

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF THE ALTERNATIVE ENERGY RESOURCE RIDER CONTAINED IN THE TARIFFS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY.

CASE No. 17-2275-EL-RDR

IN THE MATTER OF THE REVIEW OF THE ADVANCED METERING INFRASTRUCTURE RIDER CONTAINED IN THE TARIFFS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY.

CASE No. 17-2276-EL-RDR

IN THE MATTER OF THE REVIEW OF THE DELTA REVENUE RECOVERY RIDER CONTAINED IN THE TARIFFS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY.

CASE No. 17-2278-EL-RDR

IN THE MATTER OF THE REVIEW OF THE ECONOMIC DEVELOPMENT RIDER, THE GENERATION COST RECOVERY RIDER, THE DISTRIBUTION UNCOLLECTIBLE RIDER, THE NON-DISTRIBUTION UNCOLLECTIBLE RIDER, AND THE PIPP UNCOLLECTIBLE RIDER CONTAINED IN THE TARIFFS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY.

CASE No. 17-2279-EL-RDR

IN THE MATTER OF THE REVIEW OF THE NON-MARKET-BASED SERVICES RIDER CONTAINED IN THE TARIFFS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY.

CASE No. 17-2378-EL-RDR

FINDING AND ORDER

Entered in the Journal on March 28, 2018

I. SUMMARY

{¶ 1} The Commission finds that the proposed tariffs, as revised by FirstEnergy on March 19, 2018, do not appear to be unjust or unreasonable and should be approved.

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} The Commission has approved several riders in FirstEnergy's approved ESP proceedings, some of which require the Companies to file quarterly updates and are subject to an annual audit by the Commission. *In re FirstEnergy*, Case No. 08-395-EL-SSO, et al. (ESP I Case); *In re FirstEnergy*, Case No. 10-388-EL-SSO (ESP II Case). *In re FirstEnergy*, Case No. 12-1230-EL-SSO (ESP III Case); *In re FirstEnergy*, Case No. 14-1297-EL-SSO (ESP IV Case). Among these Commission-approved riders are the Alternative Energy Resource Rider (Rider AER),¹ the Advanced Metering Infrastructure/Modern Grid Rider (Rider AMI),²

¹ Rider AER recovers all costs associated with securing compliance with the alternative energy resource requirements including, but not limited to, all renewable energy credit costs and associated carrying costs.

² Rider AMI recovers costs associated with the deployment of the Smart Grid Modernization Initiative in Case No. 09-1820-EL-ATA and any additional advanced metering or grid modernization infrastructure in Ohio.

PIPP Uncollectible Rider (Rider PUR),³ Distribution Uncollectible Rider (Rider DUN),⁴ Non-Distribution Uncollectible Rider (Rider NDU),⁵ Economic Development Rider (Rider EDR),⁶ and Generation Cost Reconciliation Rider (Rider GCR).⁷ Pursuant to the Commission's orders in the ESP proceedings, FirstEnergy was directed to file updates for these riders on a quarterly basis, which would become effective unless suspended by the Commission prior to each rider's respective effective date. The Companies filed the required applications in Case Nos. 17-2275-EL-RDR, 17-2276-EL-RDR, 17-2278-EL-RDR, and 17-2279-EL-RDR on March 1, 2018,⁸ requesting that the new rates become effective April 1, 2018.

{¶ 5} Similarly, the Commission has also approved the Companies' Non-Market-Based Services Rider (Rider NMB),⁹ requiring that FirstEnergy file an annual application no later than January 15 of each year with rates to be effective no later than 75 days following the filing of the application. *ESP III Case, Opinion and Order* (July 18, 2012) at 44; *In re FirstEnergy, Case No. 15-648-EL-RDR, Finding and Order* (July 1, 2015) at 3-4. On February 28, 2018, the Commission approved the annual application for Rider NMB, further directing that the rates become effective no earlier than March 1, 2018. *In re FirstEnergy, Case No. 17-2378-EL-RDR, Finding and Order* (Feb. 28, 2018).

{¶ 6} The Tax Cuts and Jobs Act of 2017 (TCJA), signed into law on December 22, 2017, provides for a number of changes in the Federal tax system. Most notably, the federal

³ Rider PUR recovers uncollectible expenses associated with the Universal Service Fund/Percentage of Income Payment Plan.

⁴ Rider DUN recovers distribution uncollectible expenses in excess of the amount being recovered in base rates, previously set by the Commission.

⁵ Rider NDU recovers non-distribution uncollectible expenses.

⁶ Rider EDR contains nine provisions including a residential non-standard credit provision, an interruptible credit provision, a non-residential provision, a general service-transmission provision, a standard charge provision, a school credit provision, an infrastructure improvement provision, an automaker credit provision, and an automaker charge provision.

⁷ Rider GCR recovers the generation cost difference that the Companies pay suppliers as compared to the costs recovered from customers.

⁸ FirstEnergy filed revised tariffs for Rider AMI in Case No. 17-2276-EL-RDR on March 2, 2018.

⁹ Rider NMB is a non-bypassable rider that is designed to recover non-market-based transmission-related costs, such as Network Integration Transmission Service (NITS) charges, imposed on or charged to the Companies by the Federal Energy Regulatory Commission or PJM Interconnection, LLC (PJM).

corporate income tax rate is reduced from 35 percent to 21 percent, effective January 1, 2018. By Entry issued January 10, 2018, the Commission opened an investigation to review the impact of the TCJA on rates charged to consumers by rate-regulated public utilities in Ohio. See *In the Matter of the Commission's 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*).

