

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company & The Toledo Edison)	
Company for Authority to Establish a Standard)	Case No. 23-301-EL-SSO
Service Offer Pursuant to R.C. 4928.143 in the)	
Form of an Electric Security Plan.)	

INITIAL POST-HEARING BRIEF OF ONE ENERGY ENTERPRISES INC.

I. INTRODUCTION

This proceeding, initiated by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively the “Companies”), presents the Public Utilities Commission of Ohio (the “Commission”) with yet another opportunity to ensure that its customers can exercise their right to access lawful, cost-effective, efficient, comparable, non-discriminatory, and unbundled transmission service. To date, this has yet to occur in the Companies’ service territories.

Instead, the Companies urge the Commission to adopt its fifth application for an electric security plan (“ESP V Application”), which contains a proposal to impose non-bypassable transmission costs on its customers through two charges embedded in its Non-Market-Based Services Rider (collectively “Rider NMB”). (ESP V Application at 11). The inclusion of the non-bypassable Rider NMB in the ESP V Application violates Ohio law. Therefore, the ESP V Application must be rejected by the Commission. Alternatively, if the Commission does not reject the ESP V Application, it must require Rider NMB to be bypassable in order to comply with Ohio law.

II. LEGAL ARGUMENT

A. The ESP V Application must be rejected because it authorizes a non-bypassable transmission rider, and transmission riders are required to be bypassable under Ohio law.

R.C. 4928.143 provides the Commission with authority to approve provisions for recovery of transmission costs in an ESP; however, it limits such authority to a transmission provision applicable solely to non-shopping customers. Specifically, R.C. 4928.143(B)(2)(g) provides the Commission with limited discretion to authorize a standard service offer (“SSO”) containing transmission provisions. There is nothing in R.C. 4928.143, however, that authorizes the Commission to approve an SSO containing a transmission provision that holds shopping customers captive to such a provision. In fact, R.C. 4928.143 specifically identifies some non-bypassable provisions that may be included in an SSO; and a non-bypassable SSO transmission provision is not one of them.

Building on this, the Commission’s own rules implementing R.C. Chapter 4928 require the Companies’ transmission cost recovery riders to be bypassable for shopping customers. Specifically, OAC 4901:1-35-03(C) requires that an ESP proposing a transmission cost recovery rider satisfy the requirements of OAC Chapter 4901:1-36. OAC Rule 4901:1-36-04(B) then states that “[t]he transmission cost recovery rider shall be avoidable by all customers who choose alternative generation suppliers.” (emphasis added). Customers obtaining generation service from a Competitive Retail Electric Service (“CRES”) provider are not, as a matter of law, SSO customers. Accordingly, any R.C. 4928.143(B)(2)(g) transmission provision cannot attach to non-SSO customers. And, a non-bypassable transmission rider (here, Rider NMB) is not permitted by

statute and the Commission's rules. As a result, the ESP V Application authorizing Rider NMB should be rejected.

B. In the alternative, if the ESP V Application is not rejected in its entirety, then Rider NMB must be made bypassable in order to comply with Ohio law.

As noted above, the non-bypassable Rider NMB included in the ESP V Application violates R.C. 4928.143 and OAC Rule 4901:1-36-04(B). If this fatal flaw does not render the entire ESP V Application unlawful, the Commission must at least modify the ESP V Application and order Rider NMB to be bypassable for shopping customers.

Modifying Rider NMB to make it bypassable is not only required under Ohio law, but is consistent with the Companies' goal of modifying Rider NMB in this proceeding "to better align non-market-based services costs with cost causers, consistent with how PJM assigns costs..." (First Energy Witness Lawless Direct Testimony at 12). The simple change of making Rider NMB bypassable achieves this goal and also provides greater transparency and choice to customers. *See* Poprocki Direct Testimony at 16 (stating that one way to provide "greater transparency and optionality to transmission rates" would be to "simply make transmission bypassable and to assess transmission rates to CRES providers based upon the 1 Coincident Peak ("CP")."); Merola Direct Testimony at 8 (explaining "[c]ustomers should be allowed to have their full customer choice back without strapping them with non-bypassable charges that create a barrier to entry to create cross subsidies to re-monopolize."

III. CONCLUSION

For the reasons set forth herein, the Commission should reject the Companies' ESP V Application in its entirety due to its unlawfulness. Alternatively, if the ESP V Application is not rejected in its entirety, the Commission should order that Rider NMB be made bypassable. Lastly,

if neither recommendation is taken by the Commission, it should order the current Rider NMB Pilot to be expanded to allow all non-residential customers to participate for the term of ESP V.

Respectfully submitted on behalf of
ONE ENERGY ENTERPRISES INC.

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing Initial Post-Hearing Brief of One Energy Enterprises Inc. was served upon the parties of record listed below this 19th day of January, 2024, via email.

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Summary: Brief INITIAL POST-HEARING BRIEF OF ONE ENERGY
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