

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION  
FOR ESTABLISHMENT OF A UNIQUE  
ARRANGEMENT FOR TOSHI CMC, LLC.

CASE NO. 21-1205-EL-AEC

## ENTRY

Entered in the Journal on November 2, 2022

### I. SUMMARY

{¶ 1} The Commission grants the motion for clarification, filed September 2, 2022, related to Toshi CMC, LLC's request for a unique arrangement with Ohio Edison Company.

### II. PROCEDURAL HISTORY

{¶ 2} Toshi CMC, LLC (Toshi) is a mercantile customer, as defined by R.C. 4928.01(A)(19) as a commercial or industrial customer that consumes more than 700,000 kilowatt hours of electricity per year for nonresidential use, or the customer is part of a national account involving multiple facilities in one or more states. Ohio Adm.Code 4901:1-38-03 and 4901:1-38-05 provide rules for the filing of applications, pursuant to R.C. 4905.31, for approval of economic development and unique arrangements that further the policy of the state of Ohio embodied in R.C. 4928.02.

{¶ 3} The Ohio Edison Company (Ohio Edison), is an electric distribution utility, as defined in R.C. 4928.01(A)(6), and a public utility as defined under R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 4} On November 29, 2021, Toshi filed an application pursuant to R.C. 4905.31 and Ohio Adm.Code 4901:1-38-05 (Application) seeking approval of a reasonable arrangement with Ohio Edison to enter a rate structure which mirrors FirstEnergy Corp.'s (FirstEnergy) non-market-based services rider opt-out pilot program. Toshi states that this arrangement will result in a zero delta for consumers and would allow Toshi to make substantial capital

investment, expand employment, provide employment benefits, and undertake operations which require access to and successful deployment of capital.

{¶ 5} Also on November 29, 2021, Toshi filed a motion for protective order concerning certain capital expenditure, employee count, and wage information in its Application. In its motion, Toshi argues that this information is competitively sensitive, proprietary information protected as trade secrets under R.C. 1333.61(D) and that the Commission should order it be kept confidential in accordance with Ohio Adm.Code 4901-1-24.

{¶ 6} On December 20, 2021, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene in the case.

{¶ 7} On January 4, 2022, Toshi filed a memorandum contra OCC's motion to intervene.

{¶ 8} On January 11, 2022, OCC filed a reply to Toshi's memorandum contra and in support of its motion to intervene.

{¶ 9} On January 24, 2022, Toshi filed notice of letters of support for a reasonable arrangement. Such letters are from various parties, indicating support for the arrangement.

{¶ 10} On May 5, 2022, Toshi filed a Stipulation and Recommendation (Stipulation) entered into by Toshi and Staff. The Stipulation provides that, while the agreement is between Staff and Toshi, OCC indicates that it does not oppose the Stipulation, and likewise, while not a party, FirstEnergy also does not oppose the Stipulation or Toshi's request for a unique arrangement.

{¶ 11} On June 1, 2022, the Commission issued its Order approving the Joint Stipulation and Recommendation entered into by Staff and Toshi.

{¶ 12} On July 21, 2022, Toshi filed its agreement for establishment of a reasonable arrangement with Ohio Edison Company.

{¶ 13} On September 2, 2022, Toshi filed a motion for clarification, which at the time of its filing, was unopposed by the parties to the case at that time, OCC and Staff.

{¶ 14} On September 22, 2022, Ohio Edison, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy) filed both a motion for limited intervention and a motion for leave to file a memorandum contra Toshi's motion for clarification.

### III. TOSHI'S MOTION FOR CLARIFICATION

{¶ 15} Ohio Adm.Code 4901-1-12 provides that any party may file a motion in writing, with an accompanying memorandum in support which sets the grounds for the motion, and that any party may file a memorandum contra within seven days of service of the original motion.

{¶ 16} Toshi prefaces its argument stating that it seeks confirmation from the Commission concerning the scope of the Commission's approval of Toshi's reasonable arrangement. Toshi states that it believes the Commission's existing authorization resolves the issue of its implementation issues with FirstEnergy's ability to enroll Toshi in the Non-Market Based (NMB) transmission pilot billing outcome. Toshi seeks confirmation from the Commission that FirstEnergy can and should manually bill Toshi directly or through an assignment of costs to a Competitive Retail Electric Service (CRES) provider for transmission service consistent with the NMB transmission pilot billing outcome while Toshi remains on the standard service officer (SSO). Toshi asks that manual billing be authorized until such time that FirstEnergy determines if an automated process can reasonably be implemented. Toshi states that it does not believe FirstEnergy would have demonstrable incremental costs to undertake a manual billing option but agrees that to the

extent there would be demonstrable incremental costs they should not be passed on to customers not participating in the manual billing option of the NMB transmission pilot.

{¶ 17} Toshi argues that, as noted in the Stipulation and Recommendation (Stipulation) approved by the Commission, its new load would be assigned to a portion of the revenue requirement of FirstEnergy's existing riders, such as the Universal Service Fund Rider, and that Toshi's reasonable arrangement and subsequent investment in various facilities in Ohio is therefore jeopardized if FirstEnergy cannot accommodate Toshi remaining on the SSO and participating in the NMB transmission pilot. Toshi avers that there is no requirement in its reasonable arrangement that it shop for generation service in order to participate in the NMB transmission pilot billing outcome. Toshi states that the plain language of the Stipulation recognizes that all NMB transmission pilot customers could choose a participation option that does not involve a CRES provider. Toshi states plainly that it does not believe an automated participation option is likely where it has discussed the possibility with FirstEnergy over the course of the summer and received feedback that it would be expensive and impactful across multiple fronts. Toshi thus argues for a manual process that would allow it to both participate in the NMB transmission pilot and remain on the SSO.

{¶ 18} Toshi's argument for a manual billing process is framed as an arrangement in which Toshi would pay FirstEnergy for transmission service based on its Network Service Peak Load, or FirstEnergy manually allocating transmission responsibility to a CRES provider which Toshi would engage with as a billing agent for transmission service. Toshi states that it believes it is technically feasible for FirstEnergy to implement and that FirstEnergy has not indicated that a manual outcome is not possible. Toshi avers that it does not believe that a manual billing outcome would result in incremental costs to FirstEnergy where an existing employee would accomplish the necessary actions.

{¶ 19} Toshi concludes stating that it believes the terms of the approved Stipulation provide the relief requested in its motion; however, it avers that Commission approval of

said motion should remove any impediment to its manual billing request made of FirstEnergy in order for it to stay on FirstEnergy's SSO and participate in the NMB transmission pilot.

#### **IV. FIRSTENERGY'S MOTION FOR LIMITED INTERVENTION AND MEMORANDUM CONTRA**

{¶ 20} Ohio Adm.Code 4901-1-12 provides that any party may file a memorandum contra any motion within 15 days after service of a motion or other such period as is required. In its memorandum contra Toshi's motion for clarification, FirstEnergy states that it is not in opposition to Toshi's requested relief that the Commission direct FirstEnergy to provide a manual billing alternative under the NMB transmission pilot, but that it seeks a Commission order to support exceptions to the Sarbanes-Oxley Act (SOA) controls necessitated by a manual billing solution.

{¶ 21} FirstEnergy argues that a Commission Order is necessary for it to implement the new manual processes necessary to support Toshi's request, which fall within the company's SOA framework. Further, FirstEnergy requests that any Order directing them to implement the manual process also grants them authority to charge participating customers for incremental costs incurred in developing and implementing new manual processes. Lastly, FirstEnergy recommends the Commission authorize the manual process that extends to other Rider NMB pilot program participants.

{¶ 22} FirstEnergy avers that, to date, it has implemented the NMB transmission pilot program in accordance with ESP IV through automated systems whereby transmission responsibility for a participating customer is allocated to the same supplier that provides the customer with generation service. FirstEnergy's argument suggests an alternative to the implementations suggested by Toshi in its motion and memorandum. FirstEnergy suggests the Commission direct that the supplier bill the SSO customer separately and directly for transmission-only charges while the customer receives SSO generation service under FirstEnergy's approved tariffs. FirstEnergy opines that under its suggested "dual-billing process" its companies would need only to manually remove the Rider NMB charges from

the SSO customer's bill, which still requires Commission authorization in order for FirstEnergy to implement it within their SOA control framework in a manner less intrusive to FirstEnergy's controls and internal processes. Finally, FirstEnergy argues that this approach would provide a clear line of distinction between its responsibilities and those of the supplier, which are application or removal of Rider NMB charges and rate calculation, billing for transmission-only charges, and so forth.

{¶ 23} Next, FirstEnergy explains that to implement Toshi's first suggestion, which it opines is less efficient than its own "dual-billing process," it would need to fashion a new manual process to remove otherwise applicable Rider NMB charges from Toshi's bill, derive Toshi's estimated portion of PJM bills, and then apply the derived charge to the bill. Concerning Toshi's second suggestion, FirstEnergy opines that to manually allocate and bill transmission costs to Toshi and its supplier while Toshi continues to receive SSO generation service would require FirstEnergy to utilize consolidated billing for the transmission charges on behalf of the SSO customer and their supplier. FirstEnergy argues that both of these options would require it to establish several manual process changes to remove Rider NMB charges from the SSO customer bill, to facilitate collection and payment, and develop an internal audit process.

## V. CONCLUSION

{¶ 24} As an initial matter, the Commission notes that as part of its filing, FirstEnergy filed a motion for limited intervention in order to file its memorandum contra. To date, no party has filed opposition to this limited intervention and, where FirstEnergy satisfies the criteria for intervention set out in Ohio Adm.Code 4901-1-11, and only seeks to intervene to file a memorandum, not to participate in any proceedings, the Commission finds its request reasonable and therefore grants it limited intervention.

{¶ 25} The Commission finds that Toshi's motion for clarification should be granted. FirstEnergy can and should manually bill Toshi directly or through an assignment of costs

to a CRES provider for transmission service consistent with the NMB transmission pilot billing outcome while Toshi remains on the standard service officer (SSO).

{¶ 26} Toshi and FirstEnergy each provide different recommendations for the implementation of the manual billing process. The Commission directs the parties to work with Staff to implement the most cost-effective option of the proposed alternatives. With respect to the recover of incremental costs, the Commission notes that FirstEnergy may make an appropriate filing to recovery any actual, prudently incurred incremental costs associated with the provision of this new manual billing process.

{¶ 27} Accordingly, the Commission finds that Toshi's motion for clarification should be granted, and that FirstEnergy should be authorized to implement a manual billing process as described above.

## VI. ORDER

{¶ 28} It is, therefore,

{¶ 29} ORDERED, That FirstEnergy's motion for limited intervention be granted. It is, further,

{¶ 30} ORDERED, That Toshi's motion for clarification be granted. It is, further,

{¶ 31} ORDERED, That a copy of this Entry be served upon all parties of record.

### COMMISSIONERS:

#### *Approving:*

Jenifer French, Chair  
Lawrence K. Friedeman  
Daniel R. Conway

JMD/dmh

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Company electronically filed by Heather A. Chilcote on behalf of Public Utilities  
Commission of Ohio