

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF ESTABLISHING THE
NONBYPASSABLE RECOVERY
MECHANISM FOR NET LEGACY
GENERATION RESOURCE COSTS
PURSUANT TO R.C. 4928.148.

CASE NO. 19-1808-EL-UNC

ENTRY

Entered in the Journal on November 21, 2019

I. SUMMARY

{¶ 1} In accordance with applicable legislative directives, the Commission establishes a replacement nonbypassable rate mechanism for the retail recovery of net legacy generation resource costs pursuant to R.C. 4928.148 for the period beginning January 1, 2020 and extending up to December 31, 2030.

II. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} Am. Sub H. B. 6 (H.B. 6), which became effective on October 22, 2019, requires the Commission to establish a replacement nonbypassable rate mechanism for the retail recovery of prudently incurred costs related to a legacy generation resource for the period commencing January 1, 2020 and extending up to December 31, 2030. R.C. 4928.148

{¶ 3} With respect to the establishment or operation of the replacement nonbypassable rate mechanism, the Commission shall: (1) subject the relevant decisions and actions of electric distribution utilities (EDUs) with legacy generation ownership (OVEC EDUs) to periodic prudence and reasonableness evaluations; (2) determine the proper rate design for the charge or credit to be applied to electric bills resulting from the nonbypassable rate mechanism's expense and revenue components; (3) provide for the discontinuation of the nonbypassable rate mechanism on December 31, 2030, subject to final reconciliation; and, (4) determine the manner in which charges are collected by any electric distribution utility that is not an OVEC EDU.

{¶ 4} Staff reviewed the legislative requirements of R.C. 4928.148 and filed a proposal for the establishment of a replacement nonbypassable rate mechanism on September 25, 2019. More specifically, the Staff proposed the establishment of the Legacy Generation Resource Rider (LGR Rider) as the replacement nonbypassable rate mechanism to be billed and collected by each EDU. The LGR Rider would include two rate elements: a statewide rate (Part A Rate); and, a specific EDU reconciliation or true-up rate (Part B Rate).

{¶ 5} In consideration of its obligation to establish a nonbypassable rate mechanism for the retail recovery of prudently incurred net costs resulting from a legacy generation resource for the period up to December 31, 2030, the Commission opened this case for comment on September 26, 2019. Interested stakeholders were invited to file initial comments on or before October 17, 2019 and reply comments by October 28, 2019.

{¶ 6} Motions to intervene were filed by: the Ohio Energy Group (OEG); Industrial Energy Users-Ohio (IEU-Ohio); the Ohio Manufactures Association Energy Group (OMAEG); PJM Power Providers Group (P3); Ohio Power Company (AEP-Ohio); the Kroger Company (Kroger); the Dayton Power and Light Company (DP&L); the Ohio Consumers' Counsel (OCC); Ohio Edison Company, the Cleveland Electric Illuminating Company, and, the Toledo Edison Company (FirstEnergy); and, Duke Energy Ohio (Duke). No objections were made to any of these motions. Accordingly, the Commission grants the motions to intervene filed by these entities.

{¶ 7} Comments were filed by OEG; IEU-Ohio; OMAEG; jointly by AEP-Ohio, Duke and DP&L (OVEC EDUs); Kroger; OCC; FirstEnergy; the Ohio Hospital Association (OHA); and, jointly by the Ohio Environmental Council, Natural Resources Defense Council, Sierra Club, and Environmental Law and Policy Center (Conservation Groups).

{¶ 8} Reply comments were filed by OEG; IEU-Ohio; OMAEG; jointly by AEP-Ohio and Duke; DP&L; Kroger; OCC; FirstEnergy; OHA; and, Conservation Groups.

III. SUMMARY OF THE COMMENTS

{¶ 9} OEG supports the LGR Rider as proposed by Staff, citing that the equal cost allocation between energy and demand (energy/demand allocation) reflects a sound “cost of service” rationale. OEG further notes that the proposed 833,000 kWh monthly recovery threshold for non-residential customers is favorable because: it will be easy to administer because the Commission has used this mechanism for other cost recovery [*e.g.* Universal Service Fund Rider (USFR) established pursuant to R.C. 4928.51 through 4928.58]; customers are accustomed to working with that threshold; and, it is likely to help customers maintain monthly charges below the statutorily-mandated cost caps.

{¶ 10} IEU-Ohio supports the energy/demand allocation, noting that the nonresidential customer rate design approximates the rate design for other charges, such as the USFR and AEP-Ohio’s current Renewable Generation Rider (*See, In re AEP-Ohio*, Case No. 16-1852-EL-SSO). IEU-Ohio seeks clarification regarding how Staff’s proposal would cap nonresidential customer charges at no more than \$1,500 per month in accordance with the statutory threshold in R.C. 4928.148(A)(2). IEU-Ohio proposes that the Commission should establish a process where customers with multiple accounts at a single premise/campus can notify their electric distribution utility (EDU) to identify all accounts that should be bundled and subject to a collective \$1,500 monthly cap.

{¶ 11} OMAEG recommends changes to Staff’s proposal in the following areas: revenue requirements should be collected, rather than merely allocated, on a demand basis; the Commission should impose the monthly cap on a “per customer” basis; revenues from the non-residential customers should be allocated to four classes, with monthly caps for secondary and primary users set below \$1,500 per month; the Commission should establish an audit process and allow stakeholder participation regarding the “prudence determination” that legacy generation EDUs must satisfy in order to qualify for reimbursements; the Commission should implement a defined reconciliation process that is “trued up” quarterly and subject to stakeholder participation; the LGR Rider should be

subject to refund; and, the manner in which non-legacy generating EDUs remit payments should be more explicitly detailed.

{¶ 12} Kroger urges imposing the \$1,500 monthly cap on a “per customer” basis; requiring the establishment of multiple classes of nonresidential users, with graduated charges below \$1,500 per month; and, that the Commission adopt processes and procedures regarding the prudence determination, reconciliation process, and refund aspects of the LGR Rider.

{¶ 13} OHA focuses solely on whether the LGR Rider should subject to a “per customer” cap of \$1,500. OHA cites to legislative testimony from June 18, 2019, as the cause of the legislative change to setting caps on a “per customer,” rather than “per account” basis. Further, OHA asserts that if the Commission imposes a cap “per premise,” that the term “premise” be broadly interpreted to include multiple adjacent parcels containing a single business entity or institution. Finally, OHA argues that the Commission’s plan for “prudence determination” should be detailed as part of the LGR Rider proposal.

{¶ 14} FirstEnergy seeks clarification of the Staff proposal as to the following areas: pre-H.B.6 OVEC rider balances should remain with their EDUs via inclusion in their individual Part B statewide rates; EDUs should be permitted to collect carrying charges on cost deferrals that exceed the caps; Staff should calculate the ratios for remittance from FirstEnergy to eligible EDUs; monthly remittances should begin effective March 15, 2020, in order to correlate FirstEnergy’s collection of the assessment from January bills prior to remitting the OVEC payments; annual rate adjustments should occur at least 30 days before the proposed effective dates, and assuming that 5 CP data will not be available by December 2 of each year, rates should use the most current 5 CP data available on those dates.

{¶ 15} AEP-Ohio, Duke and DP&L join in concerns raised regarding the availability of 5 CP data in time for each January’s rate determination, recommending that: the annual January rate calculations rely on 5 CP data from two years prior to the rating year; and, the

July rate calculations rely on the prior year's 5 CP data. The commenters also advocate for clarification regarding calculating their net OVEC cost recovery; that the Part B true up be specific to each EDU, and adjusted for differences in collections, rather than billed amounts; that any expiring riders be trued up using Part B recovery; that they be permitted to recover carrying charges; and, that the customers of each EDU maintain responsibility for their own collections such that any deficit (or extra) collections under Part A would be specifically attributable to the EDUs' customers using the Part B rate adjustment.

