

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Review of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo) Case No. 17-0974-EL-UNC
Edison Company's Compliance with)
R.C. 4928.17 and Ohio Adm. Code)
Chapter 4901:1-37.)**

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

I. ARGUMENT

The Office of the Ohio Consumers' Counsel's November 17, 2023 Application for Rehearing (the "Rehearing Application") should be denied because it is procedurally defective and substantively without merit.¹ OCC's duplicative Rehearing Application again targets the Commission's August 23 Entry extending the stay in this case. OCC already sought rehearing on that order,² and the Commission rejected OCC's arguments on both procedural and substantive grounds in its October 18 Entry on Rehearing.³ Now, OCC seeks yet another bite at the apple in the Rehearing Application, raising the same points already considered and rejected by the Commission.

Procedurally, the Rehearing Application fails at the outset because Commission rules permit *one* application for rehearing of a Commission order. Rule 4901-1-35, O.A.C. ("A party . . . may only file one application for rehearing to a commission order . . ."). The Rule plainly

¹ Case Nos. 17-974-EL-UNC, 17-2474-EL-RDR, 20-1502-EL-UNC, 20-1629-EL-UNC, OCC Application for Rehearing (November 17, 2023) (hereinafter, "OCC November 17 Application for Rehearing").

² Case Nos. 17-974-EL-UNC, 17-2474-EL-RDR, 20-1502-EL-UNC, 20-1629-EL-UNC, OCC Application for Rehearing (September 22, 2023) (the "September 22 Application for Rehearing").

³ Case Nos. 17-974-EL-UNC, 17-2474-EL-RDR, 20-1502-EL-UNC, 20-1629-EL-UNC, Entry (October 18, 202) (the "October 18 Entry").

bars duplicative rehearing requests, and the Rehearing Application should be rejected for this reason alone.

OCC's request also fails for other, independent reasons. Here, as in the September 22 Application for Rehearing, OCC argues that the Commission acted unjustly and unreasonably when it extended the stay in its August 23 Entry but did not also stay Case Nos. 16-481-EL-UNC ("Grid Mod I"), 22-704-EL-UNC ("Grid Mod II"), and 23-301-EL-SSO ("ESP V").⁴ As explained in the Companies' memorandum opposing the September 22 rehearing request, OCC's arguments were deficient even as initially raised because they were, among other things, previously available and impermissibly new.⁵ The Commission agreed with those procedural points and went on to reject the September 22 Application for Rehearing in its entirety. The same result should follow here. OCC's request to stay the Grid Mod I, Grid Mod II, and ESP V dockets was never the proper subject of any rehearing application of the Commission's August 23 Entry because R.C. 4903.10 expressly limits such applications "to any matters *determined* in the proceeding."⁶

Even if the Rehearing Application were procedurally proper, OCC has not and cannot demonstrate, as it must, that any of the Commission's decisions were unlawful or unreasonable. In the Entry on Rehearing, the Commission found that OCC presented "no rational basis for a delay in any of the three noted proceedings," and that "delaying those proceedings would be highly improper and may ultimately harm the very customers of FirstEnergy represented by OCC."⁷ And all the current Rehearing Application does is reassert arguments, with a slightly different spin, that

⁴ See Memorandum in Support of Rehearing Application, at 3–13; September 22 Application for Rehearing, at 15–19.

⁵ Case Nos. 17-974-EL-UNC, 17-2474-EL-RDR, 20-1502-EL-UNC, 20-1629-EL-UNC, Companies' Memo Contra OCC Application for Rehearing (October 2, 2023).

⁶ Ohio R.C. 4903.10 (emphasis added).

⁷ October 18 Entry, at ¶ 19.

OCC first presented. But it has long been settled that the Commission will deny applications for rehearing that “simply reiterate[] arguments that were considered and rejected by the Commission.”⁸ Moreover, while OCC complains that the Commission did not apply “the six part balancing test applied earlier to the U.S. Attorney’s stay request,”⁹ that argument ignores the Commission’s broad discretion to manage its own proceedings, and in particular, the timing of those proceedings.¹⁰

II. CONCLUSION

OCC’s Rehearing Application is barred by Rule 4901-1-35, is improper under R.C. 4903.10, and is deficient in failing to demonstrate that the Commission’s rulings (whether in the August 23 or the October 18 Entries) were in any way unjust or unreasonable. For all these reasons, or any of them, the Commission should deny the Rehearing Application.

⁸ *Wiley v. Duke Energy Ohio, Inc.*, Case No. 10-2463-GE-CSS, 2011 Ohio PUC LEXIS 1276, Entry on Rehearing, at *6–7 (Nov. 29, 2011). *See also In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO, 2011 Ohio PUC LEXIS 543, Entry on Rehearing, at *15-16 (May 4, 2011) (rejecting an application for rehearing that “raised nothing new”); *City of Reynoldsburg v. Columbus Southern Power Co.*, Case No. 08-846-EL-CSS, 2011 Ohio PUC LEXIS 680, Entry on Rehearing, at *19-20 (June 1, 2011) (holding that no grounds for rehearing existed where no new arguments had been raised); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, No. 08-1344-GA-EXM, 2011 Ohio PUC LEXIS 1184, Entry on Rehearing, at *9-10 (Nov. 1, 2011) (denying application for rehearing because applicant “raised nothing new on rehearing that was not thoroughly considered” in the Commission order at issue).

⁹ OCC November 17 Application for Rehearing, Memorandum in Support, at 3.

¹⁰ *See, e.g., Weiss v. Pub. Util. Comm.*, 2000-Ohio-5, 90 Ohio St. 3d 15, 19, 734 N.E.2d 775, 780 (finding Commission has broad discretion to manage its docket); *see also Toledo Coal. for Safe Energy v. Pub. Utilities Comm’n of Ohio*, 69 Ohio St. 2d 559, 560, 433 N.E.2d 212, 214 (1982).

Dated: November 27, 2023

Respectfully submitted,

/s/ Ryan A. Doringo

Michael R. Gladman (0059797)
Shalini B. Goyal (0096743)
Margaret M. Dengler (0097819)
Jones Day
325 John H. McConnell Blvd
Suite 600
Columbus, Ohio 43215
Tel: (614) 469-3939
Fax: (614) 461-4198
mrgladman@jonesday.com
mdengler@jonesday.com

Ryan A. Doringo (0091144)
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Tel: (216) 586-3939
Fax: (216) 579-0212
radoringo@jonesday.com

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 November 27, 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

Attorney for the Companies

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