

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE DETERMINATION
OF THE EXISTENCE OF SIGNIFICANTLY
EXCESSIVE EARNINGS FOR 2017 UNDER
THE ELECTRIC SECURITY PLAN OF OHIO
EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY,
AND THE TOLEDO EDISON COMPANY.

CASE NO. 18-857-EL-UNC

ENTRY ON REHEARING

Entered in the Journal on May 15, 2019

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by the Ohio Consumers' Counsel on April 19, 2019.

II. DISCUSSION

{¶ 2} Ohio Edison Company (OE), 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.

{¶ 3} Pursuant to R.C. 4928.141, electric utilities are required to provide consumers with a standard service offer, consisting of either a market-rate offer or an electric security plan (ESP). Further, R.C. 4928.143(F) requires the Commission to evaluate the earnings of each electric utility's approved ESP to determine whether the plan produces significantly excessive earnings for the electric utility. The Commission issued a Finding and Order in *In re Significantly Excessive Earnings Test*, Case No. 09-786-EL-UNC, Finding and Order (June 30, 2010), which established the policy and significantly excessive earnings test (SEET) filing directives for the electric utilities.

{¶ 4} On May 15, 2018, the Companies filed an application for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10, for 2017. The

Companies also filed the supporting testimony of Jason S. Petrik and Joanne M. Savage as attachments to its application.

{¶ 5} On October 16, 2018, Staff filed the testimony of Joseph P. Buckley and the Ohio Consumers' Counsel (OCC) filed the testimony of Daniel J. Duann, Ph.D.

{¶ 6} A stipulation and recommendation (Stipulation) between FirstEnergy, Ohio Energy Group (OEG), and Staff was filed on October 26, 2018, in addition to supplemental testimony submitted by FirstEnergy's witness Savage.

{¶ 7} OCC filed supplemental testimony of Dr. Duann in response to the Stipulation on November 16, 2018.

{¶ 8} Motions to intervene were filed by OCC, OEG, and Industrial Energy Users-Ohio on June 29, 2018, June 5, 2018, and October 5, 2018, respectively. The attorney examiner granted the motions to intervene by Entry issued October 31, 2018, as well as scheduled a hearing for November 29, 2018.

{¶ 9} At the November 29, 2018 hearing, the Stipulation was introduced and admitted into the record.

{¶ 10} On March 20, 2019, the Commission issued its Opinion and Order in this matter, adopting the Stipulation, as modified, regarding FirstEnergy's 2017 SEET. In the Opinion and Order, the Commission found that it was appropriate to exclude the revenues from the distribution modernization rider (Rider DMR) from the 2017 SEET, consistent with the Commission's orders in FirstEnergy's latest ESP. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO (ESP IV), Fifth Entry on Rehearing (Oct. 12, 2016) at ¶212, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶81.

{¶ 11} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined

therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 12} On April 19, 2019, OCC filed an application for rehearing of the Commission's March 20, 2019 Opinion and Order, asserting that the Commission unreasonably and, under R.C. 4928.143(F), unlawfully failed to consider the Rider DMR revenues under OE's ESP, which caused ESP profits to be understated and denied customers over \$42 million in refunds of significantly excess earnings. OCC strongly objects to the exclusion of the Rider DMR revenues and raises many of the same arguments made in its comments and the *ESP IV* proceeding, while emphasizing that these profits should be included in earnings as a matter of fairness and reasonableness for consumers (OCC Ex. 2 at 7). See *ESP IV*, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶¶181-82, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶¶77-80. Notably, OCC contends that if these revenues are excluded, then the Commission would effectively be segregating out a significant portion of OE's ESP, Rider DMR revenues, and treating them differently from all other revenues created under the ESP, in violation of R.C. 4928.143(F). Accordingly, OCC requests that the Commission grant rehearing and reverse its ruling in order to comply with Ohio law.

{¶ 13} On April 29, 2019, FirstEnergy filed a memorandum contra OCC's application for rehearing, requesting that the Commission affirm its decision to exclude Rider DMR revenues from the SEET. The Companies argue that OCC's arguments were raised, and thoroughly addressed, in *ESP IV* and this proceeding. Opinion and Order at 9; *ESP IV*, Fifth Entry on Rehearing (Oct. 12, 2016) at 85-86, 98, Eighth Entry on Rehearing (Aug. 16, 2017) at 35. As OCC has raised no new arguments for the Commission's consideration, FirstEnergy requests that the Commission deny OCC's application for rehearing.

{¶ 14} This issue was thoroughly addressed in the Opinion and Order, as well as the *ESP IV* proceeding. Opinion and Order at ¶26. In *ESP IV*, we determined that Rider DMR revenues would be excluded from SEET calculations for the approved initial three-year period of the rider. *ESP IV*, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶212, Eighth Entry

on Rehearing (Aug. 16, 2017) at ¶81. OCC has again failed to demonstrate any new rationale for including these revenues in the 2017 SEET. We again stress that concerns regarding the inclusion of Rider DMR revenues for purposes of the SEET beyond the initial three-year period would be more appropriately raised in response to FirstEnergy's application requesting a two-year extension of Rider DMR. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 19-361-EL-RDR, Application (Feb. 1, 2019). As such, we find OCC's application for rehearing should be denied.

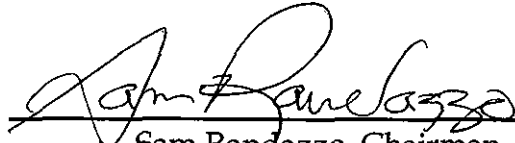
III. ORDER

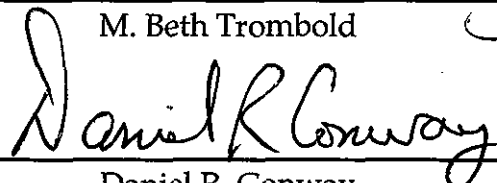
{¶ 15} It is, therefore,

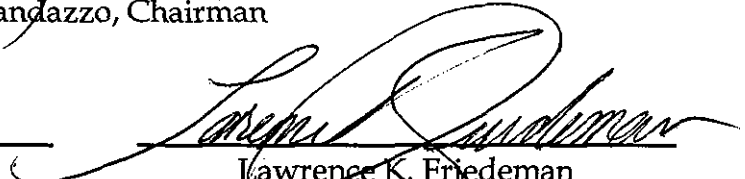
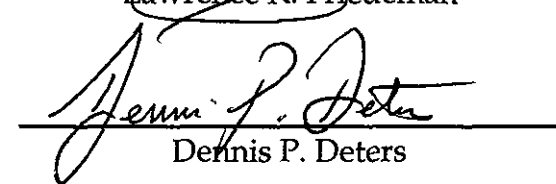
{¶ 16} ORDERED, That OCC's application for rehearing be denied. It is, further,

{¶ 17} ORDERED, That a copy of this Entry on Rehearing be served upon each party of record be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Sam Randazzo, Chairman


M. Beth Trombold

Daniel R. Conway


Lawrence K. Friedeman

Dennis P. Deters

MJA/mef

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MAY 15 2019


Tanowa M. Troupe
Secretary