

**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 Administration of the Significantly Excessive Earnings Test Under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code.

Case No. 18-857-EL-UNC

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

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EDISON COMPANY

I. INTRODUCTION

The Public Utilities Commission of Ohio (“Commission”) approved the Distribution Modernization Riders (“Rider DMR”) for Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “Companies”), when it approved the Companies’ fourth Electric Security Plan¹ (“ESP IV”) through its Fifth Entry on Rehearing² and subsequent entries on rehearing (collectively, “ESP IV Order”). The Commission determined in the ESP IV Order that revenues collected under Rider DMR should be excluded from tests for significantly excessive earnings (“SEET”). The Commission’s March 20, 2019 Opinion and Order approving the Stipulation and Recommendation in this case properly implemented the ESP IV Order by excluding Rider DMR revenues from the Companies’ 2017 SEET Application.

The Application for Rehearing of the Office of the Ohio Consumers’ Counsel (“OCC”) ignores the ESP IV Order and challenges the Commission’s exclusion of Rider DMR revenues from the Companies’ SEET calculation. OCC made the same arguments in the ESP IV proceeding and earlier in this proceeding, and the Commission has considered those arguments and rejected them time and again. For all of the reasons previously set forth by the Companies in prior pleadings and further as described below, the Commission should again reject these arguments and deny OCC’s Application for Rehearing.

¹ Case No. 14-1297-EL-SSO.

² Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016).

II. ARGUMENT

OCC argues “the earnings caused by the plan (adjustments) must be considered as part of the earnings reviewed in the SEET.”³ OCC repeats the exact same argument that has already been considered and rejected by the Commission on multiple occasions in ESP IV,⁴ and previously in this proceeding.⁵ The Commission has thoroughly considered this issue, and OCC has raised no new arguments for the Commission’s consideration. Therefore, OCC’s Application for Rehearing should be denied.

OCC cites the Supreme Court of Ohio opinion in *In re Columbus Southern* to support its assertion that only non-ESP sourced earnings may be excluded from a SEET analysis.⁶ Again, OCC raised *Columbus Southern* in ESP IV, and the Commission considered the case and rejected OCC’s position.⁷ Further, OCC misreads and misapplies the Court’s holding in that case. *Columbus Southern* excluded from the SEET certain earnings not caused by an ESP, i.e., off-system sales earnings. The Court did not hold that this is the only basis to exclude revenues from the SEET. *Columbus Southern* does not address how revenues from ESP-related provisions are treated in the SEET calculation.

³ OCC Application for Rehearing, (Apr. 19, 2019) p. 3.

⁴ See Fifth Entry on Rehearing, Case No. 14-1297-EL-SSO (Oct. 12, 2016) pp. 85-86, 98 (rejecting OCC arguments); OCC Application for Rehearing, Case No. 14-1297-EL-SSO (Nov. 14, 2016) p. 20 (arguments repeated *verbatim* in this case); Eighth Entry on Rehearing, Case No. 14-1297-EL-SSO (Aug. 16, 2017) p. 35 (rejecting OCC arguments, finding “Intervenors have raised no new arguments for our consideration, and we fully considered those arguments in the Fifth Entry on Rehearing.”).

⁵ Opinion and Order (Mar. 20, 2019) at 9 (“This issue has been thoroughly considered by the Commission in ESP IV and OCC has failed to demonstrate any new rationale for including these revenues in the 2017 SEET.”).

⁶ OCC Application for Rehearing p. 3 (citing *In re: Columbus S. Power Co.*, 134 Ohio St. 3d 392, para. 40 (2012)).

⁷ See Eighth Entry on Rehearing, Case No. 14-1297-EL-SSO p. 34.

Further, to the extent that the Court in *Columbus Southern* addressed Commission discretion to determine SEET treatment of earnings generally, the Court recognized that “the statutory language does allow such an inference and does not definitively prohibit it.”⁸ Indeed, in rejecting an argument that is directly analogous to OCC’s arguments here, namely, that 4928.143(F) requires that *all* earnings be included in SEET, the Court noted that the phrase “all earnings” appears nowhere in the statute.⁹ Therefore, OCC’s reliance on *Columbus Southern* should again be rejected.

III. CONCLUSION

The Commission’s March 20, 2019 Opinion and Order properly implemented the SEET treatment of Rider DMR revenues that was approved in the Companies’ ESP IV proceeding. OCC has raised no new arguments for the Commission’s consideration. Accordingly, the Commission should deny OCC’s Application for Rehearing.

Respectfully submitted,

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⁸ *Columbus Southern* at para. 7.

⁹ *Columbus Southern* at para. 42.

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum Contra was served via electronic mail upon the following parties of record, this 29th day of April, 2019.

/s/ Robert M. Endris
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Summary: Memorandum Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company of Application for Rehearing of the Office of the Ohio Consumers' Counsel electronically filed by Mr Robert M Endris on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company