{¶ 16} OCC urges that the Commission require that all data used to calculate the LGR Rider should be: subject to an independent audit; shared with parties to this case; reviewed to exclude costs related to a lack of prudence; and, that intervenors be included in the annual subsidy calculation process. OCC is agreeable to the proposed energy/demand allocation, as well as the flat rate recovery mechanism. But OCC maintains that the \$1.50 rate cap should apply to Part B reconciliations, and that those reconciliation charges should not extend past December 31, 2031. Finally, OCC asserts that amounts collected should be subject to refund if they are invalidated, and that EDUs should not receive carrying charges related to the administration of these funds.

{¶ 17} Conservation Groups oppose the H.B. 6 subsidy of OVEC costs, including creation of the LGR Rider, arguing that there can be no "prudently incurred costs" because OVEC power is being sold without the "approval" of the Federal Energy Regulatory Commission (FERC). Further, should the Commission implement the LGR Rider, they argue for robust EDU filing requirements in order to evaluate the prudence of OVEC operations.

{¶ 18} Separate reply comments filed by Kroger and OMAEG are consistent in regard to four points: monthly caps should be applied on a "per customer" basis; separate caps must be established for all nonresidential customer classes; only OVEC costs that are prudently incurred are subject to recovery; and, refund provisions should be adopted should collections be deemed imprudent or otherwise unlawful.

{¶ 19} Reply comments filed by OHA reiterate its position that cost caps must be applied on a “per customer” basis. OHA also argues alternatively that if the rider charge is to be applied on a “premise” basis, then each “premise” should be broadly defined to include multiple adjacent parcels containing a single business entity. Further, OHA urges the Commission to establish separate caps for all nonresidential customer classes.

{¶ 20} Reply comments from OCC join in the position raised by Conservation Groups, arguing that all OVEC charges are currently imprudent because FERC has not approved the OVEC power agreement. OCC also urges that if nonresidential charges are applied on a “per customer” basis, that any revenue deficits resulting from that decision must remain solely within the classes in which the deficits arise. Finally, OCC argues against EDU proposals to impose carrying charges for any deferral that is not collected from consumers within 12 months.

{¶ 21} Joint reply comments from AEP-Ohio and Duke focus on three main issues: OVEC-related costs are “prudently incurred” based on the Inter-Company Power Agreement (ICPA) filed with FERC on March 23, 2011; the Commission need not establish pre-filing requirements, predetermine issues related to final reconciliation, nor substantially alter its practices regarding prudence audits; and, the nonresidential cap should be applied to customers based on their individual billing accounts.

{¶ 22} Reply comments from DP&L share in the points raised by AEP-Ohio and Duke. Additionally, DP&L argues against: establishing separate rate caps for different nonresidential customers; making the rider “subject to refund;” and, requiring the disclosure of competitively sensitive information.

{¶ 23} FirstEnergy’s reply comments were bifurcated between OVEC EDU comments and non-EDU comments. Regarding EDU comments, FirstEnergy agrees with EDU comments regarding using the 5 CP data that is available at the time of the rate calculation cutoff. Further, FirstEnergy seeks to clarify that: Part A of the rider relates to

billing, rather than collections; Part B true ups will be specific to each EDU and based on the difference between projected versus actual billed Part A revenue; and, OVEC EDUs will be obligated to remit LGR Rider refunds should future revenues result in a credit balance. Regarding non-EDU comments, FirstEnergy advocates that: the nonresidential cap should be applied on a customer billing account basis; there should not be multiple nonresidential customer classes for cap purposes; and, EDUs should be able to recover all future deferred costs regardless of the timing of the recovery.

{¶ 24} Reply comments filed by IEU-Ohio urged consumer protections as to: establishing a process to determine what costs are “prudently incurred;” applying rate caps during all periods of deferral collections; ensuring that evidence supporting the rider is filed so that parties can review revenue and rate calculations; ensuring that collections are “subject to refund;” rejecting carrying charges; rejecting the creation of multiple nonresidential rate classes; and, providing for aggregated nonresidential rate caps only where customers have multiple meters at a single location.

