

## 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

### SECOND ENTRY ON REHEARING

Entered in the Journal on June 29, 2016

#### I. SUMMARY

{¶ 1} In this Second Entry on Rehearing, the Commission grants rehearing for further consideration of the matters specified in the applications for rehearing filed by Ohio Consumers' Counsel and the Northwest Ohio Aggregation Coalition, and the Retail Energy Supply Association.

#### 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 is 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 this proceeding, approving FirstEnergy's application and the stipulations filed in this proceeding with several modifications (Opinion and Order).

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

{¶ 7} On April 29, 2016, FirstEnergy filed a motion for an extension of time to file its tariffs in this proceeding in order to fully consider the FERC Order and its impact on the Companies' tariffs to be filed pursuant to the Opinion and Order.

{¶ 8} By Entry issued April 29, 2016, the attorney examiner granted the Companies' request, noting the new filing deadline would be established by subsequent entry. On May 10, 2016, the attorney examiner directed the Companies to file their proposed tariffs, consistent with the Opinion and Order, by May 13, 2016, and noted such tariffs would be effective June 1, 2016, subject to Commission review and final approval.

{¶ 9} On May 13, 2016, FirstEnergy filed proposed tariffs in Case Nos. 14-1297-EL-SSO and 16-541-EL-RDR, pursuant to the Opinion and Order.

{¶ 10} Staff filed its review and recommendations regarding the Companies' proposed tariff filing on May 20, 2016, concluding that it was consistent with the Opinion and Order.

{¶ 11} By Finding and Order issued May 25, 2016, the Commission found that, in accordance with Staff's review and recommendations, the Companies' proposed tariff filing was consistent with the Opinion and Order, did not appear to be unjust and unreasonable, and, therefore, was approved for rates effective June 1, 2016.

{¶ 12} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 13} On May 31, 2016, Ohio Consumers' Counsel and Northwest Ohio Aggregation Coalition (collectively, OCC/NOAC) filed an application for rehearing regarding the Commission's May 25, 2016 Finding and Order, asserting three assignments of error for the Commission's consideration. In its application for rehearing, OCC/NOAC argues that the Commission unreasonably found the tariff rates filed by FirstEnergy to be consistent with its Opinion and Order, as the tariffs failed to implement Rider RRS as approved by the Commission. OCC/NOAC states that FirstEnergy was obligated to withdraw its pending application in this case and file a new application, due to the fact that the Companies effectively rejected the Commission's modifications to the proposed ESP by including the Modified RRS Proposal in its application for rehearing. As the projected hedge resulting from Rider RRS was premised upon FirstEnergy executing a PPA agreement with an affiliate, OCC/NOAC argues FirstEnergy has fundamentally changed the operation of Rider RRS and that, by approving the tariffs filed pursuant to the Opinion and Order, the Commission erred in finding such tariffs to be consistent with the Opinion and Order. Moreover, OCC/NOAC contends that Rider RRS provided many of the alleged benefits

of the ESP, and without it, the ESP can no longer be approved as a package. Additionally, OCC/NOAC contends the Commission erred by unlawfully approving the tariff rates for the ESP, as Rider RRS does not satisfy the requirements of R.C. 4928.143(B)(2)(d), and therefore, the Commission lacked authority to approve it. Finally, OCC/NOAC argues that the Commission erred in approving tariff rates to implement an ESP, noting that FirstEnergy's tariff filing disregards certain modifications the Commission approved in the Opinion and Order. According to OCC/NOAC, the tariff filing was inconsistent with the actual ESP authorized by the Commission, and failed to follow the process set forth in R.C. 4928.141(B).

{¶ 14} On June 9, 2016, Industrial Energy Users-Ohio (IEU-Ohio) filed a memoranda contra OCC/NOAC's application for rehearing. IEU-Ohio argues that OCC/NOAC's arguments are without merit, as the tariff filing was consistent with the Opinion and Order and that OCC/NOAC requests an inappropriate remedy as its application for rehearing is merely limited to the approval of compliance tariffs. Additionally, IEU-Ohio contends that no party will suffer any harm from the May 15, 2016 Finding and Order, emphasizing that the rates are currently set at zero; however, IEU-Ohio notes that customers who have engaged to enter into new contracts for service with FirstEnergy or competitive retail electric service (CRES) providers in reliance on the Opinion and Order will suffer "irreparable hardship." Accordingly, IEU-Ohio requests the Commission deny the application for rehearing.

{¶ 15} Thereafter, on June 10, 2016, Ohio Energy Group (OEG) and FirstEnergy filed memoranda contra OCC/NOAC's application for rehearing. OEG states that OCC/NOAC's argument has already been considered and rejected in this proceeding, noting that Staff and the Commission have already conclusively found that the Companies' tariff filing was consistent with the Opinion and Order. FirstEnergy agrees that OCC/NOAC's allegations are without merit and that this Commission has already held "the Companies have an approved ESP, subject to rehearing, irrespective of

FERC's action rescinding the waiver of FirstEnergy Solution's affiliate power sales restrictions." May 25, 2016 Finding and Order at 4. FirstEnergy contrarily argues that the Companies were under no obligation to enter into the PPA proposed under the ESP. Opinion and Order at 87. Additionally, the Companies argue that the prohibitions on recovery associated with capacity performance penalties and plant outage costs through Rider RRS would not change the tariff sheets as filed on May 13, 2016. For all of these reasons, FirstEnergy requests that the Commission deny OCC/NOAC's application for rehearing.

{¶ 16} Additionally, on June 24, 2016, RESA filed an application for rehearing, in which it asserted that the May 25, 2016 Finding and Order was unjust and unreasonable. Specifically, RESA contends that the Commission erred in adopting the Companies Rider ELR tariff as the tariff contains a limitation requiring shopping customers to use consolidated billing, which is inconsistent with the Opinion and Order and unduly discriminates against customers utilizing dual billing.

{¶ 17} Upon consideration of the arguments raised in the applications for rehearing and memoranda contra OCC/NOAC's application for rehearing, the Commission believes that sufficient reason has been set forth by the parties to warrant further consideration of the matters specified in the applications for rehearing. Accordingly, we find that the applications for rehearing filed by OCC/NOAC and RESA should be granted.

### III. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That the applications for rehearing filed by OCC/NOAC and RESA be granted for further consideration of the matters specified in the application for rehearing. It is, further,

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

**Commissioners Voting: Asim Z. Haque, Chairman; Lynn Slaby; M. Beth Trombold;  
Thomas W. Johnson**

MJA/sc