

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

REHEARING REPLY BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

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INTRODUCTION

The proposed Distribution Modernization Rider (DMR Rider) should be approved without modification. As will be discussed below, the various objections made by intervenors have no merit. Further, the adjustments proposed by the companies are unneeded and should be rejected as well.

In this reply brief, Staff will only address those matters that it believes require further comment. Silence as to any topic should not be read as acquiescence in the position of any party, but rather the view that the matter has already been adequately developed on the record.

DISCUSSION

A. Rider DMR should be approved.

Intervenors have made a number of challenges to the Staff's proposed Rider DMR. None has merit. Those that have not already been adequately dismissed will be examined below.

1. It is proper to submit Staff's proposed Rider DMR at this stage of the proceeding.

It is proper for the Staff to have submitted its Proposed Rider DMR at this stage of the hearing. Precedent shows that an applicant can submit a new proposal on rehearing¹ and parties must be able to respond.

This is as it should be. To bar a new proposal would be entirely counter-productive. This case presents an excellent example. The original proposal, approved by the Commission, simply became impossible to implement by virtue of a FERC action entirely outside the control of any participant. Something different *had* to be done and the companies made an alternative proposal in response to this practical requirement.

When a proposal is submitted in an ESP case, parties must be permitted to respond to it. This is simply fundamental fairness. In this situation, Staff responded not merely with a critique of the companies' Modified Rider RRS but also by making an affirmative presentation of what it believes to be a superior proposal from the perspective of the con-

¹ *Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio State 3d 300, 2006-Ohio-5789.

suming public. Staff's proposed grid modernization initiative, Rider DMR, provides superior benefits to the public *vis-à-vis* Modified Rider RRS. Rider DMR is the second portion of the Staff's response to Modified Rider RRS. One of the reasons that Staff argues that the Commission should reject Modified Rider RRS is that the Staff has a better idea, specifically the proposed Rider DMR. The alternative proposal is merely a part of the necessary ability to respond to an application or filing that all parties have.

The Court has noted that the Commission has broad authority to change its orders on rehearing. The Court has observed, "[f]ollowing a rehearing, the Commission need only be of the opinion that the original order should be changed for it to modify the same."² Staff submits that the Commission should change its decision on rehearing and substitute approval of Staff's alternative proposal because it represents a better outcome for the public than that of the companies, as explained in Staff's initial brief.

2. Rider DMR could not have been presented earlier in the proceeding.

It was not possible to submit Proposed Rider DMR in the initial stage of this case. In Staff's view, the original Rider RRS was beneficial to the public and was something that the Commission should have approved. It was, however, costly in the early years. Staff could not support both the original Rider RRS and what is now proposed Rider DMR simultaneously. In Staff's view, this combination would have been too costly for

² *Columbus & S. Ohio Elec. Co. v. Pub. Util. Comm.*, 10 Ohio St.3d 12, 15, 460 N.E.2d 1108 (1984).

ratepayers in the early years. That is why proposed Rider DMR was not, and could not have been, recommended earlier.

In the time that has passed since the original Rider RRS filing, the situation has changed. As indicated in Staff's initial brief, Modified Rider RRS does not offer the same benefits as the original Rider RRS. While Rider DMR is superior to Modified Rider RRS, it was not superior to original Rider RRS. Proposed Rider DMR has only become viable because the original Rider RRS is not. Proposed Rider DMR could therefore not have been presented any earlier than it was.

3. Rider DMR is not transition revenue.

Proposed Rider DMR is not transition revenue in violation of R.C. 4928.38. Rider DMR is not tied to generation in any respect. Indeed, it is not tied to any existing investment.

The point of the Rider is to support the companies' access to the additional funds that will be needed to accomplish new investment in grid modernization.³ Rider DMR does not look to the past rather it looks to the future. It has the "...goal of bringing about the intelligence of the distribution grid all the way to the customers' premises."⁴ Why is this valuable? The answer is clear. "Customers would then be able to interact and trans-act with retail suppliers and third party providers of innovative products and services,

³ Staff Ex 15 (Rehearing Testimony of Choueiki) at 15 (Jun. 29, 2016) ("Choueiki Rehearing Test.").

⁴ *Id.*

such as energy efficiency and demand response products, green energy, distributed energy, and others.”⁵ This is about the future. Transition revenues are tied to the past.

4. Rider DMR is permitted by R.C. 4928.143(B)(2).

An ESP may include modernization incentives for an electric distribution company.⁶ Further, an ESP may include “provisions under which the electric distribution utility may implement economic development, job retention, and energy efficiency programs...”⁷ Proposed Rider DMR does both of these things.

It is apparent on the face of Staff’s proposal that Rider DMR is an incentive mechanism to support modernization of the distribution grid.⁸ That is the stated purpose of the initiative but not merely the purpose; it is also a necessary portion of the means by which the modernization can be accomplished. Modernizing the companies’ distribution grid will require significant investment. Obtaining these necessary funds would be hampered if an investment grade rating were not maintained. Companies within a holding company structure are viewed in a family approach and thus the family must be supported if the companies are to remain in a position to access the amount of money needed to move the companies’ distribution grid into the twenty-first century.⁹ Proposed Rider

⁵ Choueiki Rehearing Test. at 15.

⁶ R.C. 4928.143(B)(2)(h).

⁷ R.C. 4928.143(B)(2)(i).

⁸ Rehearing Tr. V at 1254-5.

⁹ Staff Ex. 13 (Rehearing Testimony of Buckley) at 6 (Jun. 29, 2016) (“Buckley Rehearing Test.”).

DMR is even more basic than an incentive. It is a prerequisite to being able to pursue the modernization objective at all.

There are three conditions for an incentive under R.C. 4928.143(B)(2)(h), specifically the Commission must:

- examine the reliability of the companies' existing system;
- ensure that the customers' and the EDU's interests are aligned; and
- ensure that the EDU is emphasizing and dedicating sufficient resources to reliability.

All of these requirements have been met and each will be discussed below..

There is really no question that the companies' distribution grid is a reliable twentieth century system. The point of Staff's proposal is not to bring the companies' performance up to standard. Rather the point is to move beyond, to go from good enough to advance. That is a sufficient examination of the reliability component of the statute. There is nothing else to be examined.

Clearly, the interests of the customers and the companies are aligned under Rider DMR. The entire point of Staff's proposal is to benefit customers, giving them access to new goods, services and providers they would not otherwise have.¹⁰ The companies will be able to obtain the financial support necessary to accomplish the initiative. The interests of both sides are aligned.

The final point is perhaps the most important. Staff is concerned that the companies will not have sufficient resources to modernize the distribution grid in the absence

¹⁰ Choueiki Rehearing Test. at 15.

of Rider DMR.¹¹ If the companies lose access to credit markets or if the access is constrained, grid modernization, with its significant benefits, may be unattainable. Proposed Rider DMR is intended as one of the necessary components to allow the companies to have sufficient resources.

In sum, all of the elements of R.C. 4928.143(B)(2)(h) have been met and the Commission should approve Rider DMR on that basis, but the benefits do not stop there.

Proposed Rider DMR also has elements that make it an economic development, job retention, and energy efficiency program under R.C. 4928.143(B)(2)(i). It should be approved on this basis as well.

Much time was wasted by intervenors in discussing the economic development aspects of Proposed Rider DMR in terms merely of retention of the Akron nexus of operations. While retaining the Akron nexus of operations certainly does have economic development (and job retention) aspects, that focus misses the greater point.¹² The grid modernization will drive the retention of current jobs and the creation of new ones.¹³

¹¹ Buckley Rehearing Test. at 6.

¹² OMAEG witness Lause misses the point as well. He speculates that Proposed Rider DMR will dissuade new generation construction in Ohio. New generation is not the new entrants referred to. Rather it is new entrants providing distribution level goods and services that will be brought by Proposed Rider DMR. Generation is irrelevant.

¹³ Choueiki Rehearing Test. at 15.

Grid modernization drives significant economic benefits.¹⁴ Rider DMR will further spur energy efficiency gains.¹⁵

It has been argued that Proposed Rider DMR cannot be viewed as an economic development rider because it does not comply with Ohio Adm. Code 4901:1-35-03(C)(9)(h). The argument is incorrect. The rule defines the showing which must accompany a company proposal. The Staff has made the proposal and the rule is irrelevant.

In addition to meeting all elements of R.C. 4928.143(B)(2)(h), the economic development and job retention aspects of Rider DMR provide an additional basis upon which to approve it.

5. Proposed Rider DMR is not a subsidy of generation.

Intervenors spent much time in the initial briefs claiming that Proposed Rider DMR will provide an illegal subsidy of the generation assets owned by a different subsidiary of FirstEnergy Corporation (FEC). These arguments reflect a fundamental misunderstanding of the Staff's proposal. Staff's approach in this case was first to calculate the amount that would be necessary to support FEC's credit rating to allow the companies to retain access to credit on favorable terms based on Standard and Poor's "family

¹⁴ Rehearing Tr. X at 1818-9.

¹⁵ *Id.* at 1221-1224.

approach.”¹⁶ Then the Staff took a second step. It allocated that amount.¹⁷ The effect of this allocation was to *avoid a subsidy*. Staff recognizes that all players need to be a part of the financial solution here.¹⁸ Had there been no allocation, and Proposed Rider DMR provided all of the financial support needed to maintain FEC’s credit worthiness,¹⁹ one might take the view that some other portion of the FEC family was being supported. *That is not the situation here.* Staff’s allocation has eliminated any concern that Proposed Rider DMR is a “subsidy” or “bail out” of any part of the FEC family. Proposed Rider DMR is exactly what it purports to be, an appropriate portion of the credit support needed to allow the companies access to the funds that will be needed to modernize the distribution grid.

6. The grid will be modernized.

Intervenors spend much time claiming that the funds made available through Proposed Rider DMR will not be used for grid modernization. This is really an attack on the ability of the Commission to control the companies’ behavior. The concern seems quite misplaced.

¹⁶ Buckley Rehearing Test. at 6.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 6.

¹⁹ Assuredly not the case here.

There already is a docket in which the details of the modernization plan will be fully developed.²⁰ The Commission will have every ability to control the scope and timing of the roll out of the grid modernization initiative. There is no basis for concern.

7. There will be no double recovery.

Proposed Rider DMR will not result in a double recovery. Parties that claim to the contrary misunderstand the proposal. The proposal is not intended as a traditional rider. It is not intended to track and recover specific expenditures. Rather, it is intended to provide credit support that will aid the companies to be able to continue to enjoy access to credit on reasonable terms. Staff believes this is necessary to permit the additional borrowing that will be needed to support grid modernization. So long as access to credit is maintained on reasonable terms, Proposed Rider DMR will have achieved its goal. To the extent that other funds are expended on the mechanics of grid modernization, those funds will be paid by ratepayers separately. The matters are distinct and there will be no double collection of any expense item.

B. The Staff's calculation of Rider DMR should not be adjusted.

The companies argue that the Staff's calculation of the amount needed for Proposed Rider DMR should be adjusted in two significant ways. They suggest that the target range should be raised and the allocation should be based on net income. Neither argument has merit nor requires much examination.

²⁰ *In the Matter of the Grid Modernization Business Plan*, PUCO Case No. 16-481-EL-UNC.

The Staff's target range was based on the midpoint of a Moody's Investors Service Credit Opinion indicating that if the credit metric remained within the range 14-15%, credit ratings would remain.²¹ The companies note that subsequently there has been a new opinion issued raising the target and resulting in a new midpoint of 15%. The companies recommend that this new midpoint should be used instead of the Staff's recommended 14.5%. This should be rejected.

A point in time must be selected. The simple reality is that the Moody's range will change over time. It may go up and it may come down. It is neither reasonable nor practicable to chase this range as it varies over time. Staff's recommendation is the one that has been analyzed and vetted through the full process and the Commission should utilize it.

The companies further argue that net income should be used to allocate the credit support amount. This should be rejected as well.

There is a multitude of ways to perform this allocation.²² Some will result in a bigger allocation to ratepayers; others will result in a smaller allocation to them.²³ Staff selected a consistent²⁴ method that falls in the middle of these methods.²⁵ The companies have selected a method that provides a higher allocation to ratepayers. The Commission

²¹ Buckley Rehearing Test. at 4.

²² Rehearing Tr. III at 554.

²³ *Id.* at 660.

²⁴ *Id.* at 554.

²⁵ *Id.* at 660.

should reject this goal-oriented approach. The Staff's recommendation is the reasonable approach to this question and the Commission should use it.

CONCLUSION

The Commission should approve Proposed Rider DMR and reject Modified Rider RRS. Modified Rider RRS no longer offers the benefits associated with the original Rider RRS and therefore it should be rejected. Proposed Rider DMR on the other hand looks to the future and will move the companies' distribution grid into the modern era to the benefit of all customers. The objections made to Proposed Rider DMR have no merit and the proposed adjustments should not be accepted. Proposed Rider DMR should be approved as proposed by the Staff including the rate design components cited by Staff witness Turkenton indicating that Rider DMR should be "allocated and charged" on a 50/50 demand/energy basis. This provides the most equitable treatment for all rate classes.

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Rehearing Reply Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via electronic mail upon the following Parties of Record, this 29th day of August, 2016.

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Summary: Brief Rehearing Reply Brief submitted by Assistant Attorney General Thomas McNamee on behalf of the Staff of the Public Utilities Commission of Ohio. electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio