

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review of)	
Chapter 4901:1-35 of the Ohio Administrative)	Case No. 18-1188-EL-ORD
Code)	

**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**

I. INTRODUCTION

This rule review concerns the Commission's filing requirements for standard service offer applications. The application for rehearing filed by The Office of the Ohio Consumers' Counsel ("OCC"), however, advances changes to the rules that exceed initial filing requirements. Rather, OCC's recommendations would decide substantive matters that the Commission determines during the course of SSO proceedings. In its June 3, 2020 Entry ("Entry"), the Commission correctly declined this invitation to prejudge matters, and rejected these recommendations. OCC's application for rehearing raises no new arguments, and instead simply repeats its previous arguments that the Commission rejected. Further, OCC attempts to use its application for rehearing to raise an issue for the Commission's consideration for the first time. For all of these reasons, the Commission should deny OCC's application for rehearing.

II. ARGUMENT

A. The Commission properly rejected OCC's proposed requirement that SSO applications that include a distribution infrastructure modernization plan include a proposal to credit operational savings to customers.

The Commission properly rejected OCC's recommended rule that an SSO application that includes a distribution infrastructure modernization plan must include a proposal to credit

operational savings.¹ OCC provides no valid reason to reverse this determination. Requiring every electric distribution utility (“EDU”) to propose such a provision as part of its initial application is inappropriate. The Commission should decline OCC’s invitation to prejudge by rule the merits of provisions for operational savings credits in every distribution infrastructure modernization plan proceeding.

OCC's only argument for requiring provisions for operational savings credits as a filing requirement is that adjudication of such provisions may be hindered by possible future “utility resistance during the case process, such as through discovery.”¹ To the contrary, the Commission already has ample rules of procedure, including rules for addressing discovery disputes. Crediting operational savings is a subject that can and should be the subject of adjudication. Consistent with this approach, the Commission’s Entry explains that the information needed to propose such a credit is already discernible from other filing requirements.² OCC fails to address this finding. Because OCC's application for rehearing raises no reasonable arguments that the Commission erred, OCC’s first assignment of error must be denied

B. The Commission properly rejected OCC’s recommended requirement that all “placeholder” riders include projections of costs.

The Commission correctly rejected OCC’s recommendation that the rules require an SSO application to include projected costs for any rider that has no estimated initial costs, finding such a rule is “unnecessary.” OCC challenges the Commission’s decision as unreasonable and unlawful, claiming that the statutory test of whether an electric security plan (“ESP”) is more

¹ Application for Rehearing of The Ohio Consumers’ Counsel (“OCC Application for Rehearing”) at p. 4.

² Entry at p. 9 (“Further, this information is already discernible through the requirements in Ohio Adm.Code 4901:1-35- 03(C)(9)(g)(iii).”).

favorable in the aggregate than a market rate offer (“MRO”) requires such cost projections.³ However, the basis of OCC’s recommendation is misplaced. It overlooks the fact that these types of mechanisms may not have initial estimates because the costs to be included in them are unknown and not able to be estimated by the EDUs. Furthermore, the Commission has previously approved ESPs with riders that do not have estimates. OCC’s arguments are tantamount to an inappropriate collateral attack on these prior Commission orders.

Contrary to OCC’s suggestion, the Commission does, in fact, consider placeholder riders in its application of the ESP vs. MRO test. The purpose of the test that OCC relies upon is to compare an ESP to the expected results of an MRO. If the same costs included in a placeholder rider in an ESP could also be recoverable under an MRO, then it is irrelevant whether or not there are cost estimates because the costs are a “wash” under the test. Such costs, even if there are no estimates at the time, are factored into the ESP vs. MRO test. Therefore, OCC’s second assignment of error should be denied.

C. The Commission did not err when it did not direct the inclusion of “subject to refund” language in all proposed ESP riders.

OCC asserts that the Commission erred by not amending these rules to require that “subject to refund” language be included in all proposed ESP rider tariffs.⁴ However, the time for OCC to raise this issue was in its initial comments. No one in this proceeding – not OCC nor any other stakeholder – submitted comments recommending that the Commission add such a requirement to the rules. OCC is trying to raise this issue for the Commission’s consideration for the first time

³ Id. at p. 5.

⁴ Id. at p. 8-9.

through its application for rehearing. Pursuant to RC 4903.10, the Commission cannot consider a recommendation for the first time on rehearing. Nor can the Commission “take any evidence that, with reasonable diligence, could have been offered upon the original hearing.” Therefore, it was not error for the Commission not to adopt a “subject to refund” tariff language requirement.

Moreover, the determination of appropriate tariff language is inappropriate for inclusion in initial filing requirements. Rather, it is the type of subject the Commission decides only after considering the merits of the cost recovery mechanism. OCC’s third assignment of error would preclude future Commission determinations of appropriate tariff language based upon review of a full and complete record. Today the Commission already has discretion to require appropriate language in a tariff approved as part of an ESP. OCC would remove that discretion with respect to refunds.

Therefore, OCC’s assignment of error should be denied not only because the Commission lacks authority to consider it, but also because it is substantively inappropriate.

III. CONCLUSION

OCC’s Application for Rehearing seeks reconsideration of recommendations that do not relate to filing requirements and instead ask the Commission to prejudge substantive matters. OCC raises no new justifications for its recommendations, and in one instance, complains that the Commission failed to adopt an amendment that no one recommended. For all of the foregoing reasons, the Commission should deny OCC’s Application for Rehearing in its entirety.

Respectfully submitted,

/s/ Robert M. Endris

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CERTIFICATE OF SERVICE

I certify that the above was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 16th day of July, 2020. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties. Further, a courtesy copy has been served upon parties via electronic mail.

/s/ Robert M. Endris
One of the Attorneys for the Companies

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Summary: Memorandum Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to Application for Rehearing of The Office of 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