

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 June 2, 2021

I. SUMMARY

{¶ 1} The Commission selects Daymark Energy Advisors, Inc. as the third-party auditor to assist the Commission and Staff with the review of FirstEnergy's distribution modernization rider.

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 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.

{¶ 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 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 4928.143.

{¶ 4} 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.

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

{¶ 6} 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 (*Ohio Edison*).

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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 the *ESP IV Case*. *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.

{¶ 10} Thereafter, on September 8, 2020, Ohio Consumers' Counsel filed a motion requesting that the Commission reopen this proceeding and initiate an audit of Rider DMR. On December 30, 2020, the Commission determined that, in the interests of both transparency and state policy, good cause existed to initiate an additional review of Rider DMR.

{¶ 11} Accordingly, the Commission directed Staff to prepare a request for proposal (RFP) to solicit the services of a third-party auditor to assist Staff with the full review of Rider DMR, as contemplated in the *ESP IV Case*. Due to an insufficient number of submitted proposals, the Commission directed Staff to reissue the RFP for audit services, in accordance with a revised RFP. The Commission specified that the audit to be conducted should also include an examination of the time period leading up to the passage of H.B. 6 and the subsequent referendum, in order to ensure funds collected from ratepayers through Rider DMR were only used for the purposes established in the *ESP IV Case*. *ESP IV Case*, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶282.

{¶ 12} Bidders were directed to demonstrate their understanding of the project and the work required by showing its clear understanding of the tasks to be completed, the experience and qualifications of the personnel who will perform the work, and the anticipated breakdown of costs and timing. All proposals were submitted by May 18, 2021, in accordance with the terms of the RFP.

{¶ 13} The proposals received in response to the RFP have been evaluated and, after consideration of those proposals, the Commission selects Daymark Energy Advisors, Inc. (Daymark). The Commission finds that Daymark has the necessary experience to complete the required work.

{¶ 14} The Companies shall enter into a contract with Daymark by June 23, 2021, for the purpose of providing payment for its services. The contract shall incorporate the terms and conditions of the RFP, the auditor's proposal, and relevant Commission entries in this case.

{¶ 15} The Commission shall solely direct the work of the auditor. Staff will review and approve payment invoices submitted by the auditor.

{¶ 16} Daymark will execute its duties pursuant to the Commission's statutory authority to investigate and acquire records, contracts, reports, and other documentation under R.C. 4903.02, 4903.03, 4905.06, 4905.15, and 4905.16. Daymark is subject to the Commission's statutory duty under R.C. 4901.16, which provides:

Except in his report to the public utilities commission or when called on to testify in any court or proceeding of the public utilities commission, no employee or agent referred to in section 4905.13 of the Revised Code shall divulge any information acquired by him in respect to the transaction, property, or business of any public utility, while acting or claiming to act as such employee or agent. Whoever violates this section shall be disqualified from acting as agent, or acting in any other capacity under the appointment or employment of the commission.

{¶ 17} Upon request of Daymark or Staff, the Companies shall provide any and all documents or information requested. The Companies may conspicuously mark such documents or information "confidential" if the Companies believe the document should be

deemed as such. In no event, however, shall the Companies refuse or delay in providing such documents or information.

{¶ 18} Once disclosure is permitted by R.C. 4901.16, the following process applies to the release of any document or information marked as confidential. Three days' prior notice of intent to disclose shall be provided to the party claiming confidentiality. Three days after such notice, Staff or the auditor may disclose or otherwise make use of such documents or information for any lawful purpose, unless the Commission receives a request for a protective order pertaining to such documents or information within the three-day notice period. The three-day notice period will be computed according to Ohio Adm.Code 4901-1-07.

{¶ 19} Daymark shall perform its audit and investigation as an independent contractor. Any conclusions, results, or recommendations formulated by Daymark may be examined by any participant to this proceeding. Further, it shall be understood that the Commission and/or its Staff shall not be liable for any acts committed by Daymark or its agents in the preparation and presentation of the report.

III. ORDER

{¶ 20} It is, therefore,

{¶ 21} ORDERED, That Daymark be selected to perform the consulting activities set forth above and in the RFP. It is, further,

{¶ 22} ORDERED, That FirstEnergy and Daymark shall observe the requirements set forth herein. It is, further,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JWS/mef

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

Summary: Entry selecting Daymark Energy Advisors, Inc. as the third-party auditor to assist the Commission and Staff with the review of FirstEnergy's distribution modernization rider electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio