

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

IN THE MATTER OF THE APPLICATION OF
OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON
COMPANY FOR AN EXTENSION OF THE
DISTRIBUTION MODERNIZATION RIDER.

CASE NO. 19-361-EL-RDR

ENTRY

Entered in the Journal on November 16, 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 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} Numerous parties appealed the Commission’s decision in the *ESP IV Case*, challenging Rider DMR and other aspects of the Commission’s orders.

{¶ 5} Thereafter, by Entry issued on December 13, 2017, in Case No. 17-2474-EL-RDR, the Commission directed Staff to issue an 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. In the *ESP IV Case*, the Commission directed the monitor to file a mid-term report of its review of Rider DMR in any proceeding in which the Companies seek an extension of Rider DMR, within 60 days after the filing of the application seeking such extension. *ESP IV Case*, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶113.

{¶ 6} On February 1, 2019, FirstEnergy filed an application in Case No. 19-361-EL-RDR, seeking an extension of Rider DMR.

{¶ 7} Following a series of extension requests, Oxford filed its mid-term report of its review of Rider DMR on June 14, 2019, in Case No. 17-2474-EL-RDR.¹ The Companies also filed a motion for protective order, seeking to protect certain information contained in the mid-term report from being disclosed publicly. No memoranda contra the motion for protective order were filed.

{¶ 8} On June 19, 2019, the Supreme Court of Ohio issued its decision in the appeals of the Commission’s decision in the *ESP IV Case*, affirming the Commission’s order in part,

¹ The mid-term report was inadvertently filed in Case No. 17-2474-EL-RDR when the Commission had directed it to be filed in Case No. 19-361-EL-RDR.

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*).

{¶ 9} 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.

{¶ 10} 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.

{¶ 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 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.

{¶ 12} 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. 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. On June 2, 2021, the Commission selected Daymark Energy Advisors, Inc. (Daymark) and directed the Companies to enter into a contract with Daymark to perform the audit services, as contemplated in the *ESP IV Case*.

{¶ 13} Meanwhile, OCC submitted a public records request to the Commission, seeking an unredacted copy of the mid-term report filed by Oxford on June 14, 2019.

{¶ 14} As there is a still pending motion for protective order covering the redacted portions of the mid-term report, Staff notified FirstEnergy of the public records request and inquired as to what information, if any, for which the Companies would not object to producing to OCC. FirstEnergy represented that, after review, it had no issue with Staff producing the majority of the mid-term report or the documents attached thereto. The Companies noted, however, that they required additional time to review OA Set 4-INT-105 Attachments 1 through 23, before determining whether its production would be appropriate in response to the public records request.

{¶ 15} Accordingly, the motion for protective order filed on June 14, 2019 should be denied, in part, to the extent the Companies are no longer objecting to the production of the requested documents. Staff is directed to release the uncontested materials identified by the Companies in response to OCC's public records request as soon as possible. Furthermore, FirstEnergy is directed to file an update in these proceedings in three days regarding OA Set 4-INT-105 Attachments 1 through 23 and whether the Companies will continue to seek protective treatment over these remaining documents.

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That the Companies' motion for protective order filed on June 14, 2019 be denied, in part, as set forth in this Entry. It is, further,

{¶ 18} ORDERED, That FirstEnergy file an update in these proceedings within three days regarding the remaining materials subject to the motion for protective order. It is, further,

{¶ 19} 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

GAP/mef

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in

Case No(s). 17-2474-EL-RDR, 19-0361-EL-RDR

Summary: Attorney Examiner Entry ordering that the Companies' motion for protective order filed on June 14, 2019 be denied, in part, as set forth in this Entry and ordering that FirstEnergy file an update in these proceedings within three days regarding the remaining materials subject to the motion for protective order. electronically filed by Kelli C. King on behalf of Megan Addison, Attorney Examiner Public Utilities Commission of Ohio