

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE FILING BY OHIO
EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY AND
THE TOLEDO EDISON COMPANY OF A
GRID MODERNIZATION BUSINESS PLAN.

CASE NO. 16-481-EL-UNC

IN THE MATTER OF THE FILING BY OHIO
EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY AND
THE TOLEDO EDISON COMPANY OF AN
APPLICATION FOR APPROVAL OF A
DISTRIBUTION PLATFORM
MODERNIZATION PLAN

CASE NO. 17-2436-EL-UNC

IN THE MATTER OF THE APPLICATION OF
OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON
COMPANY TO IMPLEMENT MATTERS
RELATING TO THE TAX CUTS AND JOBS
ACT OF 2017.

CASE NO. 18-1604-EL-UNC

IN THE MATTER OF THE APPLICATION OF
OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON
COMPANY FOR APPROVAL OF A TARIFF
CHANGE.

CASE NO. 18-1656-EL-ATA

SECOND ENTRY ON REHEARING

Entered in the Journal on January 10, 2024

I. SUMMARY

{¶ 1} In this Entry on Rehearing, the Commission finds that the application for rehearing filed in this proceeding should be granted for further consideration of the matters specified in the application for rehearing.

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 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 March 31, 2016, in Case No. 14-1297-EL-SSO, the Commission approved FirstEnergy's application for its fourth ESP (ESP IV). *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and the Toledo Edison Co. for Authority to Provide for a Std. Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan*, Case No. 14-1297-EL-SSO (ESP IV Case), Opinion and Order (Mar. 31, 2016). Moreover, on October 12, 2016, the Commission issued the Fifth Entry on Rehearing in the ESP IV Case, further modifying ESP IV.

{¶ 5} Among other terms, ESP IV required the Companies to undertake grid modernization initiatives that promote customer choice in Ohio and to file a grid modernization business plan. *ESP IV Case*, Opinion and Order (Mar. 31, 2016) at 22, 95-96. Accordingly, on February 29, 2016, the Companies filed a grid modernization plan with the Commission in Case No. 16-481-EL-UNC. Thereafter, on December 4, 2017, the Companies filed an application for approval of a distribution platform modernization plan in Case No.

17-2436-EL-UNC as a complement to the Commission's then-ongoing grid modernization initiative (Co. Ex. 1 at 3; Co. Ex. 2 at 5).¹

{¶ 6} On January 10, 2018, the Commission opened an investigation into the financial impacts of the Tax Cuts and Jobs Act of 2017 (TCJA) on regulated utilities in this state. *See In re the Commission's Investigation of the Financial Impact of the TCJA on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI (TCJA Case), Entry (Jan. 10, 2018). On October 24, 2018, following an extensive comment period and hearing, the Commission directed public utilities to file applications not for an increase in rates, pursuant to R.C. 4909.18, by January 1, 2019, in order to return to consumers the tax impacts resulting from the TCJA. *TCJA Case*, Finding and Order (Oct. 24, 2018). On October 30, 2018, the Companies filed an application to establish a process to resolve TCJA-related issues in Case No. 18-1604-EL-UNC.

{¶ 7} On November 9, 2018, a stipulation and recommendation (Co. Ex. 1) was filed, recommending a resolution for the above-captioned cases. The Companies indicated the resolution included components of the applications in both Case No. 16-481-EL-UNC and Case No. 17-2346-EL-UNC and represented the first phase of its grid modernization initiative (Grid Mod I). On January 25, 2019, a supplemental stipulation and recommendation (Co. Ex. 3) was filed, which modified the original stipulation (collectively referred to as the Stipulation). The supplemental stipulation included all of the original signatory parties as well as the Office of the Ohio Consumers' Counsel (OCC), The Northeast Ohio Public Energy Council (NOPEC), and Ohio Partners for Affordable Energy. The supplemental stipulation noted that OCC and NOPEC agreed to all terms and conditions of the supplemental stipulation except the terms and conditions related to grid modernization, but OCC and NOPEC agreed not to oppose the terms and conditions related

¹ All references to exhibits are to the record of the evidentiary hearing held in this proceeding on February 5-6, 2019.

to grid modernization. An evidentiary hearing regarding the Stipulation commenced on February 5, 2019, and concluded on February 6, 2019.

{¶ 8} The Commission issued an Opinion and Order on July 17, 2019, approving the Stipulation, subject to the Commission's adjustments to the calculation of the total estimated net benefits proposed for Grid Mod I. *Grid Mod I Case, et al.*, Opinion and Order (July 17, 2019) at ¶¶ 115-116.

{¶ 9} On August 16, 2019, the Environmental Law and Policy Center (ELPC), Ohio Environmental Council and Natural Resources Defense Council filed an application for rehearing. The Commission denied rehearing on September 11, 2023.

{¶ 10} Subsequently, ELPC filed a motion to vacate and conduct new proceedings. In its motion, ELPC noted the resignation of the former chairman, among other events, and ELPC argued that the Commission should ascertain the former chairman's involvement in this proceeding and determine the appropriate course of action to ensure that FirstEnergy did not benefit from undue influence or bias.

{¶ 11} On December 30, 2020, the Commission issued an Entry denying ELPC's motion to vacate. The Commission noted that the Supreme Court of Ohio has held that vacation and reconsideration is an inappropriate remedy where the party complaining has not been prejudiced by the improper conduct and the record supported the Commission's decision. *Cincinnati v. Pub. Util. Comm.*, 64 Ohio St.3d 279, 281-282, 595 N.E.2d 858 (1992); *Ohio Transp. v. Pub. Util. Comm'n*, 164 Ohio St. 98, 128 N.E.2d 22 (1955). In the Entry, the Commission determined that ELPC had failed to demonstrate any prejudice from the Commission's decision in the Opinion and Order or the Entry on Rehearing in this case. Entry (Dec. 30, 2020) at ¶ 24. Further, the Commission reviewed the decisions in the Opinion and Order and Entry on Rehearing, as well as the evidentiary record in the proceeding and the Commission determined that ample evidence supported the Commission's decision. *Id.* at ¶ 25. Neither ELPC nor any other party filed an application for rehearing challenging the denial of the motion to vacate.

{¶ 12} In the Opinion and Order approving the Stipulation, the Commission directed Staff, or its consultant, to conduct an operational benefits assessment and review prior to the next projected phase of the Companies' grid modernization investments to evaluate whether the actual functionality and performance of the project is consistent with the planned specifications. Opinion and Order (July 17, 2019) at ¶¶ 44-45, 71. Subsequently, on April 20, 2022, the Commission selected Daymark Energy Advisors, Inc. (Daymark) to conduct the operational benefits assessment to evaluate whether the actual functionality and performance of Grid Mod I are consistent with planned specifications as approved in the Stipulation. Daymark filed the required audit report on November 14, 2022 (Audit Report).

{¶ 13} Initial comments regarding the Audit Report were timely filed by Ohio Energy Leadership Council (OELC), the Companies, Northwest Aggregation Coalition (NOAC), OCC, The Retail Energy Supply Association (RESA), and jointly by The Ohio Manufacturers' Association Energy Group (OMAEG) and The Kroger Co. (Kroger). Reply comments were timely filed by RESA, OELC, FirstEnergy, NOAC, OCC, and jointly by OMAEG and Kroger.

{¶ 14} Meanwhile, the Companies filed an application for approval of the second phase of the Companies' grid modernization initiative, and supporting testimony, on July 15, 2022. The hearing for that proceeding is scheduled to commence on April 16, 2024. *In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, Case No. 22-704-EL-UNC, Entry (Jan. 4, 2024) at ¶ 17.

{¶ 15} On November 16, 2023, the Commission issued the Finding and Order adopting the recommendations proposed by Daymark and directing that the recommendations be implemented in Grid Mod II. Finding and Order at ¶ 1.

{¶ 16} R.C. 4903.10 states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.

{¶ 17} On December 18, 2023, OCC filed an application for rehearing regarding the November 16, 2023 Finding and Order.

{¶ 18} The Commission finds that the application for rehearing filed by OCC should be granted. We believe that sufficient reason has been set forth by the parties to warrant further consideration of the matters specified in the application for rehearing.

III. ORDER

{¶ 19} It is, therefore,

{¶ 20} ORDERED, That the application for rehearing filed by OCC in this proceeding be granted for further consideration of the matters specified in the application for rehearing. It is, further,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters
John D. Williams

GAP/dmh

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**Case No(s). 16-0481-EL-UNC, 17-2436-EL-UNC, 18-1604-EL-UNC, 18-1656-EL-
ATA**

Summary: Entry on Rehearing finding that the application for rehearing filed in this proceeding should be granted for further consideration of the matters specified in the application for rehearing. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio.