

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review)
of Chapter 4901:1-36 of the Ohio) Case No. 18-1189-EL-ORD
Administrative Code)

**REPLY TO COMMENTS OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
SUBMITTED BY
OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON COMPANY**

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INTRODUCTION

On July 12, 2019, the Office of the Ohio Consumers' Counsel ("OCC") filed Initial Comments on the Transmission Cost Recovery Rider ("TCRR") rule in Chapter 4901:1-36, Ohio Admin. Code. OCC made two recommendations: 1) that the Commission add language that transmission cost recovery mechanisms be reconcilable and refundable; and 2) that the Commission extend the time of intervention and eliminate the automatic effectiveness provision. OCC's recommendations are unnecessary and counterproductive and should be rejected.

REPLY TO COMMENTS

A. OCC's recommended additional language regarding reconciliation and refunds is unnecessary.

OCC recommends that the PUCO amend Ohio Adm. Code 4901:1-36-03 to add that each transmission cost recovery rider application should include language that the rider is "subject to reconciliation and refund."¹ OCC claims this language is necessary to remedy the "no refund issue" it says was created by the Supreme Court of Ohio's decision in *Keco*.² Contrary to OCC's mischaracterization, *Keco* did not create a "no refund issue." Rather, *Keco* interpreted Revised Code Section 4905.32, and recognized the General Assembly's statutory plan of regulation to "attempt[] to keep the equities between the utility and the consumer in balance...."³ This statutory plan protects regulated utilities against constant risk of refunds of lawful rates subsequently challenged. Likewise, it protects consumers from a utility recouping past losses on a prospective basis or charging increased rates without Commission approval.⁴ This statutory plan provides

¹ OCC Comments at p. 2.

² *Id.* at p. 3 (citing *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel Co.*, 166 Ohio St. 254, 141 N.E.2d 465 (1957)).

³ *Keco Industries, Inc.*, 166 Ohio St. at 259, 141 N.E.2d at 469.

⁴ *Id.*

necessary stability to regulated utilities and customers. OCC's recommended rule change ignores this well-established statutory plan.

Further, this recommendation is unnecessary because current law already provides that transmission cost recovery riders are subject to reconciliation based on Commission review. Sections 4901:1-36-05 and 4901:1-36-06(B), Ohio Adm. Code, clearly indicate that transmission cost recovery mechanisms approved under this chapter are subject to reconciliation resulting from the outcome of any hearings conducted by the Commission.⁵ Also, the Companies' Commission-approved transmission cost recovery mechanism tariff -- the Non-Market Based Rider ("Rider NMB") -- already explicitly provides for reconciliation.⁶ OCC's recommendation overlooks this existing language in the Companies' tariff, as well as similar language in the tariffs of AEP,⁷ Duke,⁸ and DP&L.⁹ Because consumers have ample protection under the existing statutory scheme, Commission rules, and Commission-approved tariffs, there simply is no need to add the language to 4901:1-36-03 that OCC proposes.

For these reasons the Commission should reject OCC's recommended amendment.

B. OCC's recommendation to eliminate automatic effectiveness and extend the intervention deadline would thwart the Commission's goals of administrative efficiency and minimizing customer impacts.

OCC recommends the Commission amend Section 4901:1-36-05, Ohio Adm. Code, to eliminate the 75-day effectiveness provision.¹⁰ OCC also recommends the intervention deadline

⁵ 4901:1-36-05, O.A.C., states in pertinent part: "Proposed rates will become effective on the seventh-fifth day subject to reconciliation adjustments following any hearing, if necessary, or in its subsequent filing."

⁶ See, P.U.C.O. No. 11, Sheet 119, 11th Revised page 2 of 2.

⁷ See Basic Transmission Cost Rider, P.U.C.O. No. 20, 8th Revised Sheet No. 474-1

⁸ See Rider BTR, P.U.C.O. No. 19, Sheet No. 89.06, p.1.

⁹ See Rider TCRR-N, P.U.C.O. No. 17, Sixteenth Rev. Sheet No. T8, p. 4

¹⁰ OCC Comments at p. 5.

be extended from 40 days to 75 days and that discovery be expedited by requiring a seven-day turnaround.¹¹ OCC claims these amendments are necessary because “thorough review is hampered, and due process is sorely lacking.”¹² However, OCC’s recommendation would thwart the Commission’s objective of minimizing customer rate impacts and is unnecessary to allow sufficient participation by interested parties.

OCC’s recommendation would thwart the Commission’s expressed goal to minimize the incidence of carrying charges and rate impacts to customers.¹³ Delaying the date of effectiveness as advocated by OCC prolongs the reconciliation period. This could result in increasing carrying costs and rate impacts on customers, contrary to the Commission’s goal.

In addition, OCC’s recommendation is based on the incorrect premise that the current process does not allow sufficient participation from interested parties. To the contrary, the current rules provide ample opportunity for parties to fully participate in the proceedings, as evidenced by prior proceedings. OCC provides not one example where the 40-day intervention deadline and 75-day automatic effectiveness hampered the thoroughness of its review despite dozens of annual update proceedings by Ohio EDUs since the rule went into effect. In fact, in the Companies’ most recent transmission cost recovery rider update, OCC conducted multiple rounds of discovery under the standard 20-day turnaround following its motion to intervene out of time.¹⁴ The Commission considered and rejected OCC’s “thorough review” and “due process” arguments in that case.¹⁵

¹¹ Id. at p. 5-6.

¹² Id. p.5.

¹³ See 4901:1-36-03(E), O.A.C., which requires utilities to file interim updates “in order to avoid excessive carrying costs and to minimize rate impacts for the following update filing.”

¹⁴ Motion for Leave to File Motion to Intervene Out of Time by the Office of the Ohio Consumers’ Counsel, Case No. 18-1818-EL-RDR, filed January 30, 2019.

¹⁵ Entry on Rehearing, Case No. 18-1818-EL-RDR, April 24, 2019, para. 15.

The 75-day automatic effectiveness provision has been in place since the inception of this rule. It allows for the efficient administration of annual updates to retail tariff rates that recover charges billed to utilities for transmission service. The retail transmission cost recovery riders are well-established mechanisms utilized to pass through costs incurred by the utilities. OCC has provided no basis whatsoever for altering them in this rule review.

For these reasons the OCC's recommended amendment to eliminate automatic effectiveness and to increase the time for intervening should be rejected.

CONCLUSION

OCC's proposed amendments are unnecessary and counterproductive. For the reasons stated above the Commission should reject OCC's recommendations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On July 26, 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.

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Summary: Reply Reply to Comments of the Office of the Ohio Consumers' Counsel by 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