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 APPROVAL OF A DECOUPLING MECHANISM.	**CASE NO. 19-2080-EL-ATA** **CASE NO. 19-2081-EL-AAM**

SECOND FINDING AND ORDER

Entered in the Journal on June 17, 2020

I. SUMMARY

{¶ 1} The Commission grants the motion filed by Ohio Consumers' Counsel and directs Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company to file new final revised tariffs, consistent with this Second Finding and Order.

II. DISCUSSION

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (the Companies or FirstEnergy) are electric distribution utilities (EDUs) 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 EDU 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 a 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 March 31, 2016, the Commission approved FirstEnergy's application for its fourth ESP. *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. for Authority to Provide for a Std. Serv. Offer Pursuant to R.C. 4928.143, in the Form of an Elec. Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016).

{¶ 5} Am. Sub H. B. 6 (H.B. 6), which became effective on October 22, 2019, authorizes EDUs to file an application to implement a decoupling mechanism. Under this decoupling mechanism, "the base distribution rates for residential and commercial customers shall be decoupled to the base distribution revenue and revenue resulting from implementation of section 4928.66 of the Revised Code, excluding program costs and shared savings, and recovered pursuant to an approved electric security plan under section 4928.143 of the Revised Code, as of the twelve month period ending on December 31, 2018." R.C. 4928.471(A).

{¶ 6} On November 21, 2019, the Companies filed an application in this proceeding to implement a decoupling mechanism pursuant to R.C. 4928.471.

{¶ 7} R.C. 4928.471(B) states that the Commission shall issue an order approving an application for a decoupling mechanism not later than 60 days after the application is filed. The statute further states that, in determining that an application is not unjust and unreasonable, the Commission shall verify that the rate schedule or schedules are designed to recover the electric distribution utility's 2018 annual revenues as described in R.C. 4928.471(A) and that the decoupling rate design is aligned with the rate design of the electric distribution utility's existing base distribution rates.

{¶ 8} By Entry issued December 3, 2019, the attorney examiner established a period to solicit comments regarding the pending application, with initial and reply comments being due by December 17, 2019, and December 27, 2019, respectively.

{¶ 9} Comments were timely filed by The Ohio Hospital Association (OHA), the Ohio Consumers' Counsel (OCC), the Ohio Manufacturers' Association Energy Group (OMAEG), Northeast Ohio Public Energy Council (NOPEC), and the Companies.

{¶ 10} Staff filed its review and recommendations on January 8, 2020.

{¶ 11} On January 15, 2020, the Commission issued the first Finding and Order in this case, approving the application filed by the Companies. In addition, the Commission directed the Companies to "file revised tariffs which specify that the funds collected through Rider CSR should be subject to refund, based on the results of any future audit ordered by the Commission and conducted by Staff or a third-party consultant of the Companies' Rider CSR and/or Rider DSE." Finding and Order at ¶ 30.

{¶ 12} On January 31, 2020, FirstEnergy filed revised final tariffs in response to the Finding and Order.

{¶ 13} On February 6, 2020, OCC filed a motion to modify the filed compliance tariffs. OCC contends that FirstEnergy did not comply with the Finding and Order. Instead, OCC alleges that the revised final tariffs filed by the Companies limit any refunds to customers to instances where an audit demonstrates that there was a double recovery of costs. OCC argues that nothing in the Finding and Order limits refunds to customers to the issue of double recovery. OCC posits that an audit could uncover any number of issues that might require a refund, including error, omissions and miscalculations in the annual update filings.

{¶ 14} The Companies filed a memorandum contra OCC's motion on February 21, 2020. In the memorandum contra, the Companies contend that the revised tariffs include the reconciliation provision required by the Commission. The Companies interpret the Finding and Order as limiting reconciliation to instances where a future audit demonstrates double recovery and nothing more. Further, the Companies dispute OCC's request for a "refund" provision to be included in the revised tariffs. The Companies argue that the reconciliation provision required by R.C. 4928.471 is already included in Rider CSR and will rectify any errors, omissions, or miscalculations resulting in under- or over-charges.

{¶ 15} OCC filed a reply to the memorandum contra on February 26, 2020. In its reply, OCC alleges that the Companies intend to limit the scope of any audits to whether

the charges to customers resulted in a double recovery. OCC argues that the Finding and Order did not say that customers will only be entitled to a refund if the charges under Rider CSR would result in a double recovery for the utility. Further, OCC claims that FirstEnergy conceded that customers should receive refunds in precisely the manner that OCC recommends, so there is no reason for the Companies to oppose OCC's proposed language.

