

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF THE DEMAND SIDE MANAGEMENT AND ENERGY EFFICIENCY RIDER OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY.

CASE NO. 13-2173-EL-RDR

CASE NO. 14-1947-EL-RDR

CASE NO. 15-1843-EL-RDR

CASE NO. 16-2167-EL-RDR

CASE NO. 17-2277-EL-RDR

IN THE MATTER OF THE DETERMINATION OF THE EXISTENCE OF SIGNIFICANTLY EXCESSIVE EARNINGS UNDER THE ELECTRIC SECURITY PLANS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY.

CASE NO. 18-857-EL-UNC

CASE NO. 19-1338-EL-UNC

CASE NO. 20-1034-EL-UNC

CASE NO. 21-586-EL-UNC

IN THE MATTER OF THE QUADRENNIAL REVIEW REQUIRED BY R.C. 4928.143(E) FOR THE ELECTRIC SECURITY PLANS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY.

CASE NO. 20-1476-EL-UNC

IN THE MATTER OF THE APPLICATION OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY FOR APPROVAL OF A TARIFF CHANGE.

CASE NO. 21-1127-EL-ATA

ENTRY

Entered in the Journal on November 9, 2021

I. SUMMARY

{¶ 1} In this Entry, the attorney examiner grants the motion to consolidate, sets a deadline for the filing of testimony in support of the stipulation, directs that the hearing be scheduled for November 22, 2021, at 10:00 a.m., via Webex, and cancels the previously scheduled hearings.

II. DISCUSSION

{¶ 2} Ohio Edison Company (OE), The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy) are electric distribution utilities (EDUs) 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 (MRO), in accordance with R.C. 4928.142, or an electric security plan (ESP), in accordance with 4928.143.

A. *SEET Procedural History*

{¶ 4} Pursuant to the directives of R.C. 4928.143(F), the Commission is required to evaluate annually the earnings of each electric utility's approved ESP to determine whether the plan produces significantly excessive earnings for the electric utility. Moreover, R.C. 4928.143(E) requires that, if a Commission-approved ESP has a term that exceeds three years from the effective date of the plan, the Commission must test the plan in the fourth year (the quadrennial review) to determine whether the ESP, including its then-existing pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, continues to be more favorable in the aggregate and during the remaining term of the plan as compared to the expected results that would otherwise apply under R.C. 4928.142, i.e., under an MRO. The Commission must also determine the prospective effect of the ESP to determine if that effect is substantially likely to provide the EDU with a return on common equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded companies, including utilities, that face comparable business and financial risk, with adjustments for capital structure as may be appropriate.

{¶ 5} On May 15, 2018, FirstEnergy filed an application in Case No. 18-857-EL-UNC for the administration of the significantly excessive earnings test (SEET), as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2017.

{¶ 6} In Case No. 18-857-EL-UNC (*2017 SEET Review*), a stipulation and recommendation between FirstEnergy, Ohio Energy Group (OEG), and Staff was filed on October 26, 2018. On March 20, 2019, the Commission issued its Opinion and Order in this matter, adopting the stipulation, as modified, in the *2017 SEET Review*. In the Opinion and Order, the Commission found that it was appropriate to exclude the revenues from the distribution modernization rider (Rider DMR) from the 2017 SEET, consistent with the Commission's orders in FirstEnergy's latest ESP. *In re Ohio Edison Co., The Cleveland Elec. Ilium. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶212, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶81.

{¶ 7} On July 15, 2019, Ohio Consumers' Counsel (OCC) appealed the Commission's decision in the *2017 SEET Review*, asserting that the Commission unreasonably and, under R.C. 4928.143(F), unlawfully failed to consider the Rider DMR revenues under OE's ESP, which caused ESP profits to be understated.

{¶ 8} On July 15, 2019, FirstEnergy filed an application in Case No. 19-1338-EL-UNC (*2018 SEET Review*) for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2018.

{¶ 9} On May 15, 2020, FirstEnergy filed an application in Case No. 20-1034-EL-UNC (*2019 SEET Review*) for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2019.

{¶ 10} Subsequently, the Commission opened Case No. 20-1476-EL-UNC (*Quadrennial Review*) in order to conduct the quadrennial review for FirstEnergy required by R.C. 4928.143(E). By Entry issued on September 4, 2020, the attorney examiner consolidated that case with the *2018 SEET Review* and *2019 SEET Review* for administrative

efficiency, established a procedural schedule, and set the matters for hearing. On October 29, 2020, the attorney examiner established a new procedural schedule.

{¶ 11} On December 1, 2020, the Supreme Court of Ohio issued its decision in OCC's appeal of the *2017 SEET Review*, remanding with instructions to conduct a new SEET proceeding and include the Rider DMR revenue in the analysis. Specifically, the Court held that the Rider DMR revenue must be included in the annual SEET review pursuant to R.C. 4928.143(F). *In re Determination of Existence of Significantly Excessive Earnings for 2017 Under Elec. Sec. Plan of Ohio Edison Co.*, 162 Ohio St.3d 651, 2020-Ohio-5450, 166 N.E.3d 1191 at ¶¶ 14-21.

{¶ 12} On January 12, 2021, the attorney examiner consolidated the *2017 SEET Review* with the *2018 SEET Review*, *2019 SEET Review*, and *Quadrennial Review*, *sua sponte*, in the spirit of administrative efficiency and ordered that the procedural schedule should remain intact, unless otherwise ordered by the Commission.

{¶ 13} On February 4, 2021, OCC filed a motion of an indefinite continuance of the procedural schedule and evidentiary hearing. OCC contended that Senate Bill 10, pending before the General Assembly, would amend R.C. 4928.143(F), which governs the calculation of the SEET. FirstEnergy filed a memorandum contra, and OCC filed a reply.

{¶ 14} On February 26, 2021, the attorney examiner denied the motion for an indefinite continuance and modified the procedural schedule. The attorney examiner also extended the date for intervenor testimony and the deadline for service of discovery.

{¶ 15} On May 27, 2021, a prehearing conference was held to discuss mutually agreeable dates for the hearing.

{¶ 16} On May 28, 2021, the attorney examiner issued an Entry setting the procedural schedule and scheduling the hearing date.

{¶ 17} Further, on July 23, 2021, the Companies filed a motion of a 90-day extension of the remaining procedural schedule. The Companies represented that OCC and Northeast Ohio Public Energy Council (NOPEC) support a 14-day extension and oppose a 90-day extension, while none of the remaining parties contacted by the Companies oppose the extension.

{¶ 18} On July 23, 2021, OEG and OCC timely filed supplemental direct testimony.

{¶ 19} By Entry issued July 26, 2021, the attorney examiner granted the request for a 14-day extension of the procedural schedule, set a deadline for memoranda contra the Companies' request for a 90-day extension, and scheduled a prehearing conference for August 2, 2021, in order to discuss the Companies' request.

{¶ 20} On July 26, 2021, OCC filed a memorandum contra the Companies' motion for a 90-day extension of the procedural schedule, primarily questioning whether such a lengthy extension was warranted. No other memoranda contra were filed.

{¶ 21} The prehearing conference occurred, as scheduled, on August 2, 2021. During the conference, the majority of parties did not contest the Companies' request for a 90-day extension in order to conduct settlement negotiations.

{¶ 22} On August 9, 2021, the attorney examiner granted the request for an additional extension, extended the deadline for supplemental intervenor testimony to October 18, 2021, and scheduled the evidentiary hearing for November 29, 2021. The attorney examiner also ordered that the Companies should file correspondence providing the status of settlement negotiations every 30 days.

{¶ 23} On October 15, 2021, the Companies filed a motion for a 14-day extension of the remaining case schedule to allow for ongoing settlement discussions. The Companies also requested expedited treatment, noting the October 18, 2021 deadline for intervenor supplemental testimony. The Companies certified that no parties object to the motion or to the expedited treatment of the motion.

{¶ 24} On October 18, 2021, the attorney examiner granted the Companies' motion for a 14-day extension of the procedural schedule, including the date for the filing of intervenor testimony. The attorney examiner also rescheduled the evidentiary hearing for December 13, 2021, at 10:00 a.m.

B. Demand Side Management and Energy Efficiency Rider Procedural History

{¶ 25} 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. One of these Commission-approved riders is the Demand Side Management and Energy Efficiency Rider (Rider DSE). *In re FirstEnergy*, Case No. 08-935-EL-SSO, et al.; *In re FirstEnergy*, Case No. 10-388-EL-SSO; *In re FirstEnergy*, Case No. 12-1230-EL-SSO; *In re FirstEnergy*, Case No. 14-1297-EL-SSO. Rider DSE recovers costs incurred by the Companies associated with energy efficiency, peak demand reduction, and demand side management programs.

{¶ 26} On March 24, 2015, FirstEnergy filed an application in Case No. 13-2173-EL-RDR, in support of Staff's 2014 annual review of Rider DSE (*2014 Rider DSE Review*).

{¶ 27} On March 31, 2016, FirstEnergy filed an application in Case No. 14-1947-EL-RDR, in support of Staff's 2015 annual review of Rider DSE (*2015 Rider DSE Review*).

{¶ 28} On March 31, 2017, FirstEnergy filed an application in Case No. 15-1843-EL-RDR, in support of Staff's 2016 annual review of Rider DSE (*2016 Rider DSE Review*).

{¶ 29} On March 30, 2018, FirstEnergy filed an application in Case No. 16-2167-EL-RDR, in support of Staff's 2017 annual review of Rider DSE (*2017 Rider DSE Review*).

{¶ 30} On March 29, 2019, FirstEnergy filed an application in Case No. 17-2277-EL-RDR, in support of Staff's 2018 annual review of Rider DSE (*2018 Rider DSE Review*).

{¶ 31} On June 28, 2018, Staff filed its review and recommendations in the *2014 Rider DSE Review* and *2015 Rider DSE Review*. Subsequently, on July 29, 2019, Staff filed its review and recommendation in the *2016 Rider DSE Review*.

{¶ 32} FirstEnergy filed comments in response to Staff's recommendations in the *2014 Rider DSE Review* and *2015 Rider DSE Review* on February 28, 2019.

{¶ 33} By Entry issued January 29, 2020, the attorney examiner consolidated the *2014 Rider DSE Review*, *2015 Rider DSE Review*, *2016 Rider DSE Review*, *2017 Rider DSE Review*, and *2018 Rider DSE Review* and established a procedural schedule.

{¶ 34} On June 26, 2020, the attorney examiner rescheduled the hearing to commence on December 14, 2020; however, on November 2, 2020, the attorney examiner issued an Entry indicating that a new hearing date would be set by subsequent entry.

{¶ 35} On May 27, 2021, a prehearing conference was held to discuss mutually agreeable dates for the hearing.

{¶ 36} On May 28, 2021, the attorney examiner established a new procedural schedule with the evidentiary hearing to commence on September 22, 2021.

{¶ 37} On July 23, 2021, the Companies filed a motion of a 90-day extension of the remaining procedural schedule. The Companies represented that OCC supports a 14-day extension and opposes a 90-day extension while none of the remaining parties contacted by the Companies oppose the extension.

{¶ 38} By Entry issued July 26, 2021, the attorney examiner granted the request for a 14-day extension of the procedural schedule, set a deadline for memoranda contra the Companies' request for a 90-day extension, and scheduled a prehearing conference for August 2, 2021, in order to discuss the Companies' request.

{¶ 39} On July 30, 2021, OCC filed a memorandum contra the Companies' motion for a 90-day extension of the procedural schedule, primarily questioning whether such a lengthy extension was warranted after the 14-day extension had already been granted. No other memoranda contra were filed.

{¶ 40} The prehearing conference occurred, as scheduled, on August 2, 2021. During the conference, the majority of parties did not contest the Companies' request for a 90-day extension in order to conduct settlement negotiations.

{¶ 41} On August 9, 2021, the attorney examiner granted the request for an additional extension and scheduled the evidentiary hearing for December 8, 2021. The attorney examiner also ordered that the Companies should file correspondence providing the status of settlement negotiations every 30 days.

{¶ 42} On October 15, 2021, the Companies filed a motion for a 14-day extension of the remaining case schedule to allow for ongoing settlement discussions. The Companies also requested expedited treatment. The Companies certified that no parties object to the motion or to the expedited treatment of the motion.

{¶ 43} On October 18, 2021, the attorney examiner granted the Companies' motion for a 14-day extension of the procedural schedule and rescheduled the evidentiary hearing for December 22, 2021, at 10:00 a.m.

C. *Additional Procedural History*

{¶ 44} On May 17, 2021, FirstEnergy filed an application in Case No. 21-586-EL-UNC (2020 SEET Review) for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2020.

{¶ 45} On November 1, 2021, the Companies filed an application in Case No. 21-1127-EL-ATA (*Tariff Case*) for a tariff adjustment, pursuant to R.C. 4909.18.

{¶ 46} On November 1, 2021, the Companies filed a stipulation and recommendation (Stipulation) in the *2014 Rider DSE Review*, *2015 Rider DSE Review*, *2016 Rider DSE Review*, *2017 Rider DSE Review*, *2018 Rider DSE Review*, *2017 SEET Review*, *2018 SEET Review*, *2019 SEET Review*, *Quadrennial Review*, *2020 SEET Review*, and *Tariff Case*.

{¶ 47} On November 2, 2021, the Companies filed a motion to consolidate the *2014 Rider DSE Review*, *2015 Rider DSE Review*, *2016 Rider DSE Review*, *2017 Rider DSE Review*, *2018 Rider DSE Review*, *2017 SEET Review*, *2018 SEET Review*, *2019 SEET Review*, *Quadrennial Review*, *2020 SEET Review*, and *Tariff Case*.

D. Consideration of the FirstEnergy's Motion to Consolidate

{¶ 48} At this time, the attorney examiner finds that the above cases should be consolidated in the spirit of administrative efficiency. Not only will consolidation promote efficiency in the resolution of these cases, the attorney examiner also notes that no party will be prejudiced by the consolidation. Motions to intervene already filed in at least one of the above-captioned cases will be treated as a motion to intervene in all the cases.

{¶ 49} The attorney examiner also finds that testimony in support of the Stipulation should be filed by November 15, 2021.

{¶ 50} The attorney examiner finds that the evidentiary hearing for the consolidated cases should be scheduled for November 22, 2021, at 10:00 a.m., to be held via Webex. Instructions for participation in the evidentiary hearing shall be emailed to the parties. Anyone interested in observing the evidentiary hearing as a nonparty can access the evidentiary hearing using the link <https://bit.ly/13-2173-EVH>, and entering the password PUCO, or by calling 1-408-418-9388, and entering code 2342 993 8700.

{¶ 51} Further, the evidentiary hearings previously scheduled for December 13, 2021, and December 22, 2021, should be cancelled.

III. ORDER

{¶ 52} It is, therefore,

{¶ 53} ORDERED, That the above-captioned cases be consolidated, as set forth in Paragraph 48. It is, further,

{¶ 54} ORDERED, That the testimony in support of the Stipulation be filed by November 15, 2021. It is, further,

{¶ 55} ORDERED, That the evidentiary hearing be scheduled for November 22, 2021, as set forth in Paragraph 50. It is, further,

{¶ 56} ORDERED, That the evidentiary hearings previously scheduled for December 13, 2021, and December 22, 2021, be cancelled. It is, further,

{¶ 57} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Jacky Werman St. John

By: Jacky Werman St. John
Attorney Examiner

JWS/kck

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Summary: Attorney Examiner Entry ordering that the above-captioned cases be consolidated, as set forth in Paragraph 48; ordering that the testimony in support of the Stipulation be filed by November 15, 2021; ordering that the evidentiary hearing be scheduled for November 22, 2021, as set forth in Paragraph 50 and ordering that the evidentiary hearings previously scheduled for December 13, 2021, and December 22, 2021, be cancelled. electronically filed by Kelli C. King on behalf of Jacky Werman St. John, Attorney Examiner, Public Utilities Commission of Ohio