

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

ORDER ON REMAND

Entered into the Journal on August 22, 2019

I. SUMMARY

{¶ 1} The Commission directs the Companies to immediately file proposed, revised tariffs that would set Companies' distribution modernization rider to \$0.00. The Commission also directs the Companies to issue a refund to customers for all monies collected through the rider for services rendered after July 2, 2019, before eliminating the rider from its electric security plan.

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 (*ESP IV*).

{¶ 5} On March 31, 2016, the Commission issued its Opinion and Order in *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, the Retail Energy Supply Association, Dynegy, Inc., 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. 155 FERC ¶ 61,101 (2016).

{¶ 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.

{¶ 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).

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

{¶ 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 Court 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, FirstEnergy filed a motion for reconsideration of the Court's June 19, 2019 decision. On that same day, FirstEnergy filed revised tariffs in Case No. 18-1649-EL-RDR, providing that Rider DMR would be collected subject to refund on a services rendered basis 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.

{¶ 12} By Entry issued July 2, 2019, the Commission approved the revised tariffs.

{¶ 13} On August 20, 2019, the Court denied FirstEnergy's motion for reconsideration and issued its mandate directing the Commission to amend FirstEnergy's tariffs to remove Rider DMR from the Companies' ESP. See *8/20/2019 Case Announcements*, 2019-Ohio-3331.

{¶ 14} Pursuant to the Supreme Court of Ohio's June 19, 2019 decision, denial of FirstEnergy's motion for reconsideration, and resulting mandate, the Commission directs the Companies to immediately file proposed revised tariffs setting Rider DMR to \$0.00.

{¶ 15} Furthermore, the Commission directs the Companies to issue a refund to customers for any monies collected through Rider DMR for services rendered after July 2, 2019. The refund is to be made in the form of a credit to customer bills, which will be accompanied with a bill insert to explain the refund. Within seven days of the date of this Order on Remand, FirstEnergy shall submit to Staff for its approval a proposed notice regarding the refund, as well as the final calculation of the exact amount to be refunded. The Companies are then directed to file revised tariffs by September 5, 2019, crediting back the full amount of the refund to customers in the following billing cycle.

{¶ 16} Once the refund has been processed, consistent with Paragraph 15, the Companies will file proposed, revised tariffs removing Rider DMR from the Companies' ESP, subject to final approval by the Commission.

III. ORDER

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That the Companies immediately file proposed, revised tariffs, in accordance with Paragraph 14. It is, further,

{¶ 19} ORDERED, That the Companies cease further collection through Rider DMR and issue a refund to customers for all monies collected through Rider DMR for services rendered after July 2, 2019, in accordance with Paragraph 15. It is, further,

{¶ 20} ORDERED, That within seven days of the date of this Order on Remand, the Companies shall submit to the Staff for its approval the final calculation of the exact amount to be refunded and the proposed bill insert. It is, further,

{¶ 21} ORDERED, That the Companies file proposed, revised tariffs by September 5, 2019, crediting back the full amount of the refund to customers in the following billing cycle. It is, further,

{¶ 22} ORDERED, That the Companies file proposed, revised tariffs removing Rider DMR from the Companies' ESP once the credits described in Paragraph 15 have been processed. It is, further,

{¶ 23} ORDERED, That the Companies filed revised tariffs, in final form, consistent with this Order on Remand 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,

{¶ 24} ORDERED, That a copy of this Order on Remand 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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Case No(s). 14-1297-EL-SSO

Summary: Order of Remand that the Commission directs the Companies to immediately file proposed, revised tariffs that would set Companies' distribution modernization rider to \$0.00. The Commission also directs the Companies to issue a refund to customers for all monies collected through the rider for services rendered after July 2, 2019, before eliminating the rider from its electric security plan electronically filed by Docketing Staff on behalf of Docketing