

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)

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

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INTRODUCTION

The Commission should deny the Office of the Ohio Consumers' Counsel's ("OCC") Second Application for Rehearing of the Commission's April 24, 2019 Entry on Rehearing ("Entry"). OCC incorrectly asserts that the Commission erred by failing to address comments of both OCC and Ohio Manufacturers' Association Energy Group ("OMAEG") regarding the satisfaction of the commitments of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies") with respect to Legacy RTEP costs¹ under their ESP II Second Supplemental Stipulation² ("Stipulation"). The Stipulation contained a critical proviso whereby all the Companies' obligations under the Stipulation with respect to Legacy RTEP costs – including the obligation to pay and not seek recovery of \$360 million in Legacy RTEP costs – are satisfied.

In challenging the satisfaction of the Companies' Legacy RTEP cost commitments, OCC merely repeats earlier assertions from its March 29, 2019 Application for Rehearing that the conditions of the proviso in the Stipulation have not been met, assertions the Commission already considered and rejected in the Entry. The Commission correctly concluded that the Companies satisfied all of their Legacy RTEP commitments under ESP II, and OCC's arguments to the contrary should again be rejected. OCC further argues that the Commission erred by not developing a record through an evidentiary hearing. Again, OCC repeats arguments from its March 29, 2019 Application for Rehearing, and the Commission has thoroughly considered and rejected these arguments as well. For the reasons explained below, the Commission should deny OCC's Second Application for Rehearing.

¹ Legacy RTEP costs are costs billed by PJM for 500 kV and above RTEP projects which were approved by the PJM board prior to June 1, 2011 to ATSI and, in turn, to the Companies. ESP II, Case No. 10-388-EL-SSO, Second Supplemental Stipulation (filed July 22, 2010) at 5, Paragraph 5.

² ESP II Second Supplemental Stipulation (filed July 22, 2010), at 5, Paragraph 6.

ARGUMENT

A. The Commission Correctly Found That the Companies Satisfied Their Legacy RTEP Commitments Under ESP II.

In its first assignment of error, OCC argues that the Commission erred in its Entry “because it failed to address comments submitted by OCC and other interested parties” that the FERC order cannot satisfy the Companies’ Legacy RTEP commitments.³ This argument is not only procedurally deficient,⁴ but also repetitive of the same argument made in OCC’s March 29, 2019 Application for Rehearing, where OCC contended that the FERC order failed to satisfy the Companies’ obligations under the ESP II Stipulation.⁵ In its Entry, the Commission considered and rejected these arguments.⁶ In fact, OCC’s assertions in the Second Application for Rehearing that the Commission did not approve the operative language from the ESP II Stipulation are directly contradicted by the Entry’s explanation that the FERC order satisfied this very language:

The FERC order falls squarely within the parameters of the type of order contemplated by the second supplemental stipulation approved in the ESP II Case, which “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” (ESP II Case, Joint Ex. 3 at 5).⁷

Since the operative stipulation provision is directly quoted in the Commission’s Entry, OCC cannot credibly contend that the Commission failed to adopt that provision in the ESP II Order approving the Stipulation. Further, the Commission’s Entry referenced Staff’s initial and

³ OCC Second Application for Rehearing, p. 3.

⁴ OCC’s and OMAEG’s Comments filed March 29, 2019 are not procedurally relevant to the Commission’s Entry, which disposed of OCC’s March 29, 2019 Application for Rehearing, consistent with the statutory administrative requirements that challenges to Commission rulings occur through an Application for Rehearing. *See* Section 4903.10, Ohio Revised Code and Rule 4901-1-35, O.A.C. The Commission’s consideration of OCC’s and OMAEG’s comments is separate from the Application for Rehearing process.

⁵ Application for Rehearing of the Office of the Ohio Consumers’ Counsel, filed March 29, 2019, pp. 3-5.

⁶ Entry at para. 10 (noting OCC’s first assignment of error that the Companies had not met their commitment); see also *id.* at para. 14 (denying OCC’s first assignment of error).

⁷ Entry at para. 14.

supplemental reports indicating their independent verification of the Companies' evidence.⁸ As the Companies previously noted, the Commission itself was a signatory party to the FERC settlement central to this determination, as approved by the FERC order.⁹ The Commission neither blindly accepted Staff's Reports nor failed to explain the reasoning that supported its decision that the Companies satisfied all of their Legacy RTEP commitments from ESP II. For these reasons, the Commission should reject OCC's first assignment of error.

B. The Commission Correctly Determined That a Hearing Was Unnecessary to Conclude That the Companies' Commitment Has Been Met.

In its second assignment of error, OCC argues that the Commission erred by not determining whether the Companies met their ESP II commitment regarding Legacy RTEP costs "based on a record developed through an evidentiary hearing."¹⁰ Again, OCC repeats the arguments made in its March 29, 2019 Application for Rehearing,¹¹ which the Commission thoroughly considered and rejected in its Entry.¹² Among other things, the Commission found that OCC's March 29, 2019 Application for Rehearing failed to cite relevant legal authority that would require the Commission to conduct an evidentiary hearing in this matter.¹³ Rather, the Commission has discretion to decide whether to hold a hearing, which it properly exercised.¹⁴ The Commission provided OCC and other parties with ample process, including notice and opportunity to be heard through comments and reply comments. In this case involving the interpretation of an unambiguous stipulation provision, which was already the subject of extensive litigation and

⁸ *Id.*

⁹ Comments on Staff Report Submitted by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, filed February 26, 2019, p.4.

¹⁰ OCC Second Application for Rehearing, p. 5.

¹¹ OCC Application for Rehearing, pp. 5-6.

¹² Entry at para. 15.

¹³ Entry at para. 15.

¹⁴ *Id.*

approved by the Commission, this is more than enough. Accordingly, the Commission should reject OCC's second assignment of error.

CONCLUSION

For the foregoing reasons, the Commission should deny OCC's Second Application for Rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On June 3, 2019, the foregoing document was filed on the Public Utilities Commission of Ohio's Docketing Information System. The PUCO's e-filing system will electronically serve notice of the filing of this document and the undersigned has served electronic copies to the following parties:

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Summary: Comments Reply Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company electronically filed by Mr Robert M Endris on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company