

**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 ) Case No. 14-1297-EL-SSO  
Authority to Provide for a Standard Service )  
Offer Pursuant to R.C. 4928.143 in the Form of )  
An Electric Security Plan )**

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

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The Application for Rehearing filed on May 31, 2016 by the Office of the Ohio Consumers' Counsel and Northwest Ohio Aggregation Coalition ("OCC/NOAC"), is ostensibly aimed at the Commission's May 25, 2016 Finding and Order ("May 25 Order") approving the Companies' compliance tariffs. An order approving a compliance filing is typically ministerial. So is the case with the May 25 Order. Nevertheless, OCC/NOAC improperly seek to use the May 25 Order as yet another vehicle for misleading attacks on both the Rider RRS approved by the Commission in its Opinion and Order of March 31, 2016 (the "March 31 Order") and the modified Rider RRS proposed by the Companies on May 2, 2016. While OCC/NOAC are obviously unhappy with the concept of Rider RRS, they have failed to raise any valid objection to the Rider RRS tariff sheets approved by the Commission in the May 25 Order. Thus, the Commission did not err when it approved the Companies' compliance tariff filing.

The Commission's March 31 Order directed the Companies to "file proposed tariffs consistent with the Stipulated ESP IV as modified," and the Stipulated ESP IV as modified

included a Rider RRS with a quarterly reconciliation.<sup>1</sup> On May 13, 2016, the Companies filed tariffs that included Rider RRS with quarterly reconciliation. Because the Companies did not have costs to include in the rider, the rider was filed with no specified rate. Staff determined that the compliance tariffs were consistent with March 31 Order and recommended approval.<sup>2</sup> In the May 25 Order, the Commission correctly noted that “the Companies have an approved ESP, subject to rehearing, irrespective of FERC’s action rescinding the waiver of FirstEnergy Solution’s affiliate power sales restrictions.”<sup>3</sup> The Companies’ proposed compliance tariffs were consistent with that approved ESP and, thus, the Commission properly approved them.<sup>4</sup> Notably, if the Companies had not filed their Rider RRS tariffs, the Companies would have violated the March 31 Order.

OCC/NOAC claim that Rider RRS as filed by the Companies violates the March 31 Order because it does not include specific charges flowing from a purchase power agreement (“PPA”) entered into between the Companies and FirstEnergy Solutions Corp. (“FES”).<sup>5</sup> The Commission made clear in the March 31 Order that Rider RRS is not dependent on there being a PPA between the Companies and FES. OCC/NOAC’s argument must be disregarded because it is based on a fundamental misunderstanding of the Commission’s March 31 Order. Contrary to OCC/NOAC’s view, the March 31 Order expressly stated that Rider RRS is not dependent on the Companies entering into a PPA with FES: “[t]he Companies are under no requirement by this

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<sup>1</sup> March 31, 2016 Order, pp. 90, 121.

<sup>2</sup> May 20, 2016 Staff Recommendation.

<sup>3</sup> May 25 Order, ¶ 13.

<sup>4</sup> *See id.*, ¶¶ 13-15.

<sup>5</sup> OCC/NOAC AFR, pp. 3-7.

Commission or FERC to enter into the arrangements proposed under the Economic Stability Program.”<sup>6</sup>

OCC/NOAC further contend that the Commission could not approve the Companies’ compliance tariffs because Rider RRS is no longer a retail rate stabilization rider under R.C. 4928.143(B)(2)(d).<sup>7</sup> What OCC/NOAC appear to be arguing is that customers are not receiving the stabilization benefits anticipated to result from Rider RRS given that it currently does not have a specified rate. But that is not an argument that implicates the compliance tariff filing; it is an argument that goes to the Commission’s approval of Rider RRS on March 31 without a specifically mandated cost source. If anything, OCC/NOAC’s position here is strong support for expeditious Commission approval of the Companies’ modified Rider RRS proposal to allow customers to begin to receive the promised stabilization benefits. It is not a basis for rejecting the Rider RRS tariff sheets filed on May 13.

OCC/NOAC’s last argument in their application does not challenge Rider RRS at all. Instead, they contend that the Companies’ inability to enter into a PPA with FES can have only one outcome – withdrawal of the Commission-approved Stipulated ESP IV under R.C. 4928.143(C)(2)(a).<sup>8</sup> Yet Rider RRS – as originally submitted on August 4, 2014 or as proposed in the Companies’ compliance filing on May 13, 2016 – does not mention a PPA. Although OCC/NOAC references various cost recovery limitations appearing in the Commission’s March

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<sup>6</sup> Order, p. 87.

<sup>7</sup> OCC/NOAC AFR, pp. 7-8.

<sup>8</sup> OCC/NOAC AFR, pp. 8-10.

31 Order,<sup>9</sup> none of those limitations would appear in Rider RRS either. Indeed, the Companies have sought rehearing of two of those limitations; if the Companies' position prevails, Rider RRS as filed on May 13, 2016 would not be altered at all. OCC/NOAC have not given the Commission any basis for reconsidering its approval of the Companies' compliance tariffs.

OCC/NOAC are simply unhappy that the Companies have not withdrawn Stipulated ESP IV as permitted by R.C. 4928.143(C)(2)(a). They care little about a rider that has no specified charge, but feel obligated to oppose any retail rate stabilization rider on principle. As a result, they are manufacturing repeated opportunities to make sure the Commission is aware of their unhappiness through what is essentially a disingenuous marketing strategy. The "Joint Interlocutory Appeal" they filed on May 16, 2016 is one example; this "Application for Rehearing" is a more recent example. Regardless, OCC/NOAC have not asserted any valid grounds for revisiting the May 25 Order.

Therefore, the Commission should deny OCC/NOAC's most recent Application for Rehearing.

Respectfully Submitted,

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<sup>9</sup> OCC/NOAC AFR, pp. 8-9 (referring to prohibitions on recovery of capacity performance penalties or certain plant outage costs through Rider RRS).

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**CERTIFICATE OF SERVICE**

I certify that this Memorandum Contra was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 10th day of June, 2016. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties. Further, a courtesy copy has been served upon parties via electronic mail.

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

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Summary: Memorandum Contra Application for Rehearing of OCC and NOAC electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company