

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 TO REVISE THEIR ENERGY
EFFICIENCY RIDERS.

CASE NO. 19-1904-EL-RDR

ENTRY ON REHEARING

Entered in the Journal on February 26, 2020

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by the Ohio Consumers' Counsel on January 31, 2020.

II. DISCUSSION

A. *Procedural Background*

{¶ 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 consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric service to customers, including a firm supply of electric generation service. 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} The Commission has approved several riders in FirstEnergy's ESP proceedings, some of which require the Companies to file semi-annual updates no later than December 1st and June 1st of each year and are subject to an annual audit by the Commission. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.,*

Case No. 08-935-EL-SSO, et al.; *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 10-388-EL-SSO; *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO (ESP III Case); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO (ESP IV Case). One of these Commission-approved riders is the Demand Side Management and Energy Efficiency Rider (Rider DSE).¹ See also *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case Nos. 09-580-EL-EEC, et al. (where the Commission approved FirstEnergy's energy efficiency and peak demand reduction program portfolio plans for 2010 through 2012 and the associated cost recovery mechanisms).

{¶ 5} Pursuant to the Commission's orders in the ESP proceedings, FirstEnergy was directed to file updates for Rider DSE on a semi-annual basis, which would become effective unless suspended by the Commission prior to each rider's respective effective date. The Companies filed the required application for Rider DSE in the above-captioned case on November 21, 2019, requesting that the new rates become effective January 1, 2020.

{¶ 6} On November 27, 2019, the Ohio Consumers' Counsel (OCC) filed a motion to intervene. Thereafter, on December 23, 2019, OCC filed objections to FirstEnergy's application.

{¶ 7} As there was no Commission order to the contrary, the Companies' Rider DSE update went into effect on a service rendered basis on January 1, 2020.

¹ Rider DSE recovers costs incurred by the Companies associated with energy efficiency, peak demand reduction, and demand side management programs. Rider DSE is comprised of two sets of charges: (1) Rider DSE1 recovers costs incurred by the Companies associated with customers taking service under the Economic Load Response Rider, which is not directly applicable to this proceeding; and (2) Rider DSE2 charges recover costs incurred by the Companies associated with the programs that may be implemented by the Companies to comply with the requirements set forth in R.C. 4928.66 through demand-response programs, energy efficiency programs, peak demand reduction programs, and self-directed demand-response, energy efficiency, or other customer-sited programs.

{¶ 8} Pursuant to R.C. 4903.10, any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days after the Commission's order is journalized.

{¶ 9} OCC filed an application for rehearing on January 31, 2020, asserting three separate assignments of error.

{¶ 10} The Companies filed a memoranda contra the application for rehearing on February 10, 2020.

B. OCC's Motion to Intervene

{¶ 11} In its motion to intervene, OCC claims that no party would be prejudiced by its intervention and that OCC satisfies all of the Commission's intervention requirements set forth in Ohio Adm.Code 4901-1-11 and R.C. 4903.221. Specifically, OCC posits that, given its statutory authority to represent the interests of the Companies' residential electric customers under R.C. Chapter 4911 and the fact no other parties have intervened in this proceeding, its participation will assist the Commission in reviewing the Companies' Rider DSE application.

{¶ 12} No memoranda contra the motion to intervene have been filed.

{¶ 13} Upon review, the Commission finds that OCC has satisfied the intervention requirements set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11. Accordingly, its motion to intervene should be granted.

C. Summary of the Application for Rehearing and Memorandum Contra

1. OCC'S FIRST ASSIGNMENT OF ERROR

{¶ 14} As its first assignment of error, OCC alleges the automatic approval of FirstEnergy's new energy efficiency rates is unreasonable and unlawful because the Companies failed to provide any supporting documentation for the new rates, violating a prior Commission order and, consequentially, R.C. 4905.54. Though FirstEnergy did not respond to OCC's objections to its application in this proceeding, OCC claims FirstEnergy

argued in another proceeding that its energy efficiency filing complies with the rider update and audit process approved in the Companies' most recent ESP proceedings. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case Nos. 19-2080-EL-ATA and 19-2081-EL-AAM (*FirstEnergy Decoupling Case*), FirstEnergy Reply Comments (Dec. 27, 2019). However, contrary to FirstEnergy's claims, OCC contends that one of the ESP proceedings FirstEnergy cites to in support of its argument actually requires that the energy efficiency rider updates include the appropriate workpapers. See *ESP III Case*, Opinion and Order (July 18, 2012) at 44. OCC asserts that FirstEnergy has not included the requisite workpapers necessary for the Commission's review of the rider adjustments. OCC suggests that the Commission grant rehearing and set FirstEnergy's energy efficiency riders to zero until such time FirstEnergy supplements its application with the workpapers required by the Commission's order in the *ESP III Case*. OCC notes that this will provide more transparency in this process and will be consistent with the Commission's approach in another recent proceeding, in which Staff required an applicant to provide a more robust filing, including an application with supporting documentation, before the Commission rendered its decision on the updated energy efficiency rider rates. See *In re East Ohio Gas Co., d/b/a Dominion East Ohio*, Case No. 17-1372-GA-RDR (*DEO Rider Update Case*), Finding and Order (Aug. 2, 2017).

{¶ 15} In response, FirstEnergy agrees that the rider update and audit process for Rider DSE was approved by the Commission in the *ESP III Case*; however, the Companies assert that OCC mischaracterizes the Commission's order. Specifically, the Companies assert that the filing of workpapers with each rider adjustment filing for Rider DSE is unnecessary, duplicative, and would run counter to the intent of the Commission to develop a streamlined schedule for the rider audits subject to annual applications and audits in the *ESP III Case* order.² Furthermore, the Companies state they have met the prescribed requirements and have followed the Commission-approved process for Rider DSE rider adjustments for several years. FirstEnergy also notes that the Companies responded to

² FirstEnergy notes that the specific riders subject to the annual audit application are listed on Attachment B in the Stipulation filed, and later approved, in the *ESP III Case*.

OCC's discovery requests and provided the calculations and workpapers supporting Rider DSE, of which OCC filed a significant number along with its December 23, 2019 objections. FirstEnergy avers it also provided the requested information, despite the Companies' belief that such discovery requests were premature given no rider audit report had been filed, as a courtesy in anticipation of OCC's likely participation in *FirstEnergy's Decoupling Case*. Finally, the Companies assert OCC's reliance on the *DEO Rider Update Case* is misplaced, as the Companies have continued to follow the longstanding Commission-approved process for Rider DSE updates.

2. OCC'S SECOND ASSIGNMENT OF ERROR

{¶ 16} As its second assignment of error, OCC notes that the automatic approval of FirstEnergy's energy efficiency charges to consumers is unlawful and unreasonable when FirstEnergy has not met its burden of proving that its proposed rates are just and reasonable, as required by R.C. 4905.22. Similar to its previous arguments, OCC claims that FirstEnergy's filings do not contain adequate supporting documentation, thus rendering it impossible for the Commission to determine if the proposed rates are just and reasonable. OCC further cautions the fact that the energy efficiency riders are subject to audit will delay potential protections for consumers from paying the unreasonably high rates, noting that Staff had only filed its review and recommendation regarding the Companies' 2016 energy efficiency charges in July 2019. See *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 15-1843-EL-RDR, Staff Review and Recommendation (July 29, 2019).

{¶ 17} FirstEnergy argues the Companies have demonstrated that the rates are just and reasonable through their supporting workpapers and calculations, which were provided to Staff, in accordance with the prescribed rider update process, and OCC, in response to its discovery requests. Moreover, the Companies provide that the Rider DSE tariffs state that the rider is subject to reconciliation based upon the results of Commission audit, adding that the timing of when the Commission completes its audit of a previous rider does not have any impact on the timing or method of implementing the current rider.

3. OCC'S THIRD ASSIGNMENT OF ERROR

{¶ 18} As its third and final assignment of error, OCC asserts the automatic approval of FirstEnergy's energy efficiency charges is unreasonable and unlawful because the Companies' have failed to prove that its energy efficiency rates are not duplicative of the decoupling charges recently approved in the *FirstEnergy Decoupling Case*. Raising many of the same arguments it posed in the *FirstEnergy Decoupling Case*, OCC contends the Commission should scrutinize FirstEnergy's application to ensure customers are not double charged, further noting that the Companies bear the burden of proving that its application for a decoupling mechanism is in compliance with all applicable laws, including R.C. 4928.471. Specifically, R.C. 4928.471 provides, "[i]f the commission determines that approving a decoupling mechanism will result in a double recovery by the electric distribution utility, the commission shall not approve the application unless the utility cures the double recovery." Based on an alleged lack of detail in the application and insufficient supporting information provided by the Companies, OCC claims that it is unclear whether the proposed charges for the decoupling mechanism may include duplicative charges, namely lost distribution revenue, from FirstEnergy's energy efficiency riders. OCC also contends that, while FirstEnergy's filings presumably aim to exclude "revenue resulting from implementation of [R.C. 4928.66], excluding program costs and shared savings, and recover pursuant to an approved electric security plan, is being removed from the energy efficiency rider," these statements allegedly lack the requisite supporting documentation required by the Commission to make a valid determination under R.C. 4928.471(D) that double recovery has not occurred or will not occur.

{¶ 19} However, the Companies state they have already filed correspondence in this proceeding to remove all lost distribution revenue from Rider DSE2 for customers served under Rate RS and Rate GS specifically to prevent any double recovery, a filing which, according to FirstEnergy, follows the Companies' approved rider update and audit process and clearly demonstrates all lost distribution revenue was removed from Rider DSE2. See *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 44; *In re Ohio Edison Co., The*

Cleveland Elec. Illum. Co., and The Toledo Edison Co., Case No. 14-1297-EL-SSO, Eighth Entry on Rehearing (Aug. 16, 2017). In fact, FirstEnergy claims the Commission has already concluded that there was no double recovery when it approved the Companies' decoupling application in the *FirstEnergy Decoupling Case*. *FirstEnergy Decoupling Case*, Finding and Order (Jan. 15, 2020) at ¶ 30.

D. Commission Conclusion

{¶ 20} As to OCC's first assignment of error, the Commission finds that rehearing should be denied. We agree with FirstEnergy that the Rider DSE update and audit process is well-established. And, in fact, we have repeatedly reviewed FirstEnergy's semi-annual Rider DSE updates under the automatic approval process since our decision in the *ESP III Case* in 2012. See, e.g., *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case Nos. 13-2173-EL-RDR, et al. This pronounced history illustrates that, since our decision in the *ESP III Case*, the Commission has repeatedly followed the process in the manner in which we intended and as set forth in our *ESP III Case* and *ESP IV Case* orders. We also find OCC's reliance on the *DEO Rider Update Case* to be misplaced, as the review process for DEO's demand-side management rider and FirstEnergy's Rider DSE contain stark dissimilarities. Notably, no aspect of DEO's applications to adjust its demand side management rider rates, or the comparable applications of any other large natural gas company for that matter, are subject to an automatic approval process. See *In re the Application of The East Ohio Gas Co., d/b/a Dominion Energy Ohio*, Case No. 18-1589-GA-RDR, Finding and Order (Jan. 23, 2019). Contrarily, FirstEnergy's semi-annual updates to Rider DSE automatically take effect on January 1st and July 1st, absent a Commission decision to the contrary, pursuant to our relevant ESP orders and the Companies' approved tariffs. What is likely the more comparable filing in FirstEnergy's Rider DSE proceedings are the applications or reports FirstEnergy files in March of every year regarding Rider DSE to initiate Staff's annual review of the rider, which include numerous associated schedules and workpapers. As noted by FirstEnergy in its memorandum contra, the Rider DSE rates are subject to reconciliation based upon the results of those audits. Thus, we agree it is unnecessary that FirstEnergy also be required to file such workpapers with its semi-annual

updates, especially when all requisite information is provided to Staff for its review, consistent with the *ESP III Case* and *ESP IV Case* orders. Nothing raised on this point in the application for rehearing convinces us that an error occurred in this case. We affirm our process and the automatic approval of the Rider DSE updates filed on November 21, 2019. The assignment of error is denied.

{¶ 21} Further, we find that OCC's second assignment of error should similarly be denied. We find the process contemplated in the *ESP III Case* and *ESP IV Case* orders regarding Rider DSE is sufficient to ensure FirstEnergy's Rider DSE rates are just and reasonable. OCC has not provided any justification to find otherwise; rather, OCC merely raises a general objection to the already-approved process for the Rider DSE semi-annual updates. Additionally, as noted above, Rider DSE is subject to an annual audit conducted by Staff, during which Staff reviews the incurred costs, including operation and maintenance expenses, in order to determine prudence and eligibility for recovery of said costs, as well as confirm various calculations to verify the accuracy of the revenue requirement calculation.

{¶ 22} Finally, we do not find that approving the application will result in double recovery by the Companies, based upon the filings in these proceedings and the supporting documentation in the *FirstEnergy Decoupling Case*, consistent with our decision in that case. This documentation demonstrates that any lost distribution revenue recovered in FirstEnergy's Conservation Support Rider (Rider CSR) will not also be recovered in Rider DSE, in accordance with R.C. 4928.471. Like that case, we are not convinced by the speculative arguments of OCC that we should find in the alternative. However, as noted in our order in the *FirstEnergy Decoupling Case*, as an additional measure to ensure that the costs recovered through Rider CSR are not duplicative of those recovered through Rider DSE, FirstEnergy was directed to file revised tariffs which specify that the funds collected through Rider CSR should be subject to refund, based on the results of any audit ordered by the Commission and conducted by Staff or a third-party consultant of the Companies' Rider CSR and/or Rider DSE. *FirstEnergy Decoupling Case*, Finding and Order (Jan. 15, 2020)

at ¶ 30. As directed, FirstEnergy filed revised tariffs on January 31, 2020. OCC has filed a motion requesting the Commission reject the tariff filing, and the revised tariff language is under review by Staff. The Commission will carefully scrutinize the tariff language submitted by FirstEnergy to ensure that the language fully, and without reservation, complies with the Commission directive in the *FirstEnergy Decoupling Case*. As such, OCC's third assignment of error should be denied.

{¶ 23} Accordingly, for the reasons stated above, the Commission finds that OCC's application for rehearing should be denied.

III. ORDER

{¶ 24} It is, therefore,

{¶ 25} ORDERED, That OCC's motion to intervene be granted. It is, further,

{¶ 26} ORDERED, That the application for rehearing filed by OCC on January 31, 2020, be denied. It is, therefore,

{¶ 27} ORDERED, That a copy of this Entry on Rehearing be served upon each party of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

MJA/mef

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