

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Non- )  
Market-Based Services Rider Contained in )  
the Tariffs of Ohio Edison Company, The ) Case No. 18-1818-EL-RDR  
Cleveland Electric Illuminating Company, )  
and The Toledo Edison Company )

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**COMMENTS OF  
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

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**I. INTRODUCTION**

On December 14, 2018, Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, the Companies) filed revised tariff pages to update their respective Non-Market-Based Service Riders (Rider NMB) with the Public Utilities Commission of Ohio (Commission).<sup>1</sup> In those updates, the Companies assert that their obligations related to Legacy RTEP costs that they assumed in Case No. 10-388-EL-SSO (ESP II) have been fulfilled.<sup>2</sup> Staff of the Commission filed its Review and Recommendations (Staff Report) on February 21, 2019.<sup>3</sup> In the Staff Report, Staff stated that it was unable to make a determination as to whether the Commission's Order in ESP II allowed for the recovery of Legacy RTEP costs as the Companies propose.

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<sup>1</sup> See Tariff Update to Rider NMB for the Cleveland Electric Illuminating Company (December 14, 2018); Tariff Update to Rider NMB of Ohio Edison Company (December 14, 2018); Tariff Update to Rider NMB of the Toledo Edison Company (December 14, 2018) (collectively, Tariff Updates).

<sup>2</sup> Id.

<sup>3</sup> See Staff Review and Recommendation (February 21, 2019).

On February 27, 2019, the Commission issued a Finding and Order regarding the Companies proposed Rider NMB tariffs.<sup>4</sup> Upon review of the Companies proposal and the Staff Report, the Commission determined that the appropriate course of action would be to allow interested parties to submit comments on the issue of whether the Companies should be permitted to recover Legacy RTEP costs.<sup>5</sup> The Commission set a deadline of March 29, 2019 for parties to file initial comments and April 15, 2019 for parties to file reply comments.<sup>6</sup> Pursuant to that directive, the Ohio Manufacturers' Association Energy Group (OMAEG) hereby submits the following comments regarding the recovery of Legacy RTEP costs through Rider NMB.

## **II. COMMENTS**

### **A. History of the Disputed Legacy Costs.**

The issue of recovery of Legacy RTEP costs from customers was first addressed in ESP II. In that proceeding the Companies entered into a stipulation, which the Commission adopted, that addressed this very issue. In the Companies ESP II case, the Companies committed to not seek recovery from retail customers of \$360 million of PJM Legacy Regional Transmission Expansion Plan (RTEP) costs.<sup>7</sup> The Stipulation in that case provided:

The Companies collectively agree to not seek recovery through retail rates from Ohio retail customers of Legacy RTEP Costs for the longer of: (1) the five year period from June 1, 2011 through May 31, 2016 or (2) when a total of \$360 million of Legacy RTEP Costs has been paid for by the Companies and has not been recovered by the Companies in the aggregate through retail rates from Ohio retail customers. If FERC issues an order or there is an appellate decision that results in the ATSI zone avoiding

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<sup>4</sup> See Finding and Order (February 27, 2019) (Order).

<sup>5</sup> Id. at ¶ 16.

<sup>6</sup> Id. at ¶ 27.

<sup>7</sup> In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan., Case No. 10-388-EL-SSO, Opinion and Order at 13 (August 25, 2010) (ESP II Case).

responsibility for payment of Legacy RTEP Costs on a load ratio share basis such that Ohio retail customers of the Companies avoid at least \$360 million of such Legacy RTEP Costs, all obligations of the Companies under this Agreement with respect to Legacy RTEP costs will be satisfied. Consistent with Section C.2 of the Stipulation and Recommendation and subject to this paragraph 6, the Companies may recover in retail rates all RTEP costs billed by PJM to ATSI commencing June 1, 2016.<sup>8</sup>

In approving the Stipulation, the Commission in that case stated:

All MTEP that are charged to the Companies shall be recovered from customers through Rider NMB. The Companies agree not to seek recovery through retail rates for MISO exit fees or PJM integration costs from retail customers of the Companies. The Companies agree not to seek recovery through retail rates of legacy RTEP costs for the longer of: (1) during the period of June 1, 2011 through May 31, 2016; or (2) when a total of \$360 million of legacy RTEP costs have been paid by the Companies and have not been recovered by the Companies through retail rates from Ohio customers.<sup>9</sup>

Through the tariffs proposed in this case, the Companies seek to recover Legacy RTEP costs through rates charged to customers. After the Staff Report questioned the appropriateness of the Companies' proposed recovery of Legacy RTEP costs, the Companies submitted comments claiming that the obligations of the ESP II Stipulation have been met and that the Companies were, therefore, entitled to recovery of the Legacy RTEP costs.<sup>10</sup> As demonstrated below, however, the requirements of the ESP II Stipulation have not been met such that the Companies are able to recover those Legacy RTEP costs.

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<sup>8</sup> ESP II Case, Second Supplemental Stipulation (July 22, 2010).

<sup>9</sup> Id.

<sup>10</sup> See Comments on Staff Report Submitted by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company at 3-5 (February 26, 2019) (Companies Comments).

## **B. The Companies Should Not Be Permitted to Recover Legacy RTEP Costs.**

As an initial matter, the Companies did not include arguments related to the satisfaction of ESP II conditions in their original filing of updated Rider NMB tariffs.<sup>11</sup> Instead, the Companies merely included the recovery of such costs (along with carrying charges) in the updated tariffs.<sup>12</sup> The Companies submitted their arguments as to the propriety of this proposed recovery only after the Staff Report questioned the inclusion of the costs.<sup>13</sup> The Companies argue that once the Federal Energy Regulatory Commission (FERC) issued an order that allows the Companies' customers to avoid paying \$519 million in Legacy RTEP costs, the Companies can now include those costs in Rider NMB.

