

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF THE  
NON-MARKET-BASED SERVICES RIDER  
PILOT PROGRAM ESTABLISHED BY OHIO  
EDISON COMPANY, THE CLEVELAND  
ELECTRIC ILLUMINATING COMPANY,  
AND THE TOLEDO EDISON COMPANY.

CASE NO. 22-391-EL-RDR

### ENTRY

Entered in the Journal on April 7, 2023

{¶ 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 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.

{¶ 2} R.C. 4928.141 provides that an electric distribution utility shall provide customers within its certified territory a standard service offer (SSO) of all competitive retail electric services (CRES) 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 R.C. 4928.143.

{¶ 3} On August 25, 2010, the Commission issued an Opinion and Order approving a stipulation and two supplemental stipulations (Combined Stipulation), authorizing the Companies' second ESP for the period beginning June 1, 2011 through 2014. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 10-388-EL-SSO (*ESP II Case*). Among other terms, the Combined Stipulation authorized the Companies' Non-Market-Based Services Rider (Rider NMB). Rider NMB is a non-bypassable rider that is designed to recover non-market-based transmission-related costs, such as Network Integration Transmission Service charges, imposed on or charged to the Companies by the

Federal Energy Regulatory Commission or PJM Interconnection, LLC (PJM). *ESP II Case*, Opinion and Order (Aug. 25, 2010) at 12.

{¶ 4} On July 18, 2012, the Commission issued an Opinion and Order approving a stipulation between FirstEnergy and certain parties, which provided for an ESP for the period beginning June 1, 2014, through May 31, 2016, pursuant to R.C. 4928.143. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO (*ESP III Case*). In that Opinion and Order, the Commission clarified that the Companies should file annually an application, in a separate docket, for a review of certain riders approved in that proceeding, including Rider NMB. *ESP III Case*, Opinion and Order (July 18, 2012) at 44.

{¶ 5} The Commission subsequently approved the NMB Pilot Program, which will allow customers served under the program to be billed directly by PJM or their competitive retail electric service provider and to no longer be subject to the Rider NMB rates. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO (*ESP IV Case*), Opinion and Order (Mar. 31, 2016), Fifth Entry on Rehearing (Oct. 12, 2016). Participation in the NMB Pilot Program provides these customers an opportunity to control their transmission-related costs by controlling their Network Service Peak Load.

{¶ 6} When approving the Rider NMB Pilot Program, the Commission directed the Companies and Staff to review the actual results of the Rider NMB Pilot Program and report their findings to the Commission. The Commission directed that the review include, at a minimum: whether there is an aggregate savings in transmission costs for all of the Companies' customers, whether and how much in transmission costs are being shifted to customers not participating in the pilot program, whether the benefits of the pilot program outweigh any costs, and whether Rider NMB results in an overall cost savings to customers.

{¶ 7} Accordingly, on June 15, 2022, the Commission issued an Entry directing Staff to reissue a request for proposal (RFP) to acquire audit services to assist the Commission with the review of the Rider NMB Pilot Program.

{¶ 8} On August 10, 2022, after reviewing the proposals submitted, the Commission selected Exeter Associates, Inc. (Exeter) to conduct the requested audit services, in accordance with the terms set forth in the RFP. Pursuant to the terms of the RFP, a final audit report was to be filed by February 10, 2023.

{¶ 9} On January 6, 2023, Staff filed a motion for an extension of time, requesting that the final audit report be due on April 10, 2023. No party opposed the extension request or the request for an expedited ruling.

{¶ 10} By Entry issued January 23, 2023, the attorney examiner granted Staff's motion for an extension.

{¶ 11} On March 31, 2023, Staff filed a motion for a second extension of time, noting that Exeter has indicated it will require additional time to complete the audit report, given the complex nature of the case and delayed responses to certain data requests. Staff proposes that the final audit report be due on July 17, 2023. In the memorandum in support, Staff noted that the Ohio Consumers' Counsel (OCC) objected to the motion for an extension; however, in the motion itself, Staff inadvertently certified that no parties objected to the motion for continuance or the request for an expedited ruling, pursuant to Ohio Adm.Code 4901-1-12(C).

{¶ 12} Counsel for OCC contacted the parties and the attorney examiners shortly thereafter to confirm that OCC objects to expedited treatment of the motion and would like to reserve the right to respond to the motion for extension.

{¶ 13} By Entry issued March 31, 2023, the attorney examiner directed that any memoranda contra Staff's motion for extension to be filed by April 4, 2023.

{¶ 14} OCC timely filed a memorandum contra Staff's motion on April 4, 2023. OCC argues that the Commission ordered that FirstEnergy shall not "refuse or delay" the provision of information requested by the auditor over nine months ago. Finding and Order (June 15, 2022) at ¶ 15. OCC emphasizes Staff's statement in its motion that "Exeter is still

missing certain information that they need to proceed” and that FirstEnergy and Exeter “are working together to resolve any issues with these data requests.” However, according to OCC, it is unclear why FirstEnergy has not provided the information requested by the auditor, further arguing that the Companies have failed to provide any justification for this delay and apparent defiance of the Commission’s directives. OCC opines that the Commission should not tolerate these “stalling tactics” by FirstEnergy and recommends that the Commission assess forfeitures against FirstEnergy, pursuant to R.C. 4905.54 and 4905.56. According to OCC, the Commission should act in order to protect residential customers and not allow further delays in the filing of an audit report in this proceeding.

{¶ 15} At this time, the attorney examiner finds that the current April 10, 2023 deadline for the audit report should be vacated, with a new deadline to be set by subsequent entry. However, it is concerning that Staff’s extension request appears to be necessary due to FirstEnergy’s delay in responding to Exeter’s data requests. As noted by OCC, the Companies were previously instructed by the Commission to provide any and all documents or information requested by the auditor and were prohibited from refusing or delaying the provision of such information, even in the event FirstEnergy believed the information to be confidential. Finding and Order (June 15, 2022) at ¶ 15. Therefore, the attorney examiner finds that the Companies should be directed to show cause by April 17, 2023, demonstrating why they should not be assessed a forfeiture pursuant to R.C. 4905.54, for their delayed responses to the auditor’s data requests. As part of that show cause response, FirstEnergy should provide a list of the data requests that remain unanswered, in whole or in part, the dates upon which those data requests were initially received by FirstEnergy, and an explanation as to when the Companies plan to respond to those outstanding data requests moving forward.

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That the April 10, 2023 deadline for the audit report be vacated. It is, further,

{¶ 18} ORDERED, That the Companies show cause by April 17, 2023, why they should not be assessed a forfeiture, pursuant to R.C. 4905.54, consistent with Paragraph 15. 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

JSA/dr

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**4/7/2023 12:33:12 PM**

**in**

**Case No(s). 22-0391-EL-RDR**

Summary: Attorney Examiner Entry ordering that the April 10, 2023 deadline for the audit report be vacated and ordering the Companies to show cause by April 17, 2023, why they should not be assessed a forfeiture, pursuant to R.C. 4905.54, consistent with Paragraph 15 electronically filed by Debbie S. Ryan on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio.