

# 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 AN  
EXTENSION OF THE DISTRIBUTION  
MODERNIZATION RIDER.

CASE NO. 19-361-EL-RDR

## ENTRY

Entered in the Journal on November 21, 2019

### I. SUMMARY

{¶ 1} The Commission denies the application as moot and dismisses this case in response to the Supreme Court of Ohio's decision and resulting mandate in *In re Application of Ohio Edison Co.*, Slip Opinion No. 2019-Ohio-2401.

### II. DISCUSSION

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (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 consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric service to customers, including a firm supply of electric generation service. 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. *In re Ohio*

*Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, Case No. 14-1297-EL-SSO (ESP IV Case), Application, Aug. 4, 2014).*

{¶ 5} On March 31, 2016, the Commission issued its Opinion and Order in the *ESP IV Case*, approving FirstEnergy's application and stipulations with several modifications (Order). As part of that 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 the *ESP IV Case*, 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. Additionally, the Commission adopted Staff's recommendation that Rider DMR be limited to three years with a possible extension of two years. *ESP IV Case*, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶ 210. The deadline for FirstEnergy to file an application for an extension of Rider DMR was later adjusted and set for February 1, 2019. *ESP IV Case*, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶ 113.

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

{¶ 9} On February 1, 2019, FirstEnergy filed an application in the above-captioned proceeding to extend Rider DMR for an additional two years.

{¶ 10} Numerous parties appealed the Commission's decision in the *ESP IV Case*, challenging Rider DMR and other aspects of the Commission's orders, including: Sierra Club; the Ohio Manufacturers' Association Energy Group (OMAEG); the Ohio Consumers' Counsel (OCC); the Northeast Ohio Public Energy Council (NOPEC); the Northwest Ohio Aggregation Coalition and its individual member communities (NOAC); and jointly by the Ohio Environmental Council, the Environmental Defense Fund, and the Environmental Law and Policy Center.

{¶ 11} 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. (Ohio Edison)*, Slip Opinion No. 2019-Ohio-2401 at ¶¶ 14-29.

{¶ 12} On July 1, 2019, FirstEnergy filed a motion for reconsideration of the Court's June 19, 2019 decision.

{¶ 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 30, 2019, OCC, OMAEG, NOPEC, and NOAC filed a joint motion requesting that the Commission deny FirstEnergy's pending request to continue Rider DMR for an additional two years.

{¶ 15} On August 22, 2019, pursuant to the *Ohio Edison* decision, the Commission directed the Companies to immediately file proposed revised tariffs setting Rider DMR to \$0.00. The Companies were further directed to issue a refund to customers for monies collected through Rider DMR for services rendered after July 2, 2019, subject to Commission review. Once the refund had been appropriately issued, the Companies were instructed to file proposed, revised tariffs removing Rider DMR from the Companies' ESP. *ESP IV Case*, Order on Remand (Aug. 22, 2019) at ¶¶ 14-16.

{¶ 16} The Companies complied with the Commission's directives as instructed in the Order on Remand and filed tariffs removing Rider DMR from their ESP on October 18, 2019. Therefore, the Commission finds that the pending application in this proceeding to extend Rider DMR for an additional two years should be denied as moot and this case should be dismissed and closed of record.

{¶ 17} Further, the Commission notes that Rider DMR was adopted in the Fifth Entry on Rehearing in the *ESP IV Case* as part of a package of provisions related to the Companies' distribution service. The other elements of the package included the extension of the Companies' delivery capital recovery rider and a directive to file a distribution rate case at the end of the ESP. *ESP IV Case*, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶¶ 189, 249-251, 327, 343, 346, 358-359, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶ 89, 91, 94. In light of the changed circumstances, with termination of revenues recovered through Rider DMR, as well as the elimination of any possibility for an extension of Rider DMR, we find that it is no longer necessary or appropriate for the Companies to be required to file a new distribution rate case at the conclusion of the Companies' current ESP. Nonetheless, the Companies' commitment to freeze distribution rates will remain in place as this commitment preceded the adoption of Rider DMR. *ESP IV Case*, Opinion and Order at 92-93, 119, Fifth Entry on Rehearing at ¶¶ 88.

**III. ORDER**

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That the Companies' application be denied as moot and this case be dismissed and closed of record. It is, further,

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

COMMISSIONERS:

*Approving:*

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

MJA/mef

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Summary: Entry Entry that the Commission denies the application as moot and dismisses this case in response to the Supreme Court of Ohio's decision and resulting mandate in In re Application of Ohio Edison Co., Slip Opinion No. 2019-Ohio-2401. electronically filed by Docketing Staff on behalf of Docketing