{¶ 7} On January 16, 2018, the Supreme Court of Ohio reversed a prior Commission order disallowing the Companies' recovery of \$43 million of costs under Rider AER, stating that the Commission had engaged in retroactive ratemaking by disallowing recovery of costs that were charged and recovered pursuant to filed tariffs, which became effective, absent a Commission order saying otherwise, one month following the quarterly filing dates. *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, Slip Opinion No. 2018-Ohio-229 (Jan. 16, 2018) (*Rider AER Case*).

{¶ 8} On March 19, 2018, FirstEnergy filed revised proposed tariffs for the riders in the above-captioned cases. In light of the *Rider AER Case*, FirstEnergy revises its proposed tariffs to include language to clarify that the charges contained in Riders NMB, AMI, AER, DRR, EDR, GCR, DUN, NDU, and PUR shall be subject to reconciliation and refund following any audits conducted by Staff. Additionally, the Companies note the revised proposed tariffs for Riders AMI and NMB include additional language that the riders will be subject to reconciliation, including increases or refunds, as ordered by the Commission in the *Tax COI Case*. The Companies again request that the tariffs become effective April 1, 2018.

{¶ 9} Thereafter, on March 20, 2018, Staff filed its review and recommendations regarding the Companies' revised proposed tariffs in each of the above-captioned proceedings. In its review, Staff states that it reviewed the filings and believes that the Companies' revised proposed tariffs appropriately clarifies that the riders are subject to reconciliation, including, but not limited to, increases or refunds based upon the results of audits ordered by the Commission. Further, Staff notes that the additional language for

Rider AMI appropriately indicates that the rider is subject to reconciliation, including, but not limited to, increases or refunds based upon the Commission's orders in the *Tax COI Case*. Accordingly, Staff recommends that the Commission approve FirstEnergy's application with the proposed language and rates effective April 1, 2018.

{¶ 10} On March 15, 2018, and March 26, 2018, the Ohio Consumers' Counsel (OCC) filed a motion to intervene in Case Nos. 17-2275-EL-RDR and 17-2276-EL-RDR, respectively. In support of its motions, 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 AER and Rider AMI. 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. 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, citing *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20.

{¶ 11} Subsequently, OCC filed comments regarding FirstEnergy's application in Case No. 17-2275-EL-RDR on March 21, 2018. In order to further protect the interests of consumers, OCC makes three recommendations for the Commission's consideration: (1) end the automatic approval process for riders that are updated quarterly, including Rider AER; (2) modify FirstEnergy's proposed refund language in Rider AER to better protect customers if the Commission or the Supreme Court of Ohio later determines that charges under this rider were unreasonable, imprudent or unlawful; and (3) ensure the tariff for Rider AER captures the lower corporate tax rate effective January 1, 2018. Thereafter, on March 26, 2018, OCC filed comments regarding FirstEnergy's application in Case No. 17-2276-EL-RDR, arguing the same points raised in Case No. 17-2275-EL-RDR as they relate to Rider AMI.

{¶ 12} As an initial matter, the Commission finds OCC's motions to intervene in Case Nos. 17-2275-EL-RDR and 17-2276-EL-RDR are reasonable and should be granted, as OCC has met the standards for intervention set forth in R.C. 4903.221, as well as Ohio Adm.Code 4901-1-11.

{¶ 13} Additionally, the Commission has reviewed the Companies' applications and Staff's review and recommendations. The Commission finds that, in accordance with Staff's recommendations, the Companies' revised proposed tariffs contain the appropriate reconciliatory language, are consistent with the Commission's decisions in FirstEnergy's ESP proceedings, do not appear to be unjust or unreasonable, and should be approved and become effective no earlier than April 1, 2018.

{¶ 14} Furthermore, in response to OCC's recommendations, the Commission finds that eliminating the long-standing automatic approval process established in FirstEnergy's ESP proceedings would not be appropriate in this limited context, especially when no alternative system of approval has been suggested by OCC. 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 intended in the event of a recovery disallowance. As such, we believe that the suggested reconciliatory language in FirstEnergy's tariffs is appropriate. Finally, as to OCC's recommendation to include language in the tariff for Rider AER to account for the lower corporate tax rate, we note that Rider AER does not include a capital component, so the reduction in the tax rate has no bearing on the recoverable amounts for that rider. Thus, omitting tax-related reconciliatory language from the Rider AER tariff is appropriate. We would also note that FirstEnergy has already incorporated language that states Rider AMI is subject to reconciliation, including, but not limited to, increases or refunds based upon the Commission's orders in the *Tax COI Case*.

III. ORDER

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That OCC's motions to intervene in Case Nos. 17-2275-EL-RDR and 17-2276-EL-RDR be granted. It is, further,

{¶ 17} ORDERED, That FirstEnergy's applications be approved, as set forth in this Finding and Order. It is, further,

{¶ 18} ORDERED, That FirstEnergy's proposed tariffs for Riders NMB, AER, AMI, DRR, EDR, GCR, DUN, NDU, and PUR, as revised on March 19, 2018, be approved and become effective no earlier than April 1, 2018. It is, further,

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

{¶ 20} 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,

{¶ 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.

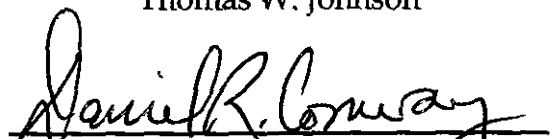
THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

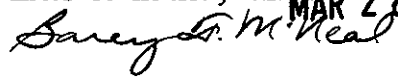

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