

## 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  
AUTHORITY TO PROVIDE FOR A STANDARD  
SERVICE OFFER PURSUANT TO R.C.  
4928.143 IN THE FORM OF AN ELECTRIC  
SECURITY PLAN.

CASE NO. 14-1297-EL-SSO

### SEVENTH ENTRY ON REHEARING

Entered in the Journal on February 1, 2017

#### I. SUMMARY

{¶ 1} The Commission finds that Ohio Consumers' Counsel's January 6, 2017 application for rehearing should be denied.

#### II. DISCUSSION

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or the Companies) are electric distribution utilities as defined in R.C. 4928.01(A)(6) and public utilities as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an electric distribution utility shall provide customers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} On August 4, 2014, FirstEnergy filed an application pursuant to R.C. 4928.141 to provide for an SSO to provide generation pricing for the period of June 1, 2016, through May 31, 2019. The application is for an ESP, in accordance with R.C. 4928.143 (*FirstEnergy ESP IV*).

{¶ 5} On March 31, 2016, the Commission issued its Opinion and Order in *FirstEnergy ESP IV*, approving FirstEnergy's application and stipulations with several modifications (Opinion and Order). As part of that Opinion and Order, the Commission approved a modified version of FirstEnergy's original proposal for a retail rate stability rider (Rider RRS).

{¶ 6} On October 12, 2016, the Commission issued its Fifth Entry on Rehearing in this proceeding (Fifth Entry on Rehearing), rejecting the Companies' proposal to modify Rider RRS and adopting Staff's alternative proposal to establish a distribution modernization rider (Rider DMR). The Commission also elected to make additional modifications to the stipulations, as approved in the Opinion and Order.

{¶ 7} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 8} Thereafter, on November 14, 2016, Ohio Consumers' Counsel (OCC) and the Northwest Ohio Aggregation Coalition (NOAC) filed a joint application for rehearing of the Fifth Entry on Rehearing.

{¶ 9} On December 7, 2016, the Commission granted the applications for rehearing filed on November 10, 2016 and November 14, 2016, in this proceeding, including OCC's application for rehearing, in order to allow further consideration of the issues raised in the applications for rehearing (Sixth Entry on Rehearing).

{¶ 10} On January 6, 2017, OCC filed an additional application for rehearing of the Sixth Entry on Rehearing, asserting two assignments of error: (1) the Commission erred by not granting and holding rehearing on the matters specified in OCC's November 14, 2016 application for rehearing; and (2) the Commission erred by granting rehearing to allow itself more time to issue a final appealable order. In support of its first assignment of error, OCC states that the Commission's approval of Rider DMR constituted an unlawful subsidy that did not require any revenues collected to be used toward grid modernization and, instead, could potentially be used for the benefit of FirstEnergy's parent company or unregulated generation affiliate. In support of its second assignment of error, OCC contends that the Commission fails to fulfill its duty to hear matters pending before it without unreasonable delay and prevents parties from exercising their appellate rights with the Ohio Supreme Court, pursuant to R.C. 4903.10, 4903.11, and 4903.13. Although the Ohio Supreme Court has held that the Commission may grant applications for rehearing for the limited purpose of allowing additional time to consider them, OCC argues that the Commission is now unreasonably applying this precedent in a manner that delays the timely judicial review of Commission decisions. *State ex rel. Consumers' Counsel v. Pub. Util. Comm.*, 102 Ohio St.3d 301, 304 (2004). OCC notes its specific concern with the ability to appeal the Commission's decision in this proceeding, as rates will be charged to customers without an opportunity to stop the collections and without a likely recourse to a refund of those collections from customers.

{¶ 11} On January 17, 2017, FirstEnergy filed a memorandum contra OCC's application for rehearing. In response to OCC's first assignment of error, FirstEnergy argues that OCC's arguments are baseless, as the Commission did grant rehearing of OCC's November 14, 2016 application for rehearing and the issues raised therein remaining pending before the Commission. Furthermore, FirstEnergy notes that R.C. 4903.10 allows parties to apply for rehearing "in respect to any matters determined in the proceeding" and argues that the Sixth Entry on Rehearing did not determine any matters

