

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison)
Company, The Cleveland Electric Illuminating) Case No. 18-1656-EL-ATA
Company, and The Toledo Edison Company for)
Approval of a Tariff Change.)

**MEMORANDUM CONTRA OF OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO
EDISON COMPANY TO MOTION TO REJECT TARIFF OF THE OFFICE OF THE
OHIO CONSUMERS' COUNSEL**

The Commission should deny the Motion to Reject the July 31, 2020 Revised Tariff Updates to the Tax Savings Adjustment Rider (“Motion”) by the Office of the Ohio Consumers’ Counsel (“OCC”). OCC’s Motion raises issues that have already been fully briefed in the 2019 audit of the Companies’ Delivery Capital Recovery Rider (“Rider DCR”).¹ Re-litigating those same issues here is unnecessary and duplicative and an inefficient use of resources. OCC’s arguments should be rejected for the same reasons as the Companies explained in the Rider DCR Audit.

As explained below, OCC’s Motion conflicts with the rider update and audit processes set forth in the approved Tax Savings Adjustment Rider (“Rider TSA”) tariff. Further, contrary to OCC’s assertions, the Companies’ interim update filing is consistent with the stipulation in Case No. 18-1656-EL-ATA, et. al (“TCJA Stipulation”).

¹See, *In the Matter of the 2019 Annual Review of the Delivery Capital Recovery Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 19-1887-EL-RDR (“Rider DCR Audit”).

I. ARGUMENT

A. OCC Fails to Acknowledge the Approved Rider TSA Update Process.

OCC's Motion improperly seeks an adjustment to the Rider TSA rates that have already gone into effect. OCC's Motion conspicuously lacks any reference to the process the Commission approved for the Rider TSA updates. Under the approved Rider TSA tariff, the Rider TSA rates shall go into effect unless otherwise ordered by the Commission.² Because the Commission did not otherwise order, this pricing update went into effect September 1, 2020 pursuant to the plain language in the Rider TSA tariff.

Moreover, the approved Rider TSA tariff provides a process to seek modification to the Rider TSA rates. Rider TSA is subject to reconciliation based upon the results of audits ordered by the PUCO in accordance with the approved TCJA Stipulation. Since no such order has been issued by the Commission, it is inappropriate to make any modifications to Rider TSA at this time. OCC's Motion is inconsistent with the approved rider update and audit processes, and improperly seeks an adjustment to already-effective Rider TSA rates; therefore, it should be denied.

B. The Companies' Interim Rider TSA Filing is Consistent with the Companies' TJCA Stipulation.

OCC recommends that the Companies' excess deferred income tax ("EDIT") balances be adjusted to the illustrative balances included in the Companies' TJCA Stipulation.³ However, as the Companies explained in response to the same arguments in the Rider DCR Audit, the EDIT balances were not yet final at the time of the TCJA Stipulation.⁴ For this reason, Attachment A to

² Rider TSA tariff sheet no. 91. Pursuant to the July 17, 2019 Opinion and Order approving the TCJA Stipulation, however, the Companies' initial Rider TSA rates were effective for the period of September 1, 2019 through August 31, 2020. Accordingly, the Companies' July 31, 2020 Rider TSA filing was an interim update for rates effective September 1, 2020 through December 31, 2020.

³ OCC Motion at 4.

⁴ Rider DCR Audit, Companies' Comments at 2-4 and Companies' Reply Comments at 2-3.

the TCJA Stipulation, where the EDIT balances are set forth in the TCJA Stipulation, was labeled “illustrative.”⁵

OCC’s argument against adjusting the illustrative EDIT balances contradicts another position taken by OCC in the Rider DCR Audit. In the Rider DCR Audit, OCC and other commenters supported adjustments for reclassification between normalized and non-normalized property EDIT balances.⁶ These reclassification adjustments were made for the same reason that the total EDIT balances were adjusted — because the EDIT balances were not final at the time of the TCJA Stipulation. OCC’s Motion conflicts with OCC’s own recommendation in the Rider DCR Audit to adjust for reclassification. OCC cannot have it both ways.

Further, OCC’s Motion would result in more EDIT liability being returned to Customers than is recorded on the Companies’ books, contrary to the TCJA Stipulation. As the Companies noted in their comments in the Rider DCR Audit, the Stipulation provides that “[t]he actual amount of EDIT flowing back to customers will reflect the final, audited balances, including a federal and state tax gross up, as of December 31, 2017”⁷ and “for all tax savings associated with the Tax Cuts and Jobs Act 2017 to flow back to customers.” If OCC’s Motion were granted, however, the total property-related EDIT returned to customers through ratemaking would be \$28.3 million higher than “all tax savings” associated with the TCJA. Therefore, OCC’s Motion should be denied.

II. CONCLUSION

OCC’s Motion ignores the approved Rider TSA update and audit processes, is inconsistent with the TCJA Stipulation, and should be denied.

⁵ Attachment A and Supplemental Attachment A, TCJA Stipulation, filed November 9, 2018 and January 25, 2019, respectively, in Case No. 18-1604-EL-UNC (all pages in Attachment A and Supplemental Attachment A containing EDIT balances labeled as “Illustrative”).

⁶ Rider DCR Audit, OCC Comments at 7.

⁷ TCJA Stipulation at 9.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Memorandum Contra was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 25th day of September, 2020. The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Robert M. Endris

One of the Attorneys for the Companies

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Case No(s). 18-1656-EL-ATA

Summary: Memorandum Memorandum Contra of Ohio Edison, 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