{¶ 25} OEG’s reply comments advocate in favor of Staff’s proposal to set nonresidential caps based on EDU billing practices, noting that EDUs determine their “customers” according to bills that are issued, each of which sets forth a separate rate schedule. OEG further notes that the use of a per kWh charge establishes a fair balance where lower usage customers pay lower LGR Rider charges and higher use customers enjoy the benefit of the cap for usage above 833,000 kWh. Finally, OEG recommends against establishing multiple caps across nonresidential customer classes.

IV. ANALYSIS OF THE COMMENTS

A. *OVEC charges qualify for recovery.*

{¶ 26} OCC and Conservation Groups argue that OVEC cost recovery is prohibited because OVEC power sales have not been “approved” by FERC as required by R.C. 4928.01(A)(42) and R.C. 4928.148. The Commission rejects this argument, finding that the

OVEC power sales are approved as a matter of law under Section 205 of the Federal Power Act (FPA) (18 U.S.C. § 824d). Under the FPA, OVEC producers provide service in accordance with ICPA rate schedules that are filed with FERC. Where those schedules are challenged by a party to the FERC case, FERC considers the challenge to determine if the proposed charges should be “approved.” Where the schedules are not challenged, FERC accepts the proposed rate schedules without issuing a formal approval order so long as the schedules are not “unjust and unreasonable.” Current OVEC charges were accepted by FERC pursuant to an amended ICPA that was filed on March 23, 2011. The charges are not subject to invalidation by OVEC or the parties to the ICPA. *See Harbor Cogeneration Co., L.L.C. v Southern California Edison Co.*, No. EL 19-82-000, 169 FERC ¶61, 067, Order Denying Complaint, ¶36 (Oct. 24, 2019). Moreover, the Commission has upheld cost recovery of these charges in prior rate cases. (*See, In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, Second Entry on Rehearing (Nov. 3, 2016); *In re DP&L*, Case No. 16-395-EL-SSO; and, *In re Duke Energy Ohio, Inc.*, 14-841-EL-SSO). Additionally, the claim made by OCC and the Conservation Groups is poorly fitted to the requirements of R.C. 4928.148 because it would, practically and mathematically speaking, nonsensically result in the nonbypassable retail recovery mechanism that always provides customers with a credit (electric bill reduction) since there could be no cost to net against the revenue obtained from the sale of electricity into the wholesale market.

B. Nonresidential customer accounts shall not be aggregated for purposes of applying rate caps.

{¶ 27} OHA, Kroger and OMAEG assert that nonresidential OVEC charges should be aggregated across the entirety of a nonresidential user’s operations for purposes of applying rate caps. In support of this position, they point to the legislative history of H.B. 6 that led to the change from “account” to “customer” prior to the final enactment of R.C. 4928.148(A)(2). The Commission rejects these arguments, finding that the legislative use of the word “customer” in H.B. 6 is clear and unambiguous. The Commission’s rules define a “customer” as “any person who has an agreement, by contract and/or tariff with an electric

utility...” Ohio Adm.Code 4901:1-10-01(J) Thus, the determination of “customer” status depends on the contract or tariff relationship between an EDU and the party that receives electric services. Contracts and tariffs contain applicability and billing provisions that attach responsibility for payment to an account or accounts. The Commission finds that the proposed LGR Rider will be collected in the same manner that all other riders are collected by EDUs - in connection with each billing account established in accordance with the applicable contract or tariff. Accordingly, nonresidential customers shall not be permitted to aggregate or group their billing accounts in order to avoid paying LGR Rider amounts.

C. *The LGR Rider shall not be subject to multiple nonresidential classes.*

{¶ 28} OHA, Kroger and OMAEG urge the Commission to establish multiple rate caps for the different nonresidential tariff classes subject to the LGR Rider. R.C. 4928.148(A)(2) requires the Commission to establish monthly caps for each nonresidential customer class, subject to the \$1,500 cap. The Commission is not required to establish multiple rate caps for the different nonresidential tariffs or rate schedules. The Commission notes that the design of the proposed LGR Rider allocates responsibility to each rate schedule in accordance with the applicable demand and energy characteristics of the rate schedules and then bills on an energy or kilowatt hour basis to recover the allocated responsibility of each rate schedule. Accordingly, the Commission finds that establishing separate class caps is unnecessary, would further complicate rate design and billing requirements, may inflate collection deferrals and complicate reconciliation, and could result in unreasonable cost-shifting. Accordingly, the proposal for multiple rate caps for nonresidential rate schedule is rejected.

D. *The Commission determinations of prudence and reasonableness of OVEC EDU actions are outside of this case and will not be considered.*

{¶ 29} R.C. 4928.148(A)(1) requires the Commission to retrospectively evaluate the ongoing prudence and reasonableness of OVEC EDU actions, providing that these determinations must occur during calendar years 2021, 2024, 2027, and 2030. Several

commenters filed suggestions aimed at: the manner of evaluating prudence and reasonableness; defining allowable costs in advance of the mandatory reviews; and, requiring disclosure of confidential, competitively-sensitive information. The Commission finds that these comments are unrelated to the LGR Rider rate design and, therefore, beyond the scope of this case.

E. The LGR Rider shall be established such that OVEC EDUs are made whole.

{¶ 30} Commenters addressed issues concerning the commencement and conclusion of the LGR Rider payments, whether EDUs should receive carrying charges, and whether customer refunds should be provided for in establishing the LGR Rider. The Commission agrees with Staff that each EDU's Part B rate as of January 1, 2020, shall include any balances due to the OVEC EDUs at the time of the expiring riders. The legislative intent of providing for recovery of OVEC generation charges supports this outcome. Further, the Commission finds that charges needed to fully compensate OVEC EDUs shall continue, subject to the established rate caps, until all prudently incurred net costs have been recovered in accordance with R.C. 4928.148.

F. The LGR Rider shall not provide for carrying charges or refunds.

{¶ 31} OVEC EDUs and FirstEnergy request that the Commission allow them carrying charges related to any deferrals that are not collected from customers within 12 months. Further, OCC and OMAEG advocate that the LGR Rider should be "subject to refund" if it is later invalidated. The Commission rejects both of these requests, finding that neither is consistent with the legislative intent of the OVEC recovery provisions.

V. LGR RIDER RATE DESIGN

{¶ 32} The Commission establishes the LGR Rider rate design that provides for a statewide rate (Part A Rate) and a specific EDU true-up rate (Part B Rate). LGR Rider will be effective January 1, 2020, through December 31, 2030, subject to final reconciliation.

{¶ 33} Details of the LGR Rider rate design are as follows:

PART A Rate - Statewide Rate

- The Part A rate will be a statewide rate designed to collect the forecasted net costs in total for the OVEC EDUs and the over/under recovered amount from the prior period.
- The rate will be updated on a semi-annual basis beginning January 1, 2020.
- Staff will calculate the statewide rate based on the forecasted data provided by the EDUs.
- The initial rate to become effective January 1, 2020, and the first updated rate to be effective July 1, 2020, will only include the forecasted costs for January 1, 2020 through June 30, 2020, and July 1, 2020 through December 31, 2020, respectively.
- The January 1, 2021 update and all subsequent updates will include the forecasted amount for the upcoming six-month period as well as the over/under collection amount from a prior period.
- The Part A rate will be a single monthly flat rate (\$/Month) for all Ohio residential EDU customers
- The Part A rate will be a single cents per kWh rate (cents/kWh) for all Ohio nonresidential EDU customers for usage up to 833,000 kWhs per month per customer account/premise. A customer account/premise is synonymous with a billing account.
- To calculate the Part A rates for the residential and non-residential customer classes, fifty percent of the total revenue requirement for the period will be allocated to the classes based on each class' actual energy (kWh) contribution to the forecasted total Ohio energy (kWh) amount and fifty percent of the total revenue requirement for the period will be allocated to the classes based on each class' contribution to PJM's capacity 5 coincident peak (5 CP) values (The 5CP shall be based on the most recent data available at least 30 days prior to setting each rate. For the rates established effective on January 1 (beginning January 1, 2020), the 5CP data will be from the peaks set during the summer one and one-half years prior. For the rates established effective July 1 (beginning July 1, 2020), the 5CP data will be based on the peaks set in the preceding summer).

PART B Rate - Specific EDU true-up

- Each EDU will calculate their rate for Part B. The rate design will be identical to the Part A rate design (i.e. flat monthly rate for the residential class and a single cents per kWh rate for all non-residential customers.
- The Part B rate will reconcile the over/under amounts associated with the forecasted billing determinants versus the actual billing determinants (projected collections versus actual collections).
- The Part B rate will be updated semi-annually with the Part A rates.

- Beginning January 1, 2020, the Part B rate will include the estimated December 31, 2019, balance that exists within the EDUs current riders that are being replaced by the LGR Rider. The reconciliation provided by the Part B rate shall take place during the six-month period following the effective date of the Part B rate unless the Commission directs use of a longer period to mitigate adverse rate impacts.

PART A and PART B Rates

- The combination of Part A and Part B rates will be capped at \$1.50 per month for residential customers and \$1,500 per month for non-residential customers on a per account basis.
- The EDUs may defer costs that exceed the caps and all such deferrals shall remain within the class for which the deferral originated and shall be collected in future updates, subject to applicable caps.
- All rates will be grossed up for Commercial Activity Taxes.
- The LGR Rider will not include Carrying Charges.
- EDUs without legacy generation resources shall remit revenues collected through the LGR Rider to the EDUs with legacy generation resources on a monthly basis in proportion to those EDUs net costs verses their collections through Rider LGR.
- For the initial January 1, 2020 rates, the EDUs shall provide the necessary data to Staff within seven days of the date of the final order, so Staff can calculate and review the Part A and B rates in time for a final EDU tariff filing to be made and considered by the Commission for rates effective January 1, 2020. As part of their initial filings, EDUs shall file typical bill comparisons, in the format outlined by Schedule E-5 in Ohio Admin.Code 4901-7-01, Appendix A, reflecting the net bill impact that results from implementing the LGR Rider in place of the discontinuing OVEC or DMR riders.
- For all filings after the January 1, 2020 update, Staff and EDUs shall work together to establish an appropriate timeline for filing, reviewing and calculating the rates. The subsequent updates should be filed no later than 30 days prior to the proposed effective date and shall become effective on the proposed effective date unless otherwise specified by the Commission.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 34} R.C. 4928.148(A)(2) requires the Commission to establish a nonbypassable rate mechanism for the retail recovery of prudently incurred costs related to a legacy generation resource for the period up to December 31, 2030.

{¶ 35} On September 25, 2019, Staff filed comments proposing a rate mechanism through the creation of the LGR Rider.

{¶ 36} On September 26, 2019, the Commission opened this case to receive comments regarding establishing the nonbypassable recovery mechanism for net legacy generation resource costs.

{¶ 37} Initial comments were received on October 17, 2019. Reply comments were received on October 28, 2019.

{¶ 38} In consideration of the statutory obligation to establish the recovery mechanism for net legacy generation resource costs, the comments, and the reply comments filed in this case, the Commission establishes the LGR Rider as described in paragraphs 32-33.

VII. ORDER

{¶ 39} It is, therefore,

{¶ 40} ORDERED, That LGR Rider is established as described It is, further,

{¶ 41} ORDERED, That EDUs responsible for collecting LGR Rider file proposed tariffs consistent with this Entry by December 9, 2019, subject to review and approval by the Commission, It is, further,

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

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

MLW/hac

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Case No(s). 19-1808-EL-UNC

Summary: Entry Entry that in accordance with applicable legislative directives, the Commission establishes a replacement nonbypassable rate mechanism for the retail recovery of net legacy generation resource costs pursuant to R.C. 4928.148 for the period beginning January 1, 2020 and extending up to December 31, 2030. electronically filed by Docketing Staff on behalf of Docketing