

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	Case No. 17-1842-EL-ORD
Review of Chapter 4901:1-10 of the)	
Ohio Administrative Code)	

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

I. INTRODUCTION

The Public Utilities Commission of Ohio (the "Commission") should deny the Application for Rehearing submitted by The Office of the Ohio Consumers' Counsel ("OCC").¹ OCC's first, second, and third assignments of error are not well-taken, and OCC has failed to demonstrate that the Commission's Finding and Order² is unreasonable or unlawful. OCC's fourth assignment of error improperly presents a new proposed rule change that was not addressed in this docket. For the reasons more fully set forth here, OCC's AFR should be denied in total.

II. ARGUMENT

A. It Was Reasonable and Lawful for the Commission to Decline to Introduce a Rule Requiring Shadow Billing into the Ohio Administrative Code (O.A.C. 4901:1-10-22(J)).

OCC argues that the Commission should not have rejected its proposal to require electric distribution utilities ("EDUs") to calculate shadow billing data and make the data available to the Commission, OCC, and the general public.³ Contrary to OCC's position, the Commission's decision to not introduce a shadow billing rule into the Ohio Administrative Code was not only

¹ Application for Rehearing by The Office of the Ohio Consumers' Counsel (3/27/2020) ("OCC AFR").

² Finding and Order (2/26/2020) ("Finding and Order").

³ OCC AFR, Mem. in Support at 3-6.

reasonable and lawful, it was also based upon careful consideration of the comments of all parties.⁴ The Commission correctly found that OCC's shadow billing proposal was unnecessary because customers' bills already include the price-to-compare by which customers can calculate their own total savings or spending without the need for EDUs to collect and provide this information in an annual report.⁵ The Commission also observed that the Standard Service Offer ("SSO") rate is displayed on the Commission's "apples to apples" website.⁶

In addition to being unnecessary, a rule requiring a blanket requirement on all EDUs to collect and report shadow billing data would also have been unduly burdensome and impractical with little to no actual benefit to customers. Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the "Companies") would have had to make significant modifications to their systems to create SSO billing data, store the data, and later compute and compile the information for publication, but the result would nevertheless be incomplete, unhelpful, and potentially confusing to customers. As AEP pointed out, for customers who are billed under bill ready or dual-billed scenarios, the Companies do not know the prices charged by the CRES provider and cannot calculate what customers are saving or spending.⁷ Also, the Companies do not know, and thus could not include, all costs and credits that might be included in a CRES provider's contract.

In sum, shadow billing is not only unnecessary and impractical, it would not provide clear or helpful information and instead would have the potential to be confusing to customers and the general public. The Commission's decision not to adopt a rule requiring the collection and

⁴ Finding and Order at ¶ 159-162.

⁵ *Id.* at ¶ 162.

⁶ *Id.*

⁷ Reply Comments of Ohio Power Company (8/30/2019) at 7-8.

reporting of shadow billing data was both reasonable and lawful, and OCC's application for rehearing should be denied. Moreover, if the Commission were to require shadow billing, the Companies should be allowed to receive full and timely recovery of all costs through their Government Directives Recovery Rider.

B. It Was Reasonable and Lawful for the Commission to Reject a Proposed Rule Regarding EDU Account Blocks to Prevent the Switching of CRES Providers (O.A.C. 4901:1-10-24(H)).

OCC argues that the Commission should have adopted Staff's proposed rule allowing customers to request that a CRES provider block be placed on their accounts.⁸ OCC posits that the blocks are necessary because waiver requests by CRES providers are eroding consumer protections.⁹ At the outset, the Companies submit that issues related to the propriety of waiver requests should be addressed in those dockets and not in this rule review proceeding. Moreover, the Commission's decision was both reasonable and lawful, and it was made after a comprehensive and deliberate consideration of numerous party comments.¹⁰ As the Commission properly found, "[e]xhaustive procedures are already in place to prevent CRES provider abuses, such as slamming (*e.g.*, R.C. 4928.10; Ohio Adm.Code 4901:1-1021(H) and 4901:1-21-08(C))."¹¹ The Commission further observed that customers can register on the national "Do Not Call Registry" and that there are "several layers of protection designed to prevent unwanted CRES provider switching during different stages of the sales process"¹² Not only are the blocks unnecessary, as the Commission correctly held, they would also result in increased costs due to necessary system changes, as well as increased customer call volume and increased call handling time.

⁸ OCC AFR Mem. in Support at 6-9.

⁹ *Id.* at 6-7.

¹⁰ Finding at Order at ¶ 167-178.

¹¹ *Id.* at ¶ 178.

¹² *Id.*

The Commission's decision not to adopt a rule regarding EDU account blocks to prevent CRES switching was both reasonable and lawful, and OCC's application for rehearing should be denied. If the Commission were to require EDUs to place account blocks, the Companies should be allowed to receive full and timely recovery of all costs through their Government Directives Recovery Rider.

C. It Was Reasonable and Lawful for the Commission to Reject a Proposed Prohibition Against EDUs Being Able to Include Non-Regulated Services on EDU-Only Bills (O.A.C. 4901:1-10-22).

OCC argues that the Commission should have adopted Staff's proposed change to Ohio Administrative Code 4901:1-10-22, which would have prohibited EDUs from including non-regulated goods and services on EDU-only bills.¹³ OCC posits that the proposed rule revision was required by Ohio law and cites to R.C. 4928.10(C).¹⁴ OCC's reliance on R.C. 4928.10(C) is misplaced, as that statutory provision sets forth the "minimum content of customer bills."¹⁵ Plainly the statute does not prohibit or limit the inclusion by EDUs of non-regulated goods and services on EDU-only bills.¹⁶ Further, as the Companies asserted in their Reply Comments, the proposed rule change advocated by OCC would have violated R.C. 4928.17(A)(1), which allows the offering of such goods and services if the EDU is operating under a Commission-approved Corporate Separation Plan.¹⁷ OCC's argument is flawed, and the Commission's decision was both reasonable and lawful.

¹³ OCC AFR, Mem. in Support at 9-11. The Companies note that the Commission did revise O.A.C. 4901:1-10-22(B)(16) such that "non-tariffed, non-regulated service" is now "non-jurisdictional services." See Finding and Order at ¶ 135.

¹⁴ *Id.* at 9.

¹⁵ R.C. 4928.10(C).

¹⁶ *Id.*

¹⁷ R.C. 4928.17(A)(1); *see also* Reply Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company at 3.

OCC further argues that the Commission's rules do not provide consumers with any way to dispute the non-jurisdictional charges on a bill or determine their accuracy.¹⁸ OCC fails to identify any place in the record where this issue was raised.¹⁹ Additionally, OCC's argument disregards the remainder of Ohio Administrative Code 4901:1-10-22(B), which requires EDU bills to include the name and toll-free telephone number of each provider of non-jurisdictional services, as well as contact information for the Commission and OCC.²⁰

The Commission's decision not to adopt a rule that would prohibit EDUs from including non-regulated goods and services (now, "non-jurisdictional services"²¹) on EDU-only bills was both reasonable and lawful, and OCC's application for rehearing should be denied.

D. OCC's Fourth Assignment of Error Purports to Raise a New Issue that Was Not Part of this Rule Review and Was Not Included in the Commission's Finding and Order.

In its fourth assignment of error, OCC argues that the Commission should change its rules to prohibit EDUs from releasing customer contact information to marketers unless the customer opts-in to the disclosure.²² However, OCC's fourth assignment of error presents a new issue that was not raised by Staff in the initial rule review entry,²³ not raised by OCC in its comments or reply comments,²⁴ and not addressed by the Commission in its Finding and Order.²⁵ OCC fails to cite to any place in the record where its fourth assignment of error was raised.²⁶ It should be

¹⁸ OCC AFR, Mem. in Support at 10.

¹⁹ *Id.*

²⁰ O.A.C. 4901:1-10-22(B).

²¹ Finding and Order at ¶ 135.

²² OCC AFR, Mem. in Support at 11-12.

²³ Entry (7/17/2019).

²⁴ Comments on Amendments to PUCO Rules to Better Protect Consumer by The Office of the Ohio Consumers' Counsel (8/16/2019); Reply Comments by The Office of the Ohio Consumers' Counsel (8/30/2019).

²⁵ *See* Finding and Order.

²⁶ *See* OCC AFR, Mem. in Support.

obvious that an application for rehearing is not the appropriate procedural mechanism to try to introduce a new rule. The Commission should deny OCC's fourth assignment of error on this basis.

Even if this issue had been properly presented, a blanket rule of the type OCC seeks is unnecessary. The Companies already allow customers to opt-out of having their information released to suppliers, and customers may utilize this opt-out option through the FirstEnergy website, through the interactive phone system, or by speaking to a call center representative.

OCC's proposed rule change is improper and unnecessary, and OCC's application for rehearing should be denied.

III. CONCLUSION

For the foregoing reasons, the Commission should deny the Application for Rehearing by The Office of the Ohio Consumers' Counsel.

Respectfully submitted,

/s/Christine E. Watchorn

Emily V. Danford (0090747)

Counsel of Record

FirstEnergy Service Company

76 South Main Street

Akron, OH 44308

(330) 384-5849

edanford@firstenergycorp.com

Christine E. Watchorn (0075919)

FirstEnergy Service Company

100 East Broad Street

Columbus, OH 43215

(614) 437-0183

cwatchorn@firstenergycorp.com

*Attorneys for Ohio Edison Company, The Cleveland
Electric Illuminating Company, and The Toledo
Edison Company*

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Memorandum Contra Application for Rehearing by The Office of the Ohio Consumers' Counsel was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 6th day of April, 2020. In accordance with O.A.C. 4901-1-05, the Commission's e-filing system will electronically serve notice of the filing of this document on the parties who have electronically subscribed to this case docket. In addition, a courtesy copy has been served by e-mail on the following:

Amy.botschner.obrien@occ.ohio.gov
Bryce.mckenney@occ.ohio.gov
bethany.allen@igs.com
joliker@igsenergy.com
khehmeyer@calfee.com
mdortch@kravitzllc.com
tallexander@calfee.com
glover@whitt-sturtevant.com
whitt@whitt-sturtevant.com
Michael.schuler@aes.com
Rocco.D'Ascenzo@duke-energy.com

Elizabeth.Watts@duke-energy.com
Larisa.Vaysman@duke-energy.com
cblend@aep.com
stnourse@aep.com
dclark1@aep.com
lebeau@CarpenterLipps.com
paul@CarpenterLipps.com
bojko@CarpenterLipps.com
dclark1@aep.com
tswolffram@aep.com

/s/Christine E. Watchorn

Christine E. Watchorn (0075919)

*One of the Attorneys for Ohio Edison Company, The
Cleveland Electric Illuminating Company and The
Toledo Edison Company*

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/6/2020 3:57:06 PM

in

Case No(s). 17-1842-EL-ORD

Summary: Memorandum Contra Application for Rehearing by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Christine E. Watchorn on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company