

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF THE
ALTERNATIVE ENERGY RESOURCE RIDER
CONTAINED IN THE TARIFFS OF OHIO
EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY, AND
THE TOLEDO EDISON COMPANY.

CASE No. 11-5201-EL-RDR

ENTRY

Entered in the Journal on May 31, 2018

{¶ 1} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or the Companies) are electric distribution utilities as defined in R.C. 4928.01(A)(6) and public utilities as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of this Commission.

{¶ 2} On September 20, 2011, the Commission issued an Entry on Rehearing in *In the Matter of the Annual Alternative Energy Status Report of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 11-2479-EL-ACP. In that Entry on Rehearing, the Commission stated that it had opened the above-captioned proceeding for the purpose of reviewing FirstEnergy's Rider AER.¹ Additionally, the Commission stated that its review would include the Companies' procurement of renewable energy credits (RECs) for purposes of compliance with R.C. 4928.64.

{¶ 3} On August 7, 2013, following a hearing, the Commission issued an Opinion and Order (Order), finding that FirstEnergy should be disallowed recovery in the amount of \$43,362,796.50 associated with certain REC purchases. The Commission also granted multiple pending motions for protective orders and affirmed the attorney examiners' rulings on motions for protective orders regarding REC procurement data appearing in the draft auditor report, as well as various pleadings in this proceeding discussing the draft auditor report. This REC procurement data consisted of supplier-identifying information

¹ Rider AER recovers all costs associated with securing compliance with the alternative energy resource requirements including, but not limited to, all renewable energy credit costs and associated carrying costs.

and pricing information. As stated in the Order, the Commission found that the REC procurement data is trade secret information and its release was, thereby, prohibited under state law. R.C. 1333.61(D).

{¶ 4} The Commission affirmed its decision as to the disallowance and motions for protective order on December 18, 2013. *In re FirstEnergy*, Case No. 11-5201-EL-RDR, Second Entry on Rehearing (Dec. 18, 2013).

{¶ 5} FirstEnergy filed an appeal with the Supreme Court of Ohio from the Order and Second Entry on Rehearing on December 24, 2013, pursuant to R.C. 4903.11 and 4903.13. In its notice of appeal, FirstEnergy argued that the Commission had unreasonably found that the Companies did not meet their burden of proof that the purchases of certain RECs in 2010 were prudent and should, therefore, be disallowed recovery of the costs associated with those purchases.

{¶ 6} Thereafter, on February 18, 2014, the Environmental Law and Policy Center (ELPC) and the Ohio Consumers' Counsel (OCC) filed cross-appeals with the Supreme Court of Ohio from the Order and Second Entry on Rehearing, pursuant to R.C. 4903.11 and 4903.13. OCC and ELPC raised several assignments of error, one of which was that the Commission had unlawfully and unreasonably held that certain information was confidential, including REC prices, seller identities, and recommended penalty amounts, upon granting the motions for protective order.

{¶ 7} On January 16, 2018, the Supreme Court of Ohio reversed the Commission's order disallowing the Companies' recovery of \$43 million of costs under Rider AER, stating that the Commission had engaged in retroactive ratemaking by disallowing recovery of these costs. Additionally, the Court found that the Commission's trade secret determination lacked record support and ordered, on remand, that the Commission must either cite evidence explaining its reasoning to qualify this information as trade secret or publicly disclose the information that has been protected. *In re Rev. of Alternative Energy Rider*

Contained in Tariffs of Ohio Edison Co., Slip Opinion No. 2018-Ohio-229 (Jan. 16, 2018) (Rider AER Case).

{¶ 8} In light of the Supreme Court of Ohio's decision regarding the Commission's rulings on the motions for protective order and the designation of certain information as trade secret in this proceeding, the attorney examiner finds that the parties should abide by the following procedural schedule:

- (a) Testimony on behalf of the Companies should be filed by July 3, 2018.
- (b) Testimony on behalf of all intervenors should be filed by July 10, 2018.
- (c) A hearing shall convene on July 24, 2018, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, Hearing Room 11-C, Columbus, Ohio.

{¶ 9} Further, given the narrow scope of the hearing and to allow parties sufficient time to prepare testimony, the attorney examiner finds that the response time for discovery should be shortened to seven days for all discovery served after the issuance of this Entry. Discovery requests and replies shall be served by hand delivery, e-mail, or facsimile (unless otherwise agreed by the parties). An attorney serving a discovery request shall attempt to contact the attorney upon whom the discovery request will be served in advance to advise him/her that a request will be forthcoming (unless otherwise agreed by the parties). To the extent that a party has difficulty responding to a particular discovery request within the seven-day period, counsel for the parties should discuss the problem and work out a mutually satisfactory solution.

{¶ 10} Any testimony filed by any party should be limited to the narrow question of whether the REC procurement data derives independent economic value from not being generally known, as required by R.C. 1333.61(D)(1). The attorney examiner notes that the

Supreme Court of Ohio found that the Commission did not err in finding that FirstEnergy took reasonable efforts to maintain the secrecy of the REC-procurement data, as required by R.C. 1333.61(D)(2). *Rider AER Case* at *14-16.

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That the procedural schedule set forth in Paragraph 8 be observed by the parties. It is, further,

{¶ 13} ORDERED, That parties respond to discovery requests served after the issuance of this Entry within seven days, in accordance with Paragraph 9. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ Megan J. Addison

By: Megan J. Addison
Attorney Examiner

JRJ/mef

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/31/2018 7:27:06 AM

in

Case No(s). 11-5201-EL-RDR

Summary: Attorney Examiner Entry setting the procedural schedule. electronically filed by Ms. Mary E Fischer on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio