

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 December 28, 2021

{¶ 1} In this Entry, the attorney examiner schedules a prehearing conference for 10:00 a.m. on January 7, 2022, via Webex.

{¶ 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. 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.

{¶ 12} 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 described in the RFP and its proposal. In the Entry, the Commission ordered Daymark and the Companies to incorporate the terms and conditions of the RFP

into the contract, which set the deadline for the draft audit report as October 15, 2021, and the deadline to file the final audit report as October 29, 2021.

{¶ 13} On October 14, 2021, Staff filed a motion for an extension of time to file the draft audit report and final audit report, which was granted by Entry on October 22, 2021. In that Entry, the deadlines for Daymark to provide its draft and final audit reports were set for December 2, 2021, and December 16, 2021, respectively.

{¶ 14} On December 14, 2021, Staff filed a motion for extension of time to file the final audit report, which was granted by Entry on December 15, 2021. The deadline for Daymark to file its final audit report was set for January 14, 2022.

{¶ 15} At this time, the attorney examiner finds that a prehearing conference should be held in this proceeding to discuss any pending discovery rulings and status updates from the parties. Accordingly, the prehearing conference shall be held remotely, via Webex, on January 7, 2022, at 10:00 a.m. ET. Instructions for participation in the prehearing conference shall be emailed to the parties. Anyone interested in observing the prehearing conference as a nonparty can access the prehearing using the link <https://bit.ly/17-2474-PHC2>, and entering the password PUCO, or by calling 1-408-418- 9388, and entering code 2345 950 1178.

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That a prehearing conference be scheduled in accordance with Paragraph 15. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Jacky Werman St. John

By: Jacky Werman St. John
Attorney Examiner

GAP/kck

**This foregoing document was electronically filed with the Public Utilities
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12/28/2021 4:24:15 PM

in

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

Summary: Attorney Examiner Entry ordering that a prehearing conference be scheduled in accordance with Paragraph 15. electronically filed by Kelli C. King on behalf of Jacky Werman St. John, Attorney Examiner, Public Utilities Commission of Ohio