

**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 Rider
FUEL and Related Accounting Authority.**

**Case Nos. 09-21-EL-ATA
09-22-EL-AEM
09-23-EL-AAM**

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON COMPANY'S MEMORANDUM
CONTRA NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S APPLICATION FOR
REHEARING**

I. INTRODUCTION

The Application for Rehearing filed by the Northeast Ohio Public Energy Council ("NOPEC"), for the most part, mirrors the Application for Rehearing filed by NextEra Energy Resources, LLC et al. ("NextEra"). Other than trumpeting the "direction" that NOPEC alleges it has given the Commission to carry out the policy goals of S.B. 221 and oblique references to the Application for Rehearing that NOPEC filed in the ESP Application case filed by Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI") and The Toledo Edison Company ("TE") (collectively, the "Companies"), NOPEC's Application here is little more than a series of references to the very arguments made by NextEra. As was the case with NextEra's Application, NOPEC's Application should be denied to the extent that it seeks anything other than the elimination of the deferral of purchased power costs by CEI. Because of the near identity of the arguments raised by NextEra and NOPEC, the Companies incorporate by reference here their Memorandum Contra NextEra's Application for Rehearing.

II. ARGUMENT

The Companies and NOPEC agree that the Commission erred in singling out CEI and ordering CEI to defer a portion of its purchased power costs. (*E.g.*, NOPEC Reh’g App., p. 5 (arguing that “grant[ing] deferral authority to CEI . . . unlawfully and unreasonably” violates state policy).)¹

Like NextEra, if the deferral of CEI’s purchased power costs remains, NOPEC supports a deferral for CRES providers. (*E.g.*, NOPEC Reh’g App., p. 6 (requesting “the Commission provide the deferral to SSO and CRES customers alike”).) Like NextEra, NOPEC fails to provide any factual or legal support for such a deferral.

As its sole factual basis for having the Companies finance a CRES provider deferral, NOPEC refers to NextEra’s Application for Rehearing. (*See id.*, p. 7.) But that Application contained no factual support whatsoever. The only citation to any fact in NextEra’s Application was the testimony of Staff witness Cahaan in the Companies’ ESP Application case. (*See* NextEra Reh’g App., p. 8.) Although Mr. Cahaan opined that he did not favor the 25 year deferrals proposed by the Companies in that case, he based his view on the alleged difficulties and distortions that he believed would be attendant to that proposal. (*See* Case No. 08-935-EL-SSO, Staff Ex. 6.0, p. 3.) He said nothing about CRES deferrals and any effect that the deferral of the Companies’ costs might have (or not have) on competition. Thus, between the

¹ NOPEC states that “FirstEnergy continues to request some deferral authority. . . .” (NOPEC Reh’g App. p. 5.) Given the accompanying page citation to the Companies’ own Application for Rehearing, NOPEC is apparently referencing the fact that Rider FUEL as initially proposed by the Companies included a quarterly reconciliation to account for over or under recoveries of costs and revenues. While NOPEC appears to oppose even this limited measure, the significant point is that such a limited trueup mechanism related to current cost recovery from customers is vastly different than a deferral that results because no recovery is taking place such as that specifically applicable to CEI – to which NOPEC and the Companies have taken exception – which was ordered by the Commission on July 14 (and subsequently modified in the Entry nunc pro tunc on January 28).

Applications for Rehearing filed by NextEra and NOPEC, there is not a single fact to support their CRES provider proposal.

Indeed, the record in the ESP Application case was bereft of any real support for the view that deferrals of the Companies' costs place CRES providers at a competitive disadvantage. No witness provided any study or analysis to show that CRES providers couldn't meet an SSO retail generation rate that reflected a deferral.² Further, if CRES providers beat the SSO rate that included a deferral, customers would benefit by receiving a lower price for generation service.

For all the complaining about their alleged potential competitive disadvantages, NOPEC, like NextEra, conveniently omits any discussion of the competitive advantages that CRES providers enjoy over POLR service providers. It is undisputed that, unlike the Companies, CRES providers can pick their customers. They are not subject to Commission credit and collection rules or shutoff moratoria. They enjoy a priority on receiving payment on customer arrearages.

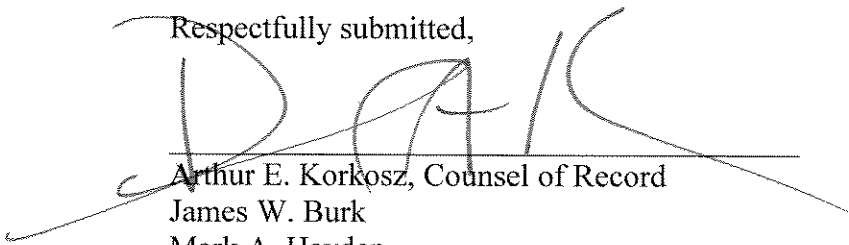
Like NextEra, NOPEC provides no legal support for the Commission's authority to require a Company financed CRES deferral. R.C. 4928.144 permits the charges associated with SSO service by electric distribution companies to be phased in and deferred. There is no similar authority to phase in or defer CRES providers' charges. In short, there is no support for the view that giving CRES providers a deferral financed by the Companies is good policy, much less required under Ohio law.

² In fact, one CRES provider-sponsored witness candidly admitted that she couldn't say that her company would not do business in Ohio if the Commission adopted the Companies' proposed deferrals in the ESP Application case. (Case No. 08-935-EL-SSO, Tr. Vol. VII (Ringebach Cross.), p. 189.)

III. CONCLUSION

For the foregoing reasons and for the reasons stated in the Companies' Memorandum Contra NextEra's Application for Rehearing, NOPEC's Application for Rehearing should be denied to the extent that it advocates anything other than eliminating the Commission ordered deferral of purchased power charges that applies only to CEI.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing was served upon the following via regular U.S. Mail, this 9th day of February, 2009. A copy was also served via electronic mail on those parties with email addresses listed below.

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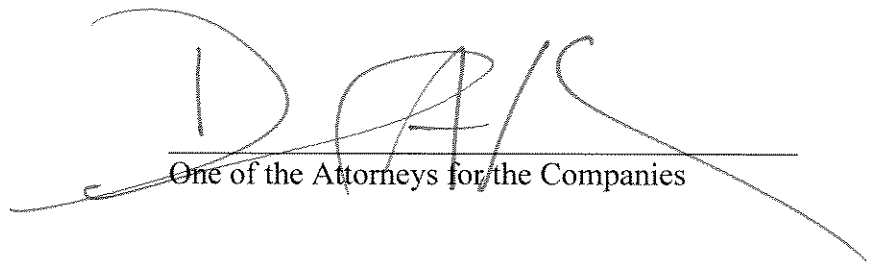
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Case No(s). 09-0021-EL-ATA, 09-0022-EL-AEM, 09-0023-EL-AAM

Summary: Memorandum Contra Northeast Ohio Public Energy Council's Application For Rehearing electronically filed by Mr. David A Kutik on behalf of Ohio Edison Company and Cleveland Electric Illuminating Company and Toledo Edison Company