

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Determination of the : Case No. 18-0857-EL-UNC
Existence of Significantly Excessive :
Earnings for 2017 Under the Electric :
Security plans of Ohio Edison Company, :
The Cleveland Electric Illuminating :
Company, and The Toledo Edison :
Company. :

**REPLY BRIEF SUBMITTED BY THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**On behalf of the Staff of
The Public Utilities Commission of Ohio**

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INTRODUCTION

The Ohio Consumers' Counsel fundamentally misunderstands the situation in this case. As this Commission is well aware, the DMR was established to aid putting the companies in a sufficiently creditworthy position to be able to undertake the very substantial financial obligations that will come with the modernization the distribution grid needed for power forward and smart grid¹. Accepting the Consumers' Counsel argument in this case would work directly at cross-purposes with this vital policy initiative. It would be self-defeating and should, therefore, be rejected.

¹ *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 number 14-1297-EL-SSO, Eighth Entry on Rehearing (August 16, 2017) (ESP order).

ARGUMENT

A. Three Part Test

Consumers' Counsel claims that the resolution of a dispute is necessary to meet the serious bargaining prong of the three part test. As explained in Staff's initial brief, this is simply not the case and, if applied, would result in pointless litigation as parties who agree would not be able to indicate that argument.

However, even if the resolution of a dispute was required, we have one. The companies and the Staff did not agree on the analytic structure to be applied, rather they agreed the result would be the same regardless of what approach was used. The signatories agreed not to dispute which methodology was better. Thus, the prong is met even if the Consumers' Counsel were correct in its characterization of the prong and, has been shown, it is not.

Likewise, the public interest prong of the test is easily met. Furthering the public interest is the entire point of the DMR and that interest needs to be protected from erosion through the SEET. In the ESP Order, the Commission took great pains to calculate the amount of increase that was needed to help to jumpstart the companies' investment in grid modernization. If \$42 million were taken back from the companies as Consumers' Counsel argues, this would dilute the very positive benefit that the Commission sought to achieve. The effect would be that the companies would become less creditworthy when the Commission, and the public, needs them to be more creditworthy. This would harm the public's long term interest in grid modernization and would serve to slow and frustrate that vital initiative. This was one of the compelling reasons that the

Commission set the SEET threshold in the case that established the DMR. It wanted the DMR to work. Applying the SEET as Consumers' Counsel argues in this case would do the exact opposite of what is needed here. The stipulation is what is needed, and this prong of the test is met.

The goal of the DMR is to further important state policies. This Commission is tasked to achieve many goals under Chapter 4928. It must “Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure.” R.C. 4928.02(D). It must “Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities.” R.C. 4928.02(C). It must “Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces.” R.C. 4928.02(F). It must “Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language.” R.C. 4928.02(E). Accomplishing all of these vital goals requires money and the Commission recognized that the companies' credit rating would not support the needed level of

borrowing, delaying or preventing the attainment of these goals. To address this problem, the DMR was created. It is the minimum necessary to put these companies into a position to “jumpstart” the grid modernization that the General Assembly clearly requires. The stipulation furthers these important goals by protecting the DMR from just the sort of erosion that the Consumers’ Counsel advocates here. Clearly, the final prong of the test is met.

In sum, the Stipulation meets the three prongs of the test and should be approved.

B. Absent the Test

Even if the three part test were not applied or the companies failed it², the Commission should still find that the companies did not have significantly excessive earnings within the meaning of the statute. The record shows testimony by the company and the Staff reaching the conclusion that significantly excessive earnings do not exist here. As has already been discussed, the existence of significantly excessive earnings depends on the treatment of the DMR revenues. If they are excluded from the test as they should be under logic and the Commission’s prior ESP Order, there are no significantly excessive earnings. The Commission could simply make that finding based upon the record in this case without reference to the three part test.

² Neither of these conditions hold as has been discussed.

C. A Legal Concern

The DMR was established using authority granted to the Commission under R.C. 4928.142(B)(2)(h). That section allows the Commission to include in an ESP “provisions regarding the utility’s distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary....” The DMR is such a provision. The Consumers’ Counsel argues that the Commission should apply the SEET in a way that effectively limits the DMR³. It would use R.C. 4928.143(F) to limit the DMR, but the authorizing statute appears to bar just that. Thankfully, the Commission never needs to reach this matter as the record shows that, based on either the three part test, the testimony itself, or both, there are no significantly excessive earnings presented.

³ This is due to the unique circumstances presented. Only the inclusion or exclusion of the DMR is involved here. More complex situations could be quite different and not present this potential issue.

CONCLUSION

In conclusion, the Commission should find that the companies have not experienced significantly excessive earnings within the meaning of R.C. 4928.143(F). This finding can be based on acceptance of the Stipulation, which passes the three part test, a simple review of the testimony in this case even apart from the three part test, and on consistency with the Order establishing the DMR originally.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **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 18th day of January, 2019.

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