

**In the Matter of the 2020 Review of the  
Delivery Capital Recovery Rider of Ohio  
Edison Company, The Cleveland Electric  
Illuminating Company, and The Toledo  
Edison Company.**

## I. ARGUMENT

The Commission has stayed these proceedings twice before at the request of the U.S. Attorney’s Office. Following an exhaustive legal analysis, the Commission first ordered a six-month stay on August 24, 2022.<sup>2</sup> In response, the Office of the Ohio Consumers’ Counsel (“OCC”) filed an Application for Rehearing on September 23, 2022, which was denied by operation of law.<sup>3</sup> Following a second request from the U.S. Attorney’s Office, the Commission

<sup>3</sup> Case Nos. 20-1629-EL-RDR, 20-1502-EL-UNC, 17-2474-EL-RDR, 17-0974-EL-UNC, OCC Application for Rehearing (September 23, 2022).

extended the stay for an additional six months on March 8, 2023.<sup>4</sup> Again, OCC filed an Application for Rehearing, on April 7, 2023, which was also denied by operation of law.<sup>5</sup>

OCC now brings its third Application for Rehearing in response to the Commission's latest extension of the stay. However, the Commission correctly granted the U.S. Attorney's request, for the same reasons set forth in Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison's (the "Companies") Memoranda Contra filed on October 3, 2022, and April 17, 2023.<sup>6</sup>

**First**, as with its prior two Applications for Rehearing, OCC has not demonstrated how the Commission's Entry is unlawful or unreasonable. OCC has not cited to any intervening events that would alter the Commission's continued rationale for an extended stay of this proceeding in light of the ongoing investigation by the U.S. Attorney's office. Indeed, it is the U.S. Attorney himself that has cited the potential for interference—as the Commission found in its August 23, 2023 Entry. OCC has not demonstrated how this finding is unreasonable or unlawful.

**Second**, the majority of OCC's arguments were already raised or available to it in its prior two Applications for Rehearing and thus are improper. For example, OCC argues that there is "no pending [criminal] trial."<sup>7</sup> OCC noted the same thing in its April 7 Application for Rehearing by pointing to the criminal convictions.<sup>8</sup> Similarly, OCC also cites to the lifting of the stay in the Ohio Attorney General matter and ongoing discovery in *In re FirstEnergy Corp. Securities*

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<sup>4</sup> Case Nos. 20-1629-EL-RDR, 20-1502-EL-UNC, 17-2474-EL-RDR, 17-0974-EL-UNC, Entry (March 8, 2023).

<sup>5</sup> Case Nos. 20-1629-EL-RDR, 20-1502-EL-UNC, 17-2474-EL-RDR, 17-0974-EL-UNC, OCC Application for Rehearing (April 7, 2023).

<sup>6</sup> See Case Nos. 20-1629-EL-RDR, 20-1502-EL-UNC, 17-2474-EL-RDR, 17-0974-EL-UNC, Companies' Memorandum Contra (October 3, 2022); Case Nos. 20-1629-EL-RDR, 20-1502-EL-UNC, 17-2474-EL-RDR, 17-0974-EL-UNC, Companies' Memorandum Contra (April 17, 2023).

<sup>7</sup> Case Nos. 20-1629-EL-RDR, 20-1502-EL-UNC, 17-2474-EL-RDR, 17-0974-EL-UNC, OCC Application for Rehearing, Memorandum in Support, at 3 (September 22, 2023).

<sup>8</sup> Case Nos. 20-1629-EL-RDR, 20-1502-EL-UNC, 17-2474-EL-RDR, 17-0974-EL-UNC, OCC Application for Rehearing, at 1–2 (April 7, 2023).

*Litigation*, but OCC raised these issues too in its prior Application for Rehearing.<sup>9</sup> These arguments have therefore been denied as a matter of law under Ohio R.C. 4903.10.

***Third***, as in its prior Application for Rehearing, OCC again impermissibly raises new issues beyond the scope of the Entry. R.C. 4903.10 provides that a “party . . . may apply for a rehearing in respect to any matters *determined* in the proceeding.”<sup>10</sup>

## **II. CONCLUSION**

Accordingly, for all the same reasons set forth in the Companies’ Memorandum Contra filed on October 3, 2022, and April 17, 2023, OCC’s improper Application for Rehearing does not demonstrate how the Commission’s Entry is unlawful or unreasonable. The Commission should therefore deny OCC’s Application for Rehearing.

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<sup>9</sup> Case Nos. 20-1629-EL-RDR, 20-1502-EL-UNC, 17-2474-EL-RDR, 17-0974-EL-UNC, OCC Application for Rehearing, Memorandum in Support, at 3–4, 14-19 (April 7, 2023).

<sup>10</sup> Ohio R.C. 4903.10 (emphasis added).

Dated: October 2, 2023

Respectfully submitted,

/s/ Ryan A. Doringo

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*On behalf of the Companies*

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on October 2, 2023. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

*/s/ Margaret M. Dengler*  
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*Attorney for the Companies*

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**Case No(s). 20-1629-EL-RDR**

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