THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY FOR AUTHORITY TO PROVIDE FOR A STANDARD SERVICE OFFER PURSUANT TO R.C. 4928.143 IN THE FORM OF AN ELECTRIC SECURITY PLAN.	**CASE NO. 14-1297-EL-SSO**

FINDING AND ORDER

Entered into the Journal on September 26, 2019

I. SUMMARY

{¶ 1} The Commission finds that the proposed tariffs for the distribution modernization rider, as revised by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company on September 5, 2019, do not appear to be unjust or unreasonable and should be approved.

II. DISCUSSION

{¶ 2} 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.

{¶ 3} R.C. 4928.141 provides that an electric distribution utility shall provide customers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} On August 4, 2014, FirstEnergy filed an application pursuant to R.C. 4928.141 to provide for an SSO to provide generation pricing for the period of June 1, 2016, through May 31, 2019. The application was for an ESP, in accordance with R.C. 4928.143 (*ESP IV*).

{¶ 5} On March 31, 2016, the Commission issued its Opinion and Order in *ESP IV*, approving FirstEnergy's application and stipulations[1] with several modifications (Order or *ESP IV* Opinion and Order). As part of that *ESP IV* Opinion and Order, we approved a modified version of FirstEnergy's original proposal for a retail rate stability rider (Rider RRS).

{¶ 6} On April 27, 2016, the Federal Energy Regulatory Commission (FERC) issued an order granting a complaint filed by the Electric Power Supply Association, the Retail Energy Supply Association, Dynegy, Inc., Eastern Generation, LLC, NRG Power Marketing LLC, and GenOn Energy Management, LLC, and rescinding a waiver of its affiliate power sales restrictions previously granted to FirstEnergy Solutions Corporation. 155 FERC ¶ 61,101 (2016).

{¶ 7} On October 12, 2016, the Commission issued its Fifth Entry on Rehearing in this proceeding, adopting Staff's alternative proposal to establish FirstEnergy's distribution modernization rider (Rider DMR) and eliminating Rider RRS. Among other things, the Commission explained in its Fifth Entry on Rehearing that Rider DMR was valid under R.C. 4928.143(B)(2)(d) because the revenue generated would serve as an incentive for the Companies to modernize their distribution systems.

{¶ 8} Subsequently, the Commission underwent four more rounds of rehearing, with the final, appealable order being issued on October 11, 2017. Ninth Entry on Rehearing (Oct. 11, 2017).

{¶ 9} Numerous parties appealed the Commission's decision, challenging Rider DMR and other aspects of the Commission's orders, including: Sierra Club; the Ohio

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1 The applications and stipulations will collectively be referred to as "Stipulations" or "Stipulated ESP IV."

Manufacturers' Association Energy Group; the Ohio Consumers' Counsel; the Northeast Ohio Public Energy Council; the Northwest Ohio Aggregation Coalition and its individual member communities; and jointly by the Ohio Environmental Council, the Environmental Defense Fund, and the Environmental Law and Policy Center.

{¶ 10} On June 19, 2019, the Supreme Court of Ohio issued its decision in those cases, affirming the Commission's order in part, reversing it in part as it relates to Rider DMR, and remanding with instructions to remove Rider DMR from FirstEnergy's ESP. Specifically, the Court held that Rider DMR does not qualify as an incentive under R.C. 4928.143(B)(2)(h) and the conditions placed on the recovery of Rider DMR revenues were not sufficient to protect ratepayers. *In re Application of Ohio Edison Co.*, Slip Opinion No. 2019-Ohio-2401 at ¶¶ 14-29.

{¶ 11} On July 1, 2019, FirstEnergy filed a motion for reconsideration of the Court's June 19, 2019 decision. On that same day, FirstEnergy filed revised tariffs in Case No. 18-1649-EL-RDR, providing that Rider DMR would be collected subject to refund on a services rendered basis.

{¶ 12} By Entry issued July 2, 2019, the Commission approved the revised tariffs.

{¶ 13} On August 20, 2019, the Court denied FirstEnergy's motion for reconsideration and issued its mandate directing the Commission to amend FirstEnergy's tariffs to remove Rider DMR from the Companies' ESP. See *8/20/2019 Case Announcements*, 2019-Ohio-3331.

{¶ 14} On August 22, 2019, pursuant to the Supreme Court of Ohio's June 19, 2019 decision, denial of FirstEnergy's motion for reconsideration, and resulting mandate, the Commission directed the Companies to immediately file proposed revised tariffs setting Rider DMR to $0.00. The Commission also instructed the Companies to issue a refund to customers for any monies collected through Rider DMR for services rendered after July 2, 2019. After calculating the correct amount of refund to be allocated to their customers, the

Companies were directed to file revised tariffs by September 5, 2019, in order to credit back the full amount of the refund to their customers in the following billing cycle. Order on Remand at ¶¶ 14-16.

{¶ 15} On September 5, 2019, the Companies filed proposed compliance tariffs for Rider DMR, which, according to the Companies, include a credit to refund customers the full amount of revenues FirstEnergy collected through Rider DMR for services rendered after July 2, 2019.

{¶ 16} On September 12, 2019, Staff filed its review and recommendations of the proposed compliance tariffs, ultimately recommending that the Commission approve them to become effective for services rendered beginning October 1, 2019, and remain in effect through October 31, 2019.

{¶ 17} The Commission has reviewed the Companies' proposed compliance tariffs for Rider DMR and Staff's review and recommendations. The Commission finds that, in accordance with Staff's recommendations, the Companies' proposed compliance tariffs are consistent with the Commission's Order on Remand, do not appear to be unjust or unreasonable, and should be approved and become effective for services rendered beginning no earlier than October 1, 2019.

III. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That FirstEnergy's proposed compliance tariffs for Rider DMR, filed on September 5, 2019, be approved and become effective no earlier than October 1, 2019. It is, further,

{¶ 20} ORDERED, That the Companies are authorized to file, in final form, completed copies of their approved tariffs in each company's respective TRF docket, Case No. 18-1649-EL-RDR, as well as in this case docket. It is, further,

{¶ 21} ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date of this Finding and Order, and the date upon which the final tariffs are filed with the Commission. It is, further,

{¶ 22} ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 23} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

COMMISSIONERS:
Approving:
M. Beth Trombold
Daniel R. Conway
Dennis P. Deters
Recusal:
Sam Randazzo, Chairman
Lawrence K. Friedeman

MJA/mef