in this proceeding. FirstEnergy also claims that OCC reiterates the same arguments it has raised before during this proceeding, adding that the Commission has historically denied applications for rehearing that reiterate arguments that have been considered and rejected by the Commission. *In re the Complaint of Wiley v. Duke Energy Ohio, Inc.*, Case No. 10-2463-GE-CSS, Entry on Rehearing (Nov. 29, 2011) at 6-7; *In re the Application of Duke Energy Ohio*, Case No. 10-2586-EL-SSO, Entry on Rehearing (May 4, 2011) at 15-16; *In re the Complaint of City of Reynoldsburg v. Columbus S. Power Co.*, Case No. 08-846-EL-CSS, Entry on Rehearing (June 1, 2011) at 19-20. Therefore, FirstEnergy contends that the first assignment of error should be denied. In respect to OCC's second assignment of error, FirstEnergy argues that the Commission acted in a responsible and deliberative manner by granting the applications for rehearing filed in November of 2016, including OCC's application for rehearing, noting that these applications for rehearing were accompanied by hundreds of pages of related briefing challenging the Commission's Fifth Entry on Rehearing and raised very complex issues. Furthermore, FirstEnergy claims that OCC's dispute is not with the Commission's decision, but rather with Ohio Supreme Court precedent which prohibits retroactive ratemaking, including a refund of funds collected under approved and filed rates charged during the appeal of a Commission order. *In re Application of Columbus S. Power Co.*, 138 Ohio St.3d 448, 460, 8 N.E.3d 863, 874, 2014-Ohio-462. Thus, FirstEnergy requests that OCC's second assignment of error be denied.

{¶ 12} As to the OCC's first assignment of error, we find that it should be denied. OCC merely states its general disapproval of the Commission's decision to approve Rider DMR and reiterates its arguments raised during the evidentiary hearing and its subsequent briefings, which were all thoroughly addressed in the Fifth Entry on Rehearing. Fifth Entry on Rehearing at 87-99, 106-108, 121-132. Moreover, we agree with FirstEnergy that we ultimately did grant OCC's November 14, 2016 application for

rehearing and that OCC has not been denied any relief that it requested in that application for rehearing. Sixth Entry on Rehearing at 12-14.

{¶ 13} Further, we find that OCC's second assignment of error should also be denied. The Commission, and likely any other party involved with this case, agrees with FirstEnergy that this has been a very complex proceeding. The Commission continues to take its statutory duties very seriously and will thoroughly review and consider all of the arguments raised in OCC's November 14, 2016 application for rehearing, as well as the ten others pending in this proceeding, before issuing a final appealable order. As FirstEnergy points out, the record in this case is particularly voluminous. In 51 days of hearing in this proceeding, the Commission heard testimony from 64 witnesses and identified 548 exhibits. Given the vast number of applications of rehearing, witnesses, exhibits, and associated briefings filed in the docket, this case is a quintessential example of why the Ohio Supreme Court has established long-standing precedent that provides us the authority to grant rehearing for the limited purpose of further consideration. To issue a decision without thorough review of the arguments raised in the applications for rehearing would be irresponsible and would be of no value to any of the parties to this proceeding, including the residential customers whom OCC is representing. Further, we note that Rider DMR, which is the focus of OCC's concern, did not take effect until January 1, 2017; thus, there is no evidence that any party is prejudiced by the granting of rehearing.

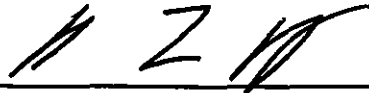
## I. ORDER

{¶ 14} It is, therefore,

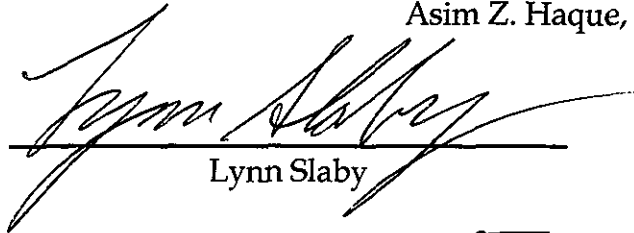
{¶ 15} ORDERED, That OCC's application for rehearing be denied. It is, further,

{¶ 16} ORDERED, That a copy of this Seventh Entry on Rehearing be served upon all parties of record.

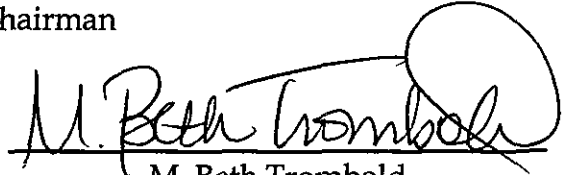
THE PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman



Lynn Slaby



M. Beth Trombold



Thomas W. Johnson

MJA/sc

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FEB 01 2017



Barcy F. McNeal  
Secretary