III. COMMISSION CONCLUSION

{¶ 16} The Commission finds that OCC's motion requesting that the Commission direct the Companies to modify the revised tariffs should be granted. The new language included in the revised final tariffs filed by the Companies is inconsistent with language previously approved by the Commission. In the Finding and Order, the Commission intended for the Companies to file revised tariffs which contained tariff language consistent with tariff language generally included in the Companies' tariffs, with the exception that refunds may be ordered as a result of audits of either Rider CSR or Rider DSE. FirstEnergy has included appropriate, compliant language, approved by the Commission, in numerous riders. *See In re the Review of the Alternative Energy Resource Rider Contained in the Tariffs of Rider of Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.*, Case Nos. 17-2275-EL-RDR, et al., Finding and Order (Mar. 28, 2018) (approving tariff language in the Alternative Energy Resource Rider, Advanced Metering Infrastructure/Modern Grid Rider, PIPP Uncollectible Rider, Distribution Uncollectible Rider, Non-Distribution Uncollectible Rider, Economic Development Rider, Generation Cost Reconciliation Rider and Non-Market-Based Services Rider). It was our intent that the Companies simply include similar language in the revised final tariffs submitted in this proceeding, except that such language should specifically reference both Rider CSR and Rider DSE.

{¶ 17} Moreover, the language added to the final revised tariffs is too narrow and, thus, does not fully comply with the Commission's directive in the Finding and Order. We agree with FirstEnergy that the need to prevent double recoveries between Rider CSR and Rider DSE was *one reason* the Commission directed the Companies to file revised tariffs. We

also agree that the Commission sought to reassure intervenors, who had strenuously objected to Rider CSR and claimed that there was insufficient information in the Companies' application to ensure against double recoveries between Rider CSR and Rider DSE, that both riders would be thoroughly audited to ensure that there are no double recoveries between the two riders. However, the prevention of double recoveries was *not the only reason* why the Commission directed the Companies to file revised final tariffs.

{¶ 18} The Commission cannot know, and we will not speculate, what may result from audits of either Rider DSE or Rider CSR, but the Commission must be prepared for any outcome. It was the Commission's intent that Rider CSR include language that ensures that any funds owed to ratepayers as a result of a future final order of the Commission, based on any pending or future audit of Rider DSE or Rider CSR be returned to ratepayers. We will clarify that these audits specifically include, but are not limited to, the audits of Rider DSE conducted in: Case Nos. 13-2173-EL-RDR, 14-1947-EL-RDR, 15-1843-EL-RDR, 16-2167-EL-RDR and 17-2277-EL-RDR, which are currently pending before the Commission.[1]

{¶ 19} We also agree with FirstEnergy that the revised final tariffs contain language which provides for the routine corrections of any errors, omissions, or miscalculations resulting in under- or over-charges. In fact, the original tariffs provided for the routine corrections of any errors, omissions, or miscalculations resulting in under- or over-charges. If that had been the Commission's only concern, we would not have directed the Companies to file revised final tariffs in the Finding and Order. However, the language in the revised final tariffs did not include the term "refund." As stated above, the Commission must prepare for any outcome resulting from audits of either Rider DSE or Rider CSR, and the Supreme Court of Ohio has established that tariffs must include language providing for refunds to customers if refunds are to be ordered by the Commission; thus, the Finding and

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[1] These cases were consolidated by the attorney examiner on January 29, 2020, and a procedural schedule was established. *In re the 2014 Review of the Demand Side Management and Energy Efficiency Rider of Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.,* Case Nos. 13-2173-EL-RDR et al., Entry (Jan. 29, 2020).

Order specifically directed the Companies to include language in the revised final tariffs that Rider CSR be subject to refund. The term "refund" was not included in the revised final tariffs even though, as discussed above, the Companies generally have included language in tariffs making the tariffs subject to refund.

{¶ 20} Therefore, the Commission finds that the Companies should be directed to file new revised final tariffs, within 15 days, which include appropriate, compliant language consistent with tariff language previously approved by the Commission and this Second Finding and Order. Specifically, the new revised final tariffs should include the following language, without substantial editing:

> This Rider is subject to reconciliation including, but not limited to, increases or refunds. Such reconciliation shall be based solely upon the results of audits ordered by the Commission of Rider CSR or Rider DSE.

{¶ 21} Further, we find that the new revised final tariffs should be effective upon filing, subject to further review by the Commission.

IV. ORDER

{¶ 22} It is, therefore,

{¶ 23} ORDERED, That the motions to modify compliance tariffs filed by OCC be granted. It is, further,

{¶ 24} ORDERED, That the Companies file revised file tariffs consistent with this Second Finding and Order. It is, further,

{¶ 25} ORDERED, That the Companies be authorized to file revised tariffs, in final form, consistent with this Second Finding and Order, subject to further review by the Commission. The Companies shall file one copy in this case docket and one copy in their respective TRF dockets. It is, further,

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

{¶ 27} ORDERED, That nothing in this Second 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,

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

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

GAP/hac

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Case No(s). 19-2080-EL-ATA, 19-2081-EL-AAM

Summary: Finding & Order granting the motion filed by Ohio Consumers' Counsel and directs Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company to file new final revised tariffs, consistent with this Second Finding and Order. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio