

THE PUBLIC UTILITIES COMMISSION OF OHIO

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. 18-1818-EL-RDR

ENTRY ON REHEARING

Entered in the Journal on April 24, 2019

I. SUMMARY

{¶ 1} The Commission denies the Ohio Consumers' Counsel's application for rehearing, filed on March 29, 2019.

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 25, 2010, the Commission issued an Opinion and Order approving a stipulation and two supplemental stipulations (Combined Stipulation), authorizing the Companies' second electric security plan for the period beginning June 1, 2011 through 2014. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 10-388-EL-SSO (ESP II Case). Among other terms, the Combined Stipulation authorized the

Companies' Non-Market-Based Services Rider (Rider NMB). Rider NMB is a non-bypassable rider that is designed to recover non-market-based transmission-related costs, such as Network Integration Transmission Service charges, imposed on or charged to the Companies by the Federal Energy Regulatory Commission (FERC) or PJM Interconnection, LLC (PJM). *ESP II Case*, Opinion and Order (Aug. 25, 2010) at 12. In the *ESP II Case*, the Companies also agreed to waive, in part, any right to seek recovery from retail customers of the Legacy Regional Transmission Expansion Plan (RTEP) charges approved by PJM prior to American Transmission Systems, Inc. (ATSI)'s integration to PJM. Specifically, FirstEnergy agreed to not seek recovery through retail rates of Legacy RTEP costs for the longer of: (1) during the period of June 1, 2011 through May 31, 2016; or, (2) when a total of \$360 million of Legacy RTEP costs have been paid by the Companies and have not been recovered by the Companies through retail rates from Ohio customers. Further, pursuant to the second supplemental stipulation filed in the *ESP II Case* as approved by the Commission, the latter commitment would be satisfied if the FERC issued an order resulting in the ATSI zone avoiding responsibility for payment of Legacy RTEP costs on a load ratio share basis such that Ohio retail customers of the Companies avoid at least \$360 million of Legacy RTEP costs. *ESP II Case*, Opinion and Order (Aug. 25, 2010) at 13, 32, 36, 44.

{¶ 5} On July 18, 2012, the Commission issued an Opinion and Order approving a stipulation between FirstEnergy and certain parties, which provided for an ESP for the period beginning June 1, 2014, through May 31, 2016, pursuant to R.C. 4928.143. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO (*ESP III Case*). The Commission also clarified that the Companies should file annually an application, in a separate docket, for a review of certain riders approved in that proceeding, including Rider NMB. *ESP III Case*, Opinion and Order (July 18, 2012) at 44.

{¶ 6} The Commission also approved the NMB Pilot Program, which allowed customers served under the program to be billed directly by PJM or their competitive retail electric service provider and to no longer be subject to the Rider NMB rates. *In re Ohio Edison*

Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co., Case No. 14-1297-EL-SSO (*ESP IV Case*), Opinion and Order (Mar. 31, 2016), Fifth Entry on Rehearing (Oct. 12, 2016).

{¶ 7} On December 14, 2018, FirstEnergy filed an application and tariff pages reflecting revisions to Rider NMB in order to comply with the Commission orders in the Companies' *ESP III Case and ESP IV Case*. As part of its application, FirstEnergy argued that the settlement order contemplated in the *ESP II Case* was issued by FERC on May 31, 2018. *PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,168 (2018). As a result, FirstEnergy proposed to: (1) recover from customers all RTEP charges incurred going forward; (2) retain refunds resulting from the May 31, 2018 FERC order; and, (3) amortize over three years with a 6.54 percent carrying charge the Legacy RTEP costs that FirstEnergy incurred and paid from 2012 through February of 2019 in excess of the refunds FirstEnergy will receive from PJM.

{¶ 8} On February 27, 2019, the Commission issued a Finding and Order (Order), which approved the application, in part, and indicated that the Companies' application may be unjust and unreasonable as to the Legacy RTEP Costs that exceed the costs to be refunded to the Companies by PJM, as detailed in Exhibit A, pages 4 through 6, of the application (Disputed Legacy RTEP Costs). The Companies were directed to file revised final tariffs, effective March 1, 2019, subject to review by Staff and the Commission, which excluded recovery of Disputed Legacy RTEP Costs and the proposed carrying charges. FirstEnergy filed the revised tariffs on February 28, 2019. Additionally, the Commission set a period soliciting comments on whether FirstEnergy should be permitted to recover Disputed Legacy RTEP Costs and the proposed carrying charges.

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

{¶ 10} On March 29, 2019, the Ohio Consumers' Counsel (OCC) filed an application for rehearing, arguing that the Commission's Order is unjust and unreasonable in two

respects. As its first assignment of error, OCC argues that the Commission's Order fails to require FirstEnergy to demonstrate that it has met its commitment to customers to forgo collecting \$360 million of Legacy RTEP costs billed to it by PJM, noting that there is nothing in the application that affirmatively demonstrates that FirstEnergy has met this commitment. As such, OCC contends that the Commission should have required FirstEnergy to demonstrate, through the filing of expert testimony or other acceptable means, that it has met this commitment.

{¶ 11} As its second assignment of error, OCC contends the Commission's Order is unjust and unreasonable because the comment process established is insufficient to address the complex factual and legal issues presented by FirstEnergy's application. Rather, OCC recommends that, given the significant dollar amounts at issue and the complexity of PJM billings, the Commission should develop a full evidentiary record in regard to the Disputed Legacy RTEP Costs and set a revised procedural schedule providing for such. OCC notes that its recommended process is consistent with procedures generally followed when utilities seek to increase rates to customers.

