

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF THE
DISTRIBUTION MODERNIZATION RIDER
OF OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON
COMPANY.

CASE NO. 17-2474-EL-RDR

ENTRY

Entered in the Journal on March 15, 2021

{¶ 1} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or the Companies) are electric distribution utilities as defined by 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.

{¶ 2} 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 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.

{¶ 3} On March 31, 2016, in Case No. 14-1297-EL-SSO, the Commission approved FirstEnergy's application for an ESP. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and the Toledo Edison Co. for Authority to Provide for a Std. Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) (*ESP IV Case*). Further, on October 12, 2016, the Commission issued the Fifth Entry on Rehearing in the *ESP IV Case*. On rehearing, the Commission authorized FirstEnergy to implement a distribution modernization rider (Rider DMR). *ESP IV Case*, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶185. Additionally, the Commission ruled that Staff will review the expenditure of Rider DMR revenues to ensure that Rider DMR revenues are used, directly or indirectly, in support of grid modernization. *ESP IV Case*, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶282.

{¶ 4} Thereafter, by Entry issued on December 13, 2017, in this proceeding, the Commission directed Staff to issue a request for proposal (RFP) for a third-party monitor to assist Staff in the review of Rider DMR, consistent with the Commission's previous directives. *ESP IV Case*, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶113. On January 24, 2018, the Commission selected Oxford Advisors, LLC (Oxford) to serve as the third-party monitor.

{¶ 5} In the *ESP IV Case*, the Commission directed the monitor to file a final report of its review of Rider DMR within 90 days after its termination or extension. *ESP IV Case*, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶113.

{¶ 6} Numerous parties appealed the Commission's decision in the *ESP IV Case*, challenging Rider DMR and other aspects of the Commission's orders.

{¶ 7} On June 19, 2019, the Supreme Court of Ohio issued its decision in those appeals, 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. *In re Application of Ohio Edison Co. v. Pub. Util. Comm.*, 157 Ohio St.3d 73, 2019-Ohio-2401, 131 N.E.3d 906 at ¶¶ 14-29.

{¶ 8} On August 22, 2019, pursuant to the *Ohio Edison* decision, the Commission directed the Companies to immediately file proposed revised tariffs setting Rider DMR to \$0.00. The Companies were further directed to issue a refund to customers for monies collected through Rider DMR for services rendered after July 2, 2019, subject to Commission review. Once the refund had been appropriately issued, the Companies were instructed to file proposed, revised tariffs removing Rider DMR from the Companies' ESP. *ESP IV Case*, Order on Remand (Aug. 22, 2019) at ¶¶ 14-16.

{¶ 9} The Companies complied with the Commission's directives as instructed in the Order on Remand and filed tariffs removing Rider DMR from their ESP on October 18, 2019.

{¶ 10} At Staff's request, the attorney examiner granted an extension to Oxford, and ordered the final report to be filed in this docket by March 31, 2020, unless otherwise ordered by the Commission.

{¶ 11} On February 26, 2020, the Commission issued an Entry in which the Commission stated that the provisions for a final review of Rider DMR were an essential part of the terms and conditions related to Rider DMR in ESP IV. *ESP IV Case*, Fifth Entry on Rehearing at ¶282, Eighth Entry on Rehearing at ¶113, Ninth Entry on Rehearing (Oct. 11, 2017) at ¶¶ 17-20. Additionally, the Commission cited the Court's objections in *Ohio Edison* to the usefulness of the proposed final review after the Court questioned the lack of an effective remedy resulting from such review. *Ohio Edison* at ¶26. As such, the Commission found that, when the provisions of Rider DMR were eliminated, so too were the provisions requiring a final review of the rider. The Commission then dismissed and closed the case of record.

{¶ 12} No applications for rehearing of the Commission's February 26, 2020 Entry were subsequently filed.

{¶ 13} Thereafter, on September 8, 2020, Ohio Consumers' Counsel (OCC) filed a motion requesting that the Commission reopen this proceeding and initiate an audit of Rider DMR. FirstEnergy filed a memorandum contra on September 23, 2020, to which OCC filed a reply on September 30, 2020.

{¶ 14} By Entry issued December 30, 2020, the Commission granted OCC's request to reopen this proceeding and initiate an audit of Rider DMR. The Commission later directed Staff to issue an RFP for audit services on February 24, 2021.

{¶ 15} On March 11, 2021, OCC moved to compel discovery responses from FirstEnergy. Specifically, OCC requests that the Commission compel FirstEnergy to respond to OCC's second set of discovery, served on January 19, 2021, seeking, among other

information, requests and responses between FirstEnergy and others (including Staff, Oxford, and other parties) as well as copies of draft audit reports.

{¶ 16} Accordingly, in order to address the pending motion to compel, the parties shall participate in a prehearing conference on April 8, 2021, at 10:00 a.m. ET. Additionally, given the current state of emergency in Ohio, the prehearing conference will be held remotely. Instructions for participation in the prehearing conference shall be emailed to the parties. Anyone interested in observing the prehearing conference as a non-party can access the hearing using the link <http://bit.ly/17-2474-PHC>, and entering the password PUCO, or by calling 1-408-418-9388, and entering code 129 457 5111.

{¶ 17} To ensure the instructions for participation are provided to all those interested in participating, all notices of appearance of counsel and motions to intervene should be filed no later than March 26, 2021. Additionally, any memoranda contra the motion to compel should be filed by March 26, 2021, and any reply memoranda should be filed by April 2, 2021, consistent with Ohio Adm.Code 4901-1-12.

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That a prehearing conference be scheduled in accordance with Paragraph 16. It is, further,

{¶ 20} ORDERED, That any notices of appearance of counsel or motions to intervene be filed by March 26, 2021, in accordance with Paragraph 17. It is, further,

{¶ 21} ORDERED, That any memoranda contra OCC's motion to compel be filed by March 26, 2021, and any reply memoranda be filed by April 2, 2021. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Megan J. Addison

By: Megan J. Addison
Attorney Examiner

JRJ/mef

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Case No(s). 17-2474-EL-RDR

Summary: Attorney Examiner Entry scheduling a prehearing conference for 4/8/21 as 10:00 am; and setting filing deadlines as detailed herein electronically filed by Ms. Mary E Fischer on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio