Grid Mod I Stipulation and Supplemental Stipulation.<sup>13</sup> Indeed, OCC's Application for Rehearing quotes the Supplemental Stipulation's requirement that "If a Commission order finds that costs were either not prudently incurred or were not used and useful, such costs will not be collected from customers

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<sup>8</sup> OCC Memorandum in Support, p. 5.

<sup>9</sup> Order, 32.

<sup>10</sup> OCC Memorandum in Support, p. 6. OCC previously raised arguments that customers should not be charged for Grid Mod I investments until the Commission has determined the investments are used and useful. OCC Reply Comments, pp. 4-7. OCC has previously requested evidentiary hearings. OCC Comments, pp. 2, 9 and 10.

<sup>11</sup> Order, ¶ 34.

<sup>12</sup> Order, ¶ 34.

<sup>13</sup> Companies' Reply Comments, p. 6.

and, if already collected, shall be refunded to the customers,”<sup>14</sup> but omits to mention that this requirement is included among the Stipulation’s requirements for the annual Rider AMI audits. The Commission’s Order, however, recognizes that the annual Rider AMI audits are meeting this Stipulation requirement.<sup>15</sup> Therefore, the Order appropriately concluded that no expanded audit or hearing is necessary.<sup>16</sup>

Because OCC has not demonstrated that the Commission’s decision is unreasonable or unlawful, OCC’s second assignment of error should be denied.

**C. The Commission appropriately established operational savings in accordance with the Grid Mod I Order. (Response to Assignment of Error No. 3)**

OCC’s third assignment of error asserts that the Commission erred by directing the Companies to apply fixed operational savings in years four through six of the Companies’ grid modernization plan, and that the Companies should “not be able to charge customers *at all*” until they can demonstrate actual operational savings from Grid Mod I.”<sup>17</sup>

OCC previously raised this argument in Comments,<sup>18</sup> and the Commission considered and correctly rejected it.<sup>19</sup> The Commission’s Order finds that fixed operational savings should be utilized because “the Stipulation specifically contemplated a situation in which actual savings could not be determined, as Daymark found to be the case here, and a fixed amount was agreed upon in the Stipulation.”<sup>20</sup> Contrary to OCC’s assertion, there is no specific level of Grid Mod I operational savings that must be achieved prior to proceeding with Grid Mod II.<sup>21</sup>

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<sup>14</sup> OCC Memorandum in Support, pp. 7-8 (quoting Grid Mod I Supplemental Stipulation ¶ 4 at p. 5).

<sup>15</sup> Order, ¶ 34.

<sup>16</sup> Order, ¶ 34.

<sup>17</sup> OCC Memorandum in Support, p. 8.

<sup>18</sup> See OCC Reply Comments, pp. 9-11 (OCC proposes that the Commission should order the Companies to cease charging their customers for Grid Mod I and recommends that the Companies work with the Auditor to demonstrate actual operational savings achieved to date under Grid Mod I).

<sup>19</sup> Order, ¶¶ 27, 29, 31.

<sup>20</sup> Order, ¶ 31.

<sup>21</sup> Companies’ Reply Comments, p. 8.

Therefore, OCC's third assignment of error should be denied.

**D. OCC's requested stay is not appropriate. (Response to Assignment of Error No. 4)**

In its fourth assignment of error, OCC asks the Commission to grant rehearing and stay Grid Mod II pending the resolution of the Commission's investigations related to House Bill 6.<sup>22</sup> In its Reply Comments, OCC raised similar arguments in support of a request to expand the scope of the Grid Mod I Operational Benefits Assessment.<sup>23</sup> The Commission already rejected these arguments in its Order.<sup>24</sup> Further, OCC's request in this proceeding to stay Grid Mod II, a separate case, is procedurally improper.<sup>25</sup> In addition, the Commission recently concluded that the Grid Mod I and Grid Mod II cases are "completely unrelated to H.B. 6,"<sup>26</sup> and nothing in OCC's fourth assignment of error disproves that conclusion.

**III. CONCLUSION**

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

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<sup>22</sup> OCC Memorandum in Support, p. 9.

<sup>23</sup> OCC Reply Comments, p. 3.

<sup>24</sup> Order, ¶ 34.

<sup>25</sup> R.C. 4903.10 (providing that a party in a proceeding may apply for rehearing "in respect to any matters determined in the proceeding.").

<sup>26</sup> Case Nos. 17-974-EL-UNC, 17-2474-EL-RDR, 20-1502-EL-UNC, 20-1629, Entry (Oct. 18, 2023), ¶ 19.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 28th day of December 2023. The PUCO'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 The Application For Rehearing Filed By The Office Of The Ohio Consumers' Counsel electronically filed by Mr. N. Trevor Alexander on behalf of Ohio Edison Company and The Cleveland Illuminating Company and The Toledo Edison Company.