To make this claim, the Companies rely on a provision of the Second Supplemental Stipulation, listed above, that reads:

If FERC issues an order or there is an appellate decision that results in the ATSI zone avoiding responsibility for payment of Legacy RTEP Costs on a load ratio share basis such that Ohio retail customers of the Companies avoid at least \$360 million of such Legacy RTEP Costs, all obligations of the Companies under this Agreement with respect to Legacy RTEP costs will be satisfied.<sup>14</sup>

The Commission, however, did not adopt this provision. It does not refer to the proposition that a FERC order could satisfy the Companies' obligations in the order approving ESP II.<sup>15</sup> The Commission approved ESP II after explicitly noting that customers would not be charged for Legacy RTEP costs until the Companies had incurred \$360 million in Legacy RTEP

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<sup>11</sup> See Tariff Updates.

<sup>12</sup> Id.

<sup>13</sup> See Companies Comments.

<sup>14</sup> ESP II Case, Second Supplemental Stipulation (July 22, 2010).

<sup>15</sup> See ESP II Case, Opinion and Order (August 25, 2010).

costs that have not been collected from customers.<sup>16</sup> In stating the benefits of the proposed settlement, the Commission again noted this \$360 million benefit to customers.<sup>17</sup> To underscore the point further, the Commission noted that the Companies had made a commitment to “forgo recovery of a minimum of \$360 million of legacy RTEP charges.”<sup>18</sup>

Yet, despite the Commission’s failure to adopt the provision in the ESP II Second Supplemental Stipulation regarding FERC orders, and without offering evidence that the Companies have actually incurred \$360 million in Legacy RTEP costs, the Companies now ask the Commission to determine that their obligation under the ESP II order to forgo recovery of at least \$360 million of Legacy RTEP costs is fulfilled. But given that the Companies have not forgone the specified recovery—and that customers have not received the benefit of them having done so as the Commission intended—the Commission should reject their attempt to begin collecting Legacy RTEP costs from customers until such time as customers have actually benefited from the Companies forgoing collection of Legacy RTEP costs for which they have been billed.

**C. If the Commission Allows the Companies to Recover Legacy RTEP Costs At All, They Should Not Be Permitted to Recover Carrying Charges.**

The Companies also propose to collect carrying charges for Legacy RTEP costs.<sup>19</sup> Although Staff was uncertain about the appropriateness of recovery of Legacy RTEP costs, it was unequivocal in its recommendation that the Companies not be permitted to included carrying charges in the event that they are able to recover Legacy RTEP costs at all, stating “[i]f the

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<sup>16</sup> Id. at 13.

<sup>17</sup> Id. at 26.

<sup>18</sup> Id. at 36.

<sup>19</sup> Id. at 5.

Commission finds that FirstEnergy may recover these costs, then Staff recommends that the costs be amortized over three years without carrying charges.”<sup>20</sup>

In support of its claim that it is entitled to carrying charges, the Companies cited Ohio Adm. Code 4901:1-36-04(A).<sup>21</sup> This provision does not support the recovery of carrying charges in this case. It states:

The transmission cost recovery rider costs are reconcilable on an annual basis, with carrying charges to be applied to both over- and under-recovery of costs.<sup>22</sup>

However, as this provision clearly states, it applies to the annual reconciliation of rider costs in the event that such reconciliation finds an over- or under-collection. Here, the Companies are not proposing a reconciliation of past-recovered costs, but rather the inclusion of Legacy RTEP costs under what it asserts are the terms of the ESP II Stipulation.

Additionally, Ohio Adm. Code 4901:1-36-04 does not even apply to Rider NMB. Ohio Adm. Code 4901:1-36-04(B) provides that:

The transmission cost recovery rider shall be avoidable by all customers who choose alternative generation suppliers and the electric utility no longer bears the responsibility of providing generation and transmission service to the customers.<sup>23</sup>

Unlike the rider described above, Rider NMB is not avoidable or bypassable by customers who choose alternative generation suppliers. The Commission should not allow the Companies to have their cake and eat it too; the Companies cannot rely on the carrying charges provision of Ohio Adm. Code 4901:1-36-04(A) while also ignoring the provisions of Ohio Adm. Code 4901:1-36-04(B).

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<sup>20</sup> Staff Report at 2.

<sup>21</sup> Companies Comments at 5.

<sup>22</sup> Ohio Adm. Code 4901:1-36-04(A).

<sup>23</sup> Ohio Adm. Code 4901:1-36-04(B).

The Companies agreed to not collect Legacy RTEP costs until specified conditions are met. In the event that the Commission finds that those conditions are met, it should not then allow the Companies to charge customers for carrying charges that naturally result from a normal amortization process that is occurring because of the Companies' agreement to wait to collect Legacy RTEP costs.

### **III. CONCLUSION**

For the reasons specified herein, OMAEG respectfully requests that the Commission deny the Companies' request to include Legacy RTEP costs in Rider NMB. Alternatively, if the Commission accepts the Companies' request, it should not permit the Companies to also recover carrying charges.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail on March 29, 2019.

/s/ Brian W. Dressel  
Brian W. Dressel



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Summary: Comments of the Ohio Manufacturers' Association Energy Group electronically filed by Mr. Brian W Dressel on behalf of The Ohio Manufacturers' Association Energy Group