

## 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

IN THE MATTER OF THE TARIFF FILINGS FOR  
THE DISTRIBUTION MODERNIZATION RIDER  
OF OHIO EDISON COMPANY, THE  
CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, AND THE TOLEDO EDISON  
COMPANY.

CASE NO. 16-2003-EL-RDR

IN THE MATTER OF THE REVISED  
TARIFF FILINGS FOR THE ECONOMIC  
DEVELOPMENT RIDER OF OHIO EDISON  
COMPANY, THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY, AND THE  
TOLEDO EDISON COMPANY.

CASE NO. 16-2143-EL-RDR

### FINDING AND ORDER

Entered in the Journal on December 21, 2016

#### I. SUMMARY

{¶ 1} The Commission finds that the compliance tariffs sheets, as proposed by FirstEnergy, are consistent with the Fifth Entry on Rehearing in this proceeding and directs that such tariff sheets become effective no earlier than January 1, 2017.

#### 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 (*FirstEnergy ESP IV*).

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

{¶ 6} On October 12, 2016, the Commission issued its Fifth Entry on Rehearing in this proceeding (Fifth Entry on Rehearing), rejecting the Companies' proposal to modify Rider RRS and adopting Staff's alternative proposal to establish a distribution modernization rider (Rider DMR). The Commission also elected to make additional modifications to the stipulations, as approved in the Opinion and Order.

{¶ 7} On November 3, 2016, FirstEnergy filed compliance tariffs as required by the Commission's Fifth Entry on Rehearing. The proposed compliance tariffs include the elimination of Rider RRS (Sheet No. 127) and Rider RCE (Sheet No. 131). Additionally, the compliance tariffs include the new Rider DMR (Sheet No. 132), as filed in Case No. 16-2003-EL-RDR, and modified Economic Development Rider (Rider EDR) (Sheet No. 116), as filed in Case No. 16-2143-EL-RDR. FirstEnergy also included updated tariff sheets for the

modified Table of Contents (Sheet No. 1) and Tariff Summary Rider (Sheet No. 80) to reflect all of the above changes.

{¶ 8} Thereafter, on December 6, 2016, Staff filed its review and recommendations regarding FirstEnergy's proposed compliance tariffs. Upon its review, Staff believes the proposed compliance tariffs appropriately reflect the Commission's orders in *FirstEnergy ESP IV*. Therefore, Staff recommends that the tariff sheets for Rider RRS and Rider RCE be removed from FirstEnergy's tariff books. Additionally, Staff recommends that the new Rider DMR and modified Rider EDR tariff sheets, as well as the Table of Contents and Summary Rider, be approved and become effective on a service rendered basis beginning January 1, 2017.

{¶ 9} On December 8, 2016, The Ohio Consumers' Counsel (OCC) and Ohio Manufacturers' Association Energy Group (OMAEG) filed a joint motion to reject FirstEnergy's Rider DMR tariff sheets, stating that they failed to comply with the Commission's orders in that the Companies have not shown that they have made "sufficient progress in the implementation and deployment of grid modernization." In support of their joint motion, OCC and OMAEG argue that FirstEnergy has shown no progress, let alone "sufficient progress," in the implementation and deployment of grid modernization programs and that it would be nearly impossible for the Companies to demonstrate sufficient progress between now and the proposed effective date of Rider DMR.

{¶ 10} In the alternative, OCC and OMAEG request the Commission to issue a stay of FirstEnergy's collection through Rider DMR or designate such collection subject to refund, with either option pending the outcome of any appeals to the Ohio Supreme Court.

{¶ 11} On December 15, 2016, FirstEnergy filed a memorandum contra OCC and OMAEG's joint motion, arguing that the condition that the Companies' demonstrate sufficient progress in its grid modernization and deployment was one for the continued recovery of Rider DMR funds. Moreover, FirstEnergy claims that agreeing with OCC and OMAEG's interpretation of the Fifth Entry on Rehearing would defeat the entire purpose of

the rider, adding that Rider DMR was intended to provide credit support to the Companies in order to enable them to fund grid modernization.

{¶ 12} As to OCC and OMAEG's request that the Commission stay the collection of Rider DMR pending the outcome of any appeals associated with the charge, the Companies first contend that this is a procedurally improper request that must be denied. FirstEnergy explains that, pursuant to Commission precedent, it is improper for parties to seek a stay prior to the Commission issuing an opinion and order deciding the contested issues. *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al., Opinion and Order (Mar. 31, 2016) at 20. FirstEnergy notes that the Commission recently issued its Sixth Entry on Rehearing, granting applications for rehearing filed by the Companies and several intervenors for further consideration, and that no pending appeal may be filed until the Commission issues a substantive decision on those applications. As a second matter, FirstEnergy argues that, even if the four-factor test utilized by the Commission when determining whether a stay is appropriate, OCC and OMAEG have failed to satisfy all four factors. Thus, FirstEnergy alleges that OCC and OMAEG's request for a stay is procedurally and substantively deficient and should be denied.

{¶ 13} As a final matter, FirstEnergy argues that OCC and OMAEG's alternative request that Rider DMR be made subject to refund is also improper, as the Commission explicitly stated in its decision that "[m]aking Rider DMR subject to refund would be counterproductive and impose additional risks on the Companies." Fifth Entry on Rehearing at 97. Thus, the Companies assert this request should also be denied.

{¶ 14} The Commission is not convinced by the arguments set forth in OCC and OMAEG's joint motion and memorandum in support and agrees with FirstEnergy that their requests should be denied. To grant such requests at this time would be to completely derail the purpose of Rider DMR. In our Fifth Entry on Rehearing, we noted that FirstEnergy's obligation to show "sufficient progress" in regard to its grid modernization efforts was intended to be an ongoing commitment throughout the entire recovery period of Rider

DMR, not just a pre-condition as alleged by OCC and OMAEG. Further, the Commission explained that we would be undertaking a detailed policy review of grid modernization in the near future and that, for the "continuation of Rider DMR," sufficient progress will be determined at the sole discretion of the Commission. Fifth Entry on Rehearing at 96-97. This language demonstrates that this showing was to be made throughout the initial three-year period of Rider DMR, not merely as a pre-condition before the recovery period was to commence.

{¶ 15} As a final point, we explained in our Fifth Entry on Rehearing that Rider DMR was necessary to access capital financing for grid modernization efforts. OCC and OMAEG mischaracterize the Commission's decision in this respect by arguing "sufficient progress" in grid modernization and deployment efforts should have been established from the time our decision was issued, October 12, 2016, to the end of the calendar year, in order to be compliant with the Commission's order. We find that to be an incorrect interpretation of our decision, which OCC and OMAEG even acknowledge would be an unrealistic proposition for the Commission to maintain. As stated in the Fifth Entry on Rehearing, we found that "the evidence in the record demonstrates that Rider DMR would provide a needed incentive to the Companies to focus innovation and resources on grid modernization," further noting our agreement with Staff that the credit support provided by Rider DMR "will assist the Companies in receiving more favorable terms when accessing the credit markets and that accessing the credit markets will, in turn, enable the Companies to obtain funds to 'jumpstart' their grid modernization efforts." Fifth Entry on Rehearing at 88-90.

{¶ 16} As to the alternative requests, the Commission has already addressed the issue of Rider DMR being subject to refund, stating that "[m]aking Rider DMR subject to refund would be counterproductive and impose additional risks on the Companies." Fifth Entry on Rehearing at 97. For similar reasons, imposing a stay would subject the Companies to the very risks outlined in the Fifth Entry on Rehearing that Rider DMR is meant to alleviate.

Therefore, the Commission finds that OCC and OMAEG's alternative requests must also be denied.

{¶ 17} Accordingly, the Commission has reviewed FirstEnergy's compliance tariffs, OCC and OMAEG's joint motion and memorandum in support, and Staff's review and recommendations, and finds that the tariff sheets accurately reflect the Commission's orders in *FirstEnergy ESP IV* and do not appear to be unjust and unreasonable. Therefore, we accept Staff's recommendations and approve the new Rider DMR and modified Rider EDR tariff sheets, as well as the Table of Contents and Summary Rider. Additionally, we direct the Companies to remove the respective tariff sheets for Rider RRS and Rider RCE from the FirstEnergy tariff books. Finally, the Commission finds that a hearing on the tariffs is not necessary.

### III. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That OCC and OMAEG's joint motion to reject Rider DMR be denied. It is, further,

{¶ 20} ORDERED, That OCC and OMAEG's joint motion to stay FirstEnergy's collection of Rider DMR be denied. It is, further,

{¶ 21} ORDERED, That OCC and OMAEG's joint motion to collect Rider DMR subject to refund be denied. It is, further,

{¶ 22} ORDERED, That FirstEnergy remove the tariff sheets for Rider RRS and Rider RCE from its tariff books, in accordance with Paragraph 17. It is, further,

{¶ 23} ORDERED, That FirstEnergy's proposed tariff sheets for Rider DMR, Rider EDR, the Table of Contents, and the Summary Rider be approved and become effective no earlier than January 1, 2017, in accordance in Paragraph 17. It is, further,

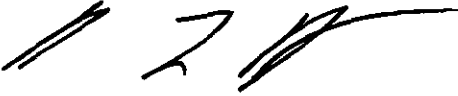
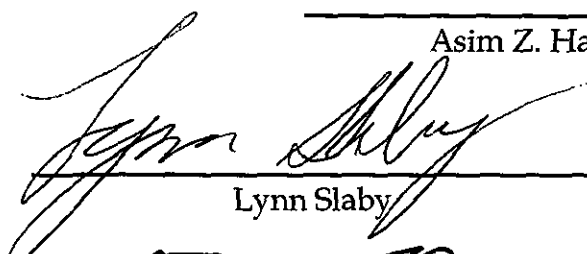


{¶ 24} ORDERED, That the Companies are authorized to file, in final form, completed copies of their tariffs in each company's respective TRF docket, as well as the corresponding above-captioned case dockets. It is, further,

{¶ 25} 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,

{¶ 26} 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,

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

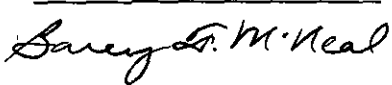
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
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MJA/sc

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Secretary