

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 APPLICATION TO
UPDATE THE TARIFF FOR THE
DISTRIBUTION MODERNIZATION RIDER
OF OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON
COMPANY.

CASE NO. 18-1649-EL-RDR

ENTRY

Entered into the Journal on July 2, 2019

I. SUMMARY

{¶ 1} The Commission approves the Companies' revised tariffs filed on July 1, 2019, in Case No. 18-1649-EL-RDR, making the distribution modernization rider subject to refund on a services rendered basis.

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 (MRO) 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 stipulations¹ with several modifications (*ESP IV* Opinion and Order). As part of that *ESP IV* Opinion and Order, we approved a modified version of FirstEnergy's original proposal for a retail rate stability rider (Rider RRS).

{¶ 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 a waiver of its affiliate power sales restrictions previously granted to FirstEnergy Solutions Corporation (FES). 155 FERC ¶ 61,101 (2016) (FERC Order).

{¶ 7} On October 12, 2016, the Commission issued its Fifth Entry on Rehearing in this proceeding, adopting Staff's alternative proposal to establish FirstEnergy's distribution modernization rider (Rider DMR) and eliminating Rider RRS. Among other things, the Commission explained in its Fifth Entry on Rehearing that Rider DMR was valid under R.C. 4928.143(B)(2)(d) because the revenue generated would serve as an incentive for the Companies to modernize their distribution systems.

¹ The applications and stipulations will collectively be referred to as "Stipulations" or "Stipulated ESP IV."

{¶ 8} Subsequently, the Commission underwent four more rounds of rehearing, with the final, appealable order being issued on October 11, 2017. Ninth Entry on Rehearing (Oct. 11, 2017).

{¶ 9} Numerous parties appealed the Commission's decision, challenging Rider DMR and other aspects of the Commission's orders, including: Sierra Club; the Ohio Manufacturers' Association Energy Group; the Ohio Consumers' Counsel; the Northeast Ohio Public Energy Council; the Northwest Ohio Aggregation Coalition and its individual member communities; and jointly by the Ohio Environmental Council, the Environmental Defense Fund, and the Environmental Law and Policy Center.

{¶ 10} On June 19, 2019, the Supreme Court of Ohio issued its decision in those cases, affirming the Commission's order in part, reversing it in part as it relates to Rider DMR, and remanding with instructions to remove Rider DMR from FirstEnergy's ESP. Specifically, the Supreme Court of Ohio held that Rider DMR does not qualify as an incentive under R.C. 4928.143(B)(2)(h) and the conditions placed on the recovery of Rider DMR revenues were not sufficient to protect ratepayers. *In re Application of Ohio Edison Co.*, Slip Opinion No. 2019-Ohio-2401 at ¶¶ 14-29.

{¶ 11} On July 1, 2019, the Companies filed a motion for reconsideration of the Supreme Court's decision. On that same day, the Companies filed revised tariffs in Case No. 18-1649-EL-RDR providing that Rider DMR is being collected subject to refund in the event the Supreme Court denies the Companies' motion for reconsideration or issues a mandate instructing that Rider DMR be removed from the Companies' ESP. FirstEnergy also provides that any refund is limited to billings beginning on the date the revised language is approved by the Commission.

{¶ 12} On July 2, 2019, the Ohio Consumers' Counsel filed comments in response to the Companies' proposed tariff sheets, requesting that the Commission set the Rider DMR

charges to zero while FirstEnergy's motion for reconsideration is pending or, in the alternative, direct that the tariffs be subject to refund immediately.

{¶ 13} Given the fact that the Companies filed their motion for reconsideration within the prescribed ten-day timeframe, the Commission has not received the mandate from the Supreme Court remanding this case back to the Commission; however, in order to give full effect to the Supreme Court's ultimate decision regarding Rider DMR, the Commission finds it appropriate to approve the Companies' revised tariffs, as filed on July 1, 2019, that provide that Rider DMR is being collected subject to refund in the event the Supreme Court denies the Companies' motion for reconsideration or issues a mandate directing that Rider DMR be removed from the Companies' ESP. Furthermore, the revised tariffs shall be effective with services rendered following the date of this Entry, until otherwise ordered by the Commission.

III. ORDER

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That the Companies' revised tariffs filed on July 1, 2019, be approved, until otherwise ordered by the Commission. It is, further,

{¶ 16} ORDERED, That the Companies file revised tariffs, in final form, consistent with this Entry and subject to final review by the Commission. The Companies shall file one copy in Case No. 14-1297-EL-SSO, one copy in Case No. 18-1649-EL-RDR, and one copy in their respective TRF dockets. It is, further,

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

COMMISSIONERS:

Approving:

M. Beth Trombold
Daniel R. Conway
Dennis P. Deters

Recusal:

Sam Randazzo, Chairman
Lawrence K. Friedeman

MJA/mef

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in

Case No(s). 14-1297-EL-SSO, 18-1649-EL-RDR

Summary: Entry The Commission approves the Companies' revised tariffs filed on July 1, 2019, in Case No. 18-1649-EL-RDR, making the distribution modernization rider subject to refund on a services rendered basis. electronically filed by Docketing Staff on behalf of Docketing.