

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

THIRD FINDING AND ORDER

Entered in the Journal on October 23, 2019

I. SUMMARY

{¶ 1} The Commission approves the revised final tariffs filed on October 18, 2019 by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

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 Stipulations), 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 Stipulations 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 (NITS) 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 Legacy Regional Transmission Expansion Plan (RTEP) charges approved by PJM prior to American Transmission Systems, Inc. (ATSI)'s integration to PJM. Specifically, in paragraph 5 of Section C of the Combined Stipulations (hereinafter, Legacy RTEP Provision), 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. *ESP II Case*, Opinion and Order (Aug. 25, 2010) at 13, 32, 36, 44; Second Supplemental Stipulation (Jul. 22, 2010) at 5. However, the second supplemental stipulation also contained a related provision. Paragraph 5 of Section C of the Combined Stipulations approved in the *ESP II Case* provides an exception (Satisfaction Clause) to the Legacy RTEP Provision:

If FERC issues an order or there is an appellate decision that 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, *all obligations of the Companies under this Agreement with respect to Legacy RTEP costs will be satisfied.*

ESP II Case, Second Supplemental Stipulation (Jul. 22, 2010) at 5 (emphasis added).

{¶ 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} 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 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.

{¶ 7} On January 30, 2019, seven days after the deadline to intervene, Ohio Consumers' Counsel (OCC) filed a motion for leave to file a motion to intervene out of time and a motion to intervene. OCC did not file any comments regarding the tariff update.

{¶ 8} On February 21, 2019, Staff filed its Review and Recommendation. Staff recommended that FirstEnergy be permitted to recover RTEP Legacy costs going forward but claimed that it was unclear whether FirstEnergy should recover past RTEP Legacy costs, which had been billed and paid to PJM over the last several years (Disputed Legacy RTEP costs).

{¶ 9} On February 27, 2019, the Commission issued the first Finding and Order in this proceeding, 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 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 established a comment period solely on whether FirstEnergy should be permitted to recover Disputed Legacy RTEP Costs and the proposed carrying charges.

{¶ 10} On March 29, 2019, the Ohio Consumers' Counsel (OCC) filed an application for rehearing, arguing that the Commission's Finding and Order was unjust and unreasonable in two respects. As its first assignment of error, OCC argues that the Commission's Finding and Order failed to require FirstEnergy to demonstrate that it had met its commitment to customers to forgo collecting \$360 million of Legacy RTEP costs billed to it by PJM, noting that there was nothing in the application that affirmatively demonstrates that FirstEnergy has met this commitment. In its second assignment of error, OCC contended the Commission's Order was unjust and unreasonable because the comment process established was insufficient to address the complex factual and legal issues presented by FirstEnergy's application. Instead, OCC recommended that, given the significant dollar amounts at issue and the complexity of PJM billings, the Commission develop a full evidentiary record in regard to the Disputed Legacy RTEP Costs. On April 24, 2019, the Commission denied rehearing on both assignments of error contained in OCC's first application for rehearing. OCC filed a second application for rehearing on May 24, 2019, which was denied by operation of law.

{¶ 11} Ohio Manufacturers' Association Energy Group (OMAEG), OCC, and the Companies filed comments in this proceeding on March 29, 2019. Subsequently, on April 15, 2019, reply comments were by OCC, OMAEG, Industrial Energy Users-Ohio and FirstEnergy. In addition, Staff filed a supplemental review and recommendation on April 15, 2019, in lieu of reply comments.

{¶ 12} On October 9, 2019, the Commission issued a Second Finding and Order in this case, authorizing FirstEnergy to recover the disputed Legacy RTEP costs and denying FirstEnergy's request for carrying costs.

{¶ 13} Subsequently, on October 18, 2019, the Companies filed revised final tariffs to implement the Commission's Second Finding and Order, effective November 1, 2019.

{¶ 14} On October 22, 2019, Staff filed a Report and Recommendation recommending approval of the revised final tariffs.

{¶ 15} The Commission finds that the revised final tariffs are consistent with the Second Finding and Order in this case, do not appear to be unjust or unreasonable, and should be approved. Further, the Commission finds that it is unnecessary to hold a hearing in this matter.

III. ORDER

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That FirstEnergy's revised final tariffs for Rider NMB be approved. It is, further,

{¶ 18} ORDERED, That the revised final tariffs shall be effective for services rendered on or after November 1, 2019. It is, further,

{¶ 19} ORDERED, That nothing in this Third Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rules, or regulation. It is, further,

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

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Dennis P. Deters

Dissenting:

Daniel R. Conway

GAP/hac

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