{¶ 12} On April 8, 2019, FirstEnergy filed a memorandum contra rehearing, arguing that the Commission correctly found that the Companies satisfied their obligations with respect to the \$360 million of Legacy RTEP Costs. FirstEnergy alleges that the stipulation approved in the *ESP II Case* specifically stated that "[i]f FERC issues an order * * * avoiding responsibility for payment of Legacy RTEP Costs on a load ratio share basis such that Ohio retail customers of the Companies avoid at least \$360 million of such Legacy RTEP Costs, all obligations of the Companies under [the stipulation] with respect to Legacy RTEP costs will be satisfied." Additionally, FirstEnergy contends that it provided Staff with the requisite evidence demonstrating compliance with this commitment, resulting in Staff's determination in its review and recommendation that the Companies had satisfied the *ESP II Case* obligation. In response to OCC's second assignment of error, FirstEnergy notes that OCC has provided no legal authority requiring such an extensive process. Furthermore, the

Companies claim that OCC and other parties to this case will receive ample opportunity to be heard through initial and reply comments.

{¶ 13} Thereafter, Staff filed a supplemental review and recommendation on April 15, 2019, in which Staff clarifies that its determination that FirstEnergy had met its Legacy RTEP Costs obligations from the *ESP II Case* was made after independently reviewing, with information provided by PJM, the expected transmission costs/savings for ATSI as a result of the FERC order.

{¶ 14} The Commission finds that OCC's first assignment of error should be denied. As noted in our Finding and Order, Staff stated that FirstEnergy satisfied its obligations under the *ESP II Case* and believes the Companies should be able to recover future RTEP costs through Rider NMB, as well as retain refunds associated with costs it has paid to date. Finding and Order at ¶¶ 14-15. We agree. The FERC order falls squarely within the parameters of the type of order contemplated by the second supplemental stipulation approved in the *ESP II Case*, which "results in the ATSI zone avoiding responsibility for payment of Legacy RTEP Costs on a load ratio share basis such that Ohio retail customers of the Companies avoid at least \$360 million of such Legacy RTEP Costs" (*ESP II Case*, Joint Ex. 3 at 5). In the supplemental review and recommendation, Staff reported that it had conducted an independent review, based upon information provided by PJM, to determine the expected transmission costs/savings for ATSI as a result of the FERC order. Based upon this independent Staff review, no further evidence of the Companies' satisfaction of this particular commitment is necessary. What remains to be determined is whether the Commission's Order approving the stipulations in the *ESP II Case* permitted the Companies to recover the Disputed Legacy RTEP Costs. As detailed below, the Commission has already determined the best course to proceed as to this remaining issue.

{¶ 15} Additionally, OCC's second assignment of error should also be denied. In the Finding and Order, the Commission found it appropriate to establish a comment period to discuss whether the Companies should be permitted to recover the Disputed Legacy RTEP

Costs, as well as carrying charges. Finding and Order at ¶ 16. OCC now seeks additional time to conduct discovery and an extension of the comment period established by the Commission in the Finding and Order. However, FirstEnergy filed its application in this proceeding on December 14, 2018, which allowed ample time for discovery prior to the deadline for initial comments on March 29, 2019. Moreover, while OCC, in its application for rehearing, cites to irrelevant statutory and regulatory provisions highlighting situations in which the Commission may schedule a hearing, OCC is quite correct in its assertion that we hold considerable discretion in our authority to hold a hearing in any matter coming before the Commission. In fact, the Commission will consider scheduling this matter for hearing based upon the comments filed in this case. Therefore, we find that, at this time, soliciting comments on this issue is more than sufficient to provide all parties an opportunity to argue the treatment of the Disputed Legacy RTEP Costs. As such, the Commission finds that OCC's application for rehearing should be denied.

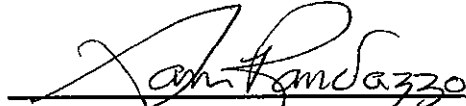
III. ORDER

{¶ 16} It is, therefore,

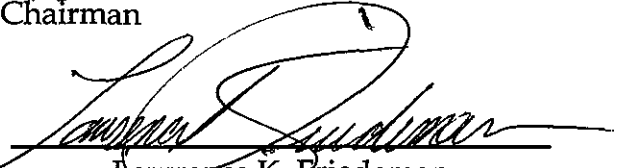
{¶ 17} ORDERED, That OCC's application for rehearing be denied. It is, further,

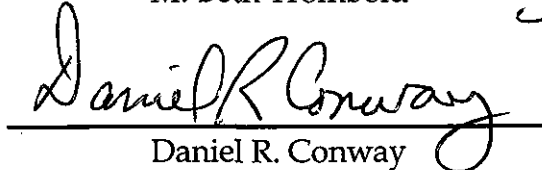
{¶ 18} ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

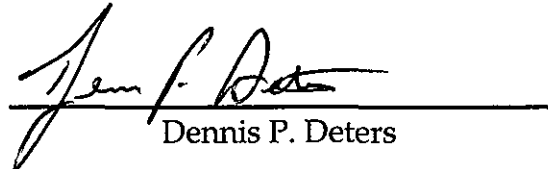
THE PUBLIC UTILITIES COMMISSION OF OHIO


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Entered in the Journal
APR 24 2019



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Secretary