

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 FOR APPROVAL OF TARIFF
AMENDMENTS.

CASE NO. 21-484-EL-ATA

FINDING AND ORDER

Entered in the Journal on July 7, 2021

I. SUMMARY

{¶ 1} The Commission approves the modified application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company and directs that all funds collected through the Conservation Support Rider be refunded to customers over a single billing cycle beginning August 1, 2021.

II. DISCUSSION

A. *Procedural History*

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or the Companies) are electric distribution utilities (EDUs) 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 EDU 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 a 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 March 31, 2016, the Commission approved FirstEnergy's application for its fourth 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).

{¶ 5} R.C. 4928.471, effective on October 22, 2019, authorized EDUs to file an application to implement a decoupling mechanism. Under this decoupling mechanism, “the base distribution rates for residential and commercial customers shall be decoupled to the base distribution revenue and revenue resulting from implementation of section 4928.66 of the Revised Code, excluding program costs and shared savings, and recovered pursuant to an approved electric security plan under section 4928.143 of the Revised Code, as of the twelve month period ending on December 31, 2018.” R.C. 4928.471(A).

{¶ 6} R.C. 4928.471(B) states that the Commission shall issue an order approving an application for a decoupling mechanism not later than 60 days after the application is filed. The statute further states that, in determining that an application is not unjust and unreasonable, the Commission shall verify that the rate schedule or schedules are designed to recover the electric distribution utility's 2018 annual revenues as described in R.C. 4928.471(A) and that the decoupling rate design is aligned with the rate design of the electric distribution utility's existing base distribution rates.

{¶ 7} On November 21, 2019, the Companies filed an application in Case Nos. 19-2080-EL-ATA and 19-2081-EL-AAM (*Decoupling Mechanism Cases*) to implement a decoupling mechanism pursuant to R.C. 4928.471, known as the Conservation Support Rider (Rider CSR).

{¶ 8} By Finding and Order issued January 15, 2020, the Commission approved the Companies’ application, finding that the proposed rates for Rider CSR did not appear to be unjust or unreasonable, subject to Staff’s third and final recommendation. The Commission noted that the decoupling mechanism should only remain in effect until the Commission subsequently approves base distribution rates for the Companies. R.C. 4928.471(C). Additionally, in order to ensure that the costs recovered through Rider CSR were not duplicative of those recovered through the Companies’ demand side management

and energy efficiency rider (Rider DSE),¹ the Commission directed FirstEnergy to file revised tariffs specifying 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.

{¶ 9} On January 31, 2020, the Companies filed their revised final tariffs to reflect the adjusted Rider CSR rates.

{¶ 10} On February 6, 2020, the Ohio Consumers' Counsel (OCC) filed a motion to modify FirstEnergy's compliance tariffs in the *Decoupling Mechanism Cases*, in order to ensure that they were consistent with the Commission's Finding and Order by recognizing that reconciliation of Rider CSR would include refunds available based on the results of any Commission audit.

{¶ 11} FirstEnergy filed a memorandum contra on February 21, 2020, to which OCC filed a reply in support of its motion on February 26, 2020.

{¶ 12} In its Second Finding and Order, the Commission granted OCC's motion and directed the Companies to file new final revised tariffs, specifically noting that the revised tariffs should include language acknowledging that Rider CSR was subject to reconciliation, including, but not limited to, increases or refunds resulting from audits ordered by the Commission of Rider CSR or Rider DSE. *Decoupling Mechanism Cases*, Second Finding and Order (June 17, 2020).

{¶ 13} The Companies filed tariffs in compliance with the Commission's directives on July 2, 2020.

¹ 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.

{¶ 14} On November 3, 2020, the Companies filed applications for tariff updates of Rider CSR to be effective for services rendered beginning January 1, 2021.

{¶ 15} On December 30, 2020, Staff filed its review of the Companies' proposed tariff rates for Rider CSR, ultimately recommending that the rates as proposed in the tariffs be effective January 1, 2021.

{¶ 16} The updated tariff rates took effect automatically on January 1, 2021.

{¶ 17} Thereafter, on January 13, 2021, the Office of the Ohio Attorney General filed a Motion for Temporary Restraining Order & Preliminary Injunction with the Franklin County Court of Common Pleas, requesting, among other things, that the Court issue a preliminary injunction to prevent the Companies from collecting the decoupling charges. *State of Ohio v. FirstEnergy Corp., et al.*, Case Nos. 20CV-06281 et al.

{¶ 18} On February 1, 2021, the Companies filed an application in Case No. 21-101-EL-ATA, requesting that the charges for Rider CSR be set to zero, pursuant to R.C. 4909.18.

{¶ 19} The Commission approved the Companies' application and directed the Companies to file final tariffs setting Rider CSR to zero, as proposed in their application, subject to final review by the Commission. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 21-101-EL-ATA, Finding and Order (Feb. 2, 2021)

{¶ 20} Thereafter, the 134th General Assembly passed Am. Sub. H.B. No. 128 (H.B. 128), which became effective June 30, 2021, and directs the full amount of revenues collected from customers through a rider established under R.C. 4928.471 to be promptly refunded to customers from whom the revenues were collected. H.B. 128 also states that refunds paid to customers shall be allocated to customer classes in the same proportion as originally collected.

{¶ 21} On April 22, 2021, in anticipation of the effective date of H.B. 128, the Companies filed an application in the above-captioned proceeding, proposing to modify

Rider CSR to return to customers the full amount of revenues collected from customers through the rider, which amounts to approximately \$27,447,717, plus interest, over a 12-month period commencing June 1, 2021. Further, the Companies propose that refunds paid to customers shall be allocated to customer classes in the same proportion as originally collected.

