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, TO MODIFY RIDER DMR RATES.	CASE NO. 17-2280-EL-RDR

FINDING AND ORDER

Entered in the Journal on February 28, 2018

I. SUMMARY

{¶ 1} The Commission finds that the compliance tariffs, as filed by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, are consistent with the recent reduction of the federal corporate income tax rate and directs that such tariffs become effective on March 1, 2018.

II. DISCUSSION

A. *Procedural History*

{¶ 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 October 12, 2016, the Commission approved a Distribution Modernization Rider (Rider DMR) for FirstEnergy. *In re FirstEnergy*, Case No. 14-1297-EL-SSO (*FirstEnergy ESP IV Case*), Fifth Entry on Rehearing (Oct. 12, 2016). Rider DMR initially became effective

on January 1, 2017, subject to annual updates. *FirstEnergy ESP IV Case; In re FirstEnergy,* Case No. 16-2003-EL-RDR, Finding and Order (Dec. 21, 2016). In approving Rider DMR, the Commission directed that the amount to be recovered be adjusted for recovery of taxes at the prevailing Federal corporate income tax rate. *FirstEnergy ESP IV Case,* Fifth Entry on Rehearing at ¶ 202.

{¶ 5} On December 1, 2017, in the above-captioned proceeding, FirstEnergy filed updated compliance tariffs that included Rider DMR rates that became effective January 1, 2018, through December 31, 2018.

{¶ 6} Subsequent to FirstEnergy's compliance filing, the Tax Cuts and Jobs Act of 2017 (TCJA) was signed into law, reducing the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018.

{¶ 7} Thereafter, on January 12, 2018, FirstEnergy filed updated compliance tariffs that included modified Rider DMR rates to reflect the new federal corporate income tax rate.

{¶ 8} On February 1, 2018, Staff filed its review and recommendation regarding FirstEnergy's compliance tariffs filed on January 12, 2018. Upon its review, Staff believes the modified rates accurately reflect the new federal corporate income tax rate. Additionally, Staff recommends that the compliance tariffs be approved and become effective on a service rendered basis beginning March 1, 2018. Staff notes, however, that its recommendation only addresses the proposed rates that reflect the reduction in the federal corporate income tax rate. Moreover, Staff explains that Rider DMR will be subject to the outcome of Case Nos. 18-47-AU-COI and 17-2474-EL-RDR, in addition to any annual audit performed to verify the revenues collected under Rider DMR. *In re the Commission Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies,* Case No. 18-47-AU-COI (*Tax COI Case*); *In re the Review of the Distribution Modernization Rider of FirstEnergy,* Case No. 17-2474-EL-RDR (*Rider DMR Review Case*).

B. *OCC's Motion to Intervene*

{¶ 9} On February 14, 2018, the office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene in this proceeding. In support of its motion, OCC asserts that it is the state agency that represents Ohio's residential utility consumers and that it seeks intervention to protect the interests of FirstEnergy customers affected by Rider DMR. OCC adds that it satisfies the intervention standard in R.C. 4903.221 because FirstEnergy residential utility customers may be adversely affected by the proposed compliance tariffs which FirstEnergy has filed to reflect TCJA. OCC also asserts that its role as a residential utility consumer advocate complies with the standards set forth in Ohio Adm.Code 4901-1-11(A)(2), which require that a party must have a real and substantial interest in a proceeding to intervene. Further, OCC asserts that the Supreme Court of Ohio has confirmed OCC's right to intervene. See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. No memoranda contra OCC's motion to intervene were filed.

C. *OCC's Objections to Staff's Review and Recommendations*

{¶ 10} On February 14, 2018, OCC also filed objections to Staff's review and recommendations regarding FirstEnergy's compliance tariffs filed on January 12, 2018. In its objections, OCC generally objects to Staff's belief that the modified rates accurately reflect TJCA. Specifically, OCC takes issue that the modified rates proposed by FirstEnergy are effective beginning March 1, 2018, stating that these rates do not pass along the benefits of the lowered federal corporate tax rate, which became effective January 1, 2018. As a result of the effective date of March 1, 2018, OCC avers that consumers were not given the benefit of the lowered corporate tax rate in January and February 2018, which totaled an alleged savings of $6,020,772.67. OCC further avers that FirstEnergy's proposed compliance tariffs do not account for a recent decision by the Supreme Court of Ohio that could affect all utility company riders and the consumers who pay the riders, including Rider DMR at issue in this case. See *In Re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, Slip Opinion No. 2018-Ohio-229 (*FirstEnergy Rider AER Case*). OCC recommends that the

modified compliance tariffs proposed herein by FirstEnergy should include the lower federal corporate tax rates and that Rider DMR should include an explicit provision that the rider is charged subject to refund.[1]

{¶ 11} As a general matter, OCC recommends that, in order to protect consumers, the Commission should take the following actions regarding riders that are subject to prudency reviews: (1) the Commission should not allow quarterly rider updates to be automatically approved; (2) the Commission may approve a rider but only with the condition expressed in the tariff that it is subject to refund; and (3) the Commission should order that tariffs for riders that are subject to prudency reviews include language that the approved rate is subject to refund. Lastly, OCC recommends that the Commission should investigate all the riders of Ohio utilities that are affected by the Supreme Court of Ohio's decision in the *FirstEnergy Rider AER Case.*

D. FirstEnergy's Reply Comments to OCC's Objections

{¶ 12} On February 23, 2018, FirstEnergy filed its reply comments to OCC's objections. In its reply, FirstEnergy objects to OCC's assertion that its compliance tariffs do not reflect TCJA and OCC's assertion that Rider DMR is subject to refund. Specifically, FirstEnergy states that Rider DMR is calculated annually, and the proposed Rider DMR rates to become effective March 1, 2018, do reflect a reconciliation of the lower income tax rate as of January 1, 2018. FirstEnergy further contends that its customers are receiving the benefit of a lower income tax rate because the Companies proactively updated Rider DMR nearly 11 months early, as opposed to re-calculating the rider by December 1, 2018, by filing its compliance tariffs 11 days after the effective date of TCJA. In regards to OCC's contention that Rider DMR is subject to refund, FirstEnergy argues that the Commission has repeatedly rejected this argument in its prior rulings, citing *FirstEnergy ESP IV Case,* Fifth Entry on

[1] OCC's proposed language is "All charges under this Rider are subject to refund."

Rehearing (Oct. 12, 2016) at ¶ 209. As a final matter, FirstEnergy is requesting that the Commission strike OCC's objections.

{¶ 13} On February 26, 2018, OCC filed a correspondence letter indicating that, based on FirstEnergy's representation that the Companies will return the applicable 12 months of 2018 tax savings, effective January 1, 2018, to consumers under the Rider DMR, OCC would be withdrawing Section II(A) of its objections. Section II(A) refers to whether the compliance tariffs reflect the lowered tax rate under the TJCA.

E. Commission's Conclusion

{¶ 14} As an initial matter, the Commission finds that OCC has satisfied the intervention requirements set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11. Accordingly, we find OCC's motion to intervene is reasonable and should be granted.

{¶ 15} Upon review of FirstEnergy's compliance tariffs filed on January 12, 2018, and Staff's review and recommendations, the Commission finds that FirstEnergy's compliance tariffs are consistent with the Commission's Fifth Entry on Rehearing in the *FirstEnergy ESP IV Case*, accurately reflect the reduction in the federal corporate income tax rate, and do not appear to be unjust and unreasonable. Therefore, we accept Staff's recommendations and approve the compliance tariffs as filed on January 12, 2018. Finally, the Commission finds that a hearing on the tariffs is not necessary.

{¶ 16} As Staff aptly emphasizes, Rider DMR is subject to the outcomes of two other Commission proceedings: the *Rider DMR Review Case* and the *Tax COI Case*. In the *FirstEnergy ESP IV Case*, the Commission ruled that Staff will review the expenditure of Rider DMR revenues to ensure that those revenues are used, directly or indirectly, in support of grid modernization. *FirstEnergy ESP IV Case*, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶282, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶113. Moreover, we also indicated that Rider DMR will recover $132.5 million from ratepayers annually, adjusted for recovery of taxes at the prevailing federal corporate income tax rate. *FirstEnergy ESP IV*

Case, Fifth Entry on Rehearing at ¶202, Eighth Entry on Rehearing at ¶136. Thus, any necessary adjustments would be considered in the *Rider DMR Review Case*, after the Commission has had the opportunity to review the recommendations of Staff and the selected third-party monitor. OCC will also have a full and fair opportunity to participate in that proceeding. Furthermore, we will continue to work collaboratively with our regulated utilities to identify the appropriate language to incorporate into their tariffs to ensure riders operate as directed in the event of a recovery disallowance.

{¶ 17} As a final matter, as OCC submitted comments in the *Tax COI Case*, it is well aware that the Commission is already prioritizing the issues related to the reduction in the federal corporate income tax rate for all utility companies. Moreover, if we were to choose this proceeding to develop the appropriate language to be incorporated in FirstEnergy's tariffs, resolving the issues identified by OCC, we would be further delaying the rate reduction proposed by FirstEnergy in this case. Delay in approving the proposed rate reduction is not acceptable. Thus, we find that the *Rider DMR Review Case* and the *Tax COI Case* are the more appropriate proceedings to raise these issues, especially given that our decision as to these issues will likely affect numerous utilities under our regulatory authority.

III. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That OCC's motion to intervene be granted. It is, further,

{¶ 20} ORDERED, That, in accordance with Paragraph 15, FirstEnergy's modified tariff sheets be approved and become effective on March 1, 2018. It is, further,

{¶ 21} 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,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

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