{¶ 22} OCC, the Ohio Manufacturing Association Energy Group (OMAEG), and Ohio Partners for Affordable Energy filed motions to intervene in this proceeding on April 29, 2021, May 6, 2021, and June 7, 2021, respectively.

{¶ 23} By Entry issued May 17, 2021, the attorney examiner established a comment period for interested parties to discuss the Companies' application and supporting workpapers.

{¶ 24} On June 7, 2021, OCC and OMAEG filed initial comments. On June 17, 2021, the Companies, OCC, and OMAEG filed reply comments.

{¶ 25} Staff filed its Staff review and recommendations on June 16, 2021.

B. Summary of the Comments

{¶ 26} In its initial comments, OCC states that, while it agrees with FirstEnergy's commitment to return the entirety of the funds collected through Rider CSR, plus interest, the proposed timeframe for returning these funds to customers is not the prompt response contemplated by H.B. 128. Initially, OCC suggests that the Commission rule in this case as quickly as possible following the submission of comments. Additionally, rather than allowing the Companies to return these funds to customers over a 12-month period, OCC recommends that the entire amount be credited to customers in a single billing cycle immediately following approval of the application. OCC stresses that H.B. 128 provides that all amounts collected by a utility for decoupling under R.C. 4928.471 "shall be promptly refunded to customers," indicating these funds should be returned to consumers without delay.

{¶ 27} OMAEG stresses that the Commission should prioritize transparency in this proceeding to ensure customers are, indeed, receiving a refund of the full amount of revenues collected through Rider CSR. Not only does it recommend verifying the amount of the refund, but OMAEG also requests that the Commission verify that the allocation of the proposed refund accurately reflects the amounts that have been collected from each customer class. To foster a more transparent approach, OMAEG also suggests that the Commission should require FirstEnergy to publicly file the company records referenced in its application as Exhibit C-3 Attachment 1. Once verification of the amounts contained in the application has occurred, OMAEG agrees with OCC that the Commission should approve the application as soon as possible as required by H.B. 128.

{¶ 28} Staff notes that it reviewed the schedules included with the Companies' application to ensure appropriate accounting and regulatory treatment was applied. As a result of its review, Staff states that FirstEnergy has appropriately calculated the rates in the Rider CSR filing; however, Staff recommends that the Commission expedite the refunds to customers over a three-month period, in the amount and manner proposed in the application, but utilizing updated rates and interest expense accounting for the three-month recovery period.

{¶ 29} In its reply comments, OCC supports OMAEG's call for transparency and proposes that FirstEnergy include its suggested language for a bill insert for residential customers receiving the credit. OMAEG also noted its support for OCC's proposal to return the funds collected over one single billing cycle. In the alternative, if such a timeframe is impractical, OMAEG supports Staff's proposal to return the funds to consumers over a three-month period.

{¶ 30} In their reply comments, the Companies ultimately agree with the recommendations proposed by OCC and OMAEG and propose to modify its application in order to return the customers the full amount of revenues collected through Rider CSR, with interest, in a single month. In an effort to achieve the transparency sought after by OMAEG,

the Companies also attached their workpapers illustrating the return of these revenues in a single month, as well as new proposed tariff sheets. Under the Companies' proposal, the updated Rider CSR rates would be effective July 1, 2021 through July 31, 2021. Additionally, the Companies note that they would make separate filings to set Rider CSR to zero following the refund, subject to final reconciliation, and remove Rider CSR from their tariffs once that reconciliation is complete. The Companies agree with OCC and OMAEG and recommend that the Commission rule on this case promptly; however, in the event a Commission decision cannot be made prior to July 1, 2021, the Companies commit to following the Commission's decision in this case and will file their final workpapers and compliance tariff sheets in the same format to enable a prompt return of dollars to customers.

C. Commission Conclusion

{¶ 31} Upon review of the modified application and the comments submitted, we find that the Companies' application and proposed tariffs, as modified in accordance with their reply comments filed on June 17, 2021, do not appear to be unjust or unreasonable, are consistent with H.B. 128, and should be approved with the tariffs to become effective for services rendered beginning on August 1, 2021. Accordingly, the Commission directs the Companies to issue a refund to customers for the full amount of revenues collected through Rider CSR in the following billing cycle. The refund is to be made in the form of a credit to customer bills over a single billing cycle, which will be accompanied with a bill insert to explain the refund. Within seven days of the date of this Finding and Order, FirstEnergy shall submit to Staff for its approval a proposed notice regarding the refund.

{¶ 32} Once the refund has been processed, the Companies will file proposed, revised tariffs removing Rider CSR from their tariff sheets, subject to final review by the Commission.

III. ORDER

{¶ 33} It is, therefore,

{¶ 34} ORDERED, That the Companies' application, as modified on June 17, 2021, be approved. It is, further,

{¶ 35} ORDERED, That the Companies file tariffs, in final form, by July 14, 2021, consistent with this Finding and Order and subject to final review by the Commission, crediting back the full amount of the funds collected through Rider CSR to customers in the following billing cycle. The Companies shall file one copy in Case No. 21-484-EL-ATA and one copy in their respective TRF dockets. It is, further,

{¶ 36} ORDERED, That within seven days of the date of this Finding and Order, the Companies shall submit to the Staff for its approval the proposed bill insert. It is, further,

{¶ 37} ORDERED, That the Companies file proposed, revised tariffs removing Rider CSR from their tariff sheets once the credits described in Paragraph 31 have been processed. It is, further,

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

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

COMMISSIONERS:

Approving:

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

MJA/mef

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Case No(s). 21-0484-EL-ATA

Summary: Finding & Order approving the modified application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company and directs that all funds collected through the Conservation Support Rider be refunded to customers over a single billing cycle beginning August 1, 2021. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio