THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF THE NON-MARKET-BASED SERVICES RIDER CONTAINED IN THE TARIFFS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY.	**CASE NO. 24-22-EL-RDR**

FINDING AND ORDER

Entered in the Journal on March 20, 2024

I. SUMMARY

{¶ 1} The Commission finds that the application filed by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company should be approved, subject to Staff's recommendations, for rates effective April 1, 2024.

II. DISCUSSION

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FirstEnergy or the Companies) are electric distribution utilities (EDU) 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 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 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

May 31, 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 Services charges, imposed on or charged to the Companies by the Federal Energy Regulatory Commission (FERC) or PJM Interconnection, LLC (PJM). *ESP II Case*, Opinion and Order (Aug. 25, 2010) at 12.

{¶ 5} 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.

{¶ 6} Subsequently, the Commission also specified that the Companies should make their filings for Rider NMB no later than January 15 of each year with rates to be effective no later than 75 days following the filing of the application. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 15-648-EL-RDR, Finding and Order (July 1, 2015) at 3-4.

{¶ 7} The Commission also 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 will provide these customers an opportunity to control their transmission-related costs by controlling their Network Service Peak Load.

{¶ 8} On January 16, 2024, FirstEnergy filed an application and proposed compliance tariff pages in the above-captioned proceeding, reflecting revisions to Rider NMB. Pursuant to the Commissions' orders in the ESP proceedings, the Companies request that the Rider NMB rates, which reflect the current and projected costs through March 31, 2025, become effective April 1, 2024.

{¶ 9} Ohio Adm.Code 4901:1-36-05 provides that, unless otherwise ordered, the Commission will approve the application or set the matter for hearing within 75 days after the filing of a complete application under Ohio Adm.Code Chapter 4901:1-36. Additionally, Ohio Adm.Code 4901:1-36-03(E) provides that affected parties may file a motion to intervene and detailed comments on any issues concerning any application filed under this rule within 40 days of the date of the filing of the application. Therefore, motions to intervene and comments were due to be filed by February 26, 2024.

{¶ 10} On various dates, motions to intervene were filed by the Ohio Consumers' Counsel (OCC), Ohio Energy Leadership Council (OELC), and Ohio Energy Group (OEG). No memoranda contra were filed. The Commission finds that the motions are reasonable and should be granted.

{¶ 11} On February 26, 2024, comments were submitted on behalf of the Ohio Consumers' Counsel (OCC) and Ohio Energy Leadership Council (OELC). In its comments, OCC asks that the Commission end Rider NMB, which it alleges involves cost shifting to residential customers who cannot participate in the opt-out pilot program, citing *In re the Review of the Non-Market-Based Services Rider Pilot Program Established by Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 22-391-EL-RDR (*NMB Review Case*), Audit Report (July 17, 2023) at 3. OCC points out other findings from the auditor, including that the pilot program is unlikely to provide direct reliability benefits, and the program does not resolve the typical causes of grid stress, citing *NMB Review Case*, Audit Report (July 17, 2023) at 39. Due to the cost shifting, OCC contends that the Commission should eliminate Rider NMB and assign transmission charges to retail suppliers. Next, OCC argues that Rider NMB should be ended because there may have been a "side agreement" between FirstEnergy and the former Commission chairman during the *ESP IV Case*. OCC notes that the proceeding involving the possible side agreement, Case No. 20-1629-EL-RDR, has been stayed,[1] so the opt-out program should not continue while the side agreement proceeding is paused.

{¶ 12} In its comments, OELC represents that the costs of Rider NMB have increased significantly since 2016, which is a burden for its members, whose electric bill represents a significant portion of their overall costs. OELC asserts that the rising costs can negatively affect the competitiveness of Ohio businesses and asks the Commission to ensure that ratepayers are not subject to unnecessary, imprudent, or cost-ineffective transmission charges. OELC advocates for transmission reform due to the rising costs.

{¶ 13} Staff filed its review and recommendation on March 13, 2024, after reviewing the Companies' application and schedules for consistency with the Commission's orders in previous cases to ensure proper accounting treatment was applied. For the audit period October 1, 2022 through September 30, 2023, Staff requested documentation as needed to determine that the costs were substantiated and jurisdictional or to conclude that an adjustment was warranted. Based on its review, Staff recommends that the application be approved with adjusted rates that would mitigate the impacts to customers who would otherwise experience increases in excess of 20 percent. Specifically, Staff recommends that FirstEnergy modify the proposed rates for the following classes to the following amounts:

OE GP	$ 7.4228/kW
OE GSU	$ 6.0506/kVa
OE GT	$ 6.6137/kVa

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[1] The stay has since been lifted in that case.

CEI GP	$ 8.5652/kW
CEI GSU	$ 8.3703/kVa
CEI GT	$ 4.6765/kVa
TE GSU	$ 5.9084/kVa
TE GT	$ 6.3433/kVa

{¶ 14} Staff states that the above modifications would limit the cost increases for customers to no more than a 15 percent increase. Staff notes that these modified rates would reduce the revenue collected by the Companies by approximately $40.1 million for the upcoming annual rate period. Because the reduced rates will result in less cash flow to the Companies, Staff recommends that the Companies file an interim update in six months to determine if the recovery of the $40.1 million is appropriate at that time. When the $40.1 million is ultimately collected, Staff suggests that it should be recovered from only the classes that are subject to the reduced rates. Ultimately, Staff recommends that the Commission approve FirstEnergy's application, with modifications, for rates effective April 1, 2024.

{¶ 15} As to OCC's concerns about the *NMB Review Case* Audit Report findings about cost shifting, we initially observe that the Pilot program resulted in an overall cost savings for customers, creating a $231.1 million revenue requirement reduction for all customers from March 2017 through February 2023. *NMB Review Case*, Audit Report (July 17, 2023) at 2. Furthermore, we emphasize that the Audit Report concludes that the Pilot program better aligns costs with those who create the costs. To explain how this happens, the auditor states that "[w]hereas [Pilot participant] expenses are assigned * * * on the basis of NSPL, Rider NMB costs are allocated using four summer coincident retail demand (kW) peaks." *Id.* at 18. The auditor continues, "[i]n other words, Rider NMB does not necessarily expose customers to costs consistent with cost causation, while the Pilot does." *Id.* at 18. The auditor states that "[o]ther potential qualitative benefits of the Pilot include alignment with cost causation" and "[t]he Pilot Program aims to more accurately align the allocation of * * * costs with the causation of those costs at the PJM level, in line with the principle of cost causation." *Id.* at 43, 46. Furthermore, we are mindful that OCC's concerns about cost shifting center on residential customers. However, the auditor found that non-participating commercial and industrial customers absorb over 75 percent of the cost shift. *Id.* at 2. We observe that the Pilot program allows participants to better align their costs due with the costs they cause, which we find undercuts OCC's implication that the cost shifting to residential customers creates unfairness. Additionally, the extension of Rider NMB is under consideration in *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. for Authority to Establish a Standard Service Offer*, Case No. 23-301-EL-SSO. In that proceeding, OCC had a full and fair opportunity to raise any issues on the merits of Rider NMB and the associated Pilot program. The Commission will decide in that proceeding whether Rider NMB and the Pilot program will be continued, which is still currently pending before the Commission. Regarding OCC's concerns relating to an alleged side agreement, we note that issue is being addressed in Case No. 20-1629-EL-RDR, as acknowledged by OCC. Thus, the Commission finds that this case is not the appropriate forum to address OCC's comments. As for OELC's comments regarding the rising costs of Rider NMB, we note that although the annual revenue requirements are proposed to be higher in 2024 than 2023, the proposed Rider NMB rates have been higher in previous years, as demonstrated in OELC's Table 2. Further, Staff's recommendation to mitigate rate increases would limit cost increases to 15 percent. Additionally, as discussed in last year's Rider NMB review, the Commission will continue to thoroughly engage with FERC as to supplemental transmission projects, as well as keep parties and the public apprised of any developments in those proceedings that may ultimately affect transmission costs in Ohio. *See In re the Review of the Non-Market-Based Services Rider Contained in the Tariffs of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 23-51-EL-RDR, Finding and Order (March 22, 2023) at ¶ 14. Finally, we remind stakeholders that all Rider NMB costs and recoveries may be subject to further adjustment following the audit in FirstEnergy's next Rider NMB update proceeding.

{¶ 16} The Commission finds that, subject to Staff's recommendations, the Companies' application is consistent with the stipulations approved by the Commission in the *ESP III Case* and *ESP IV Case*, does not appear to be unjust or unreasonable, and should be approved for rates effective April 1, 2024. The Commission directs the Companies to file revised final tariffs to implement Staff's recommendations, subject to further review by the Commission. The Commission further directs the Companies to file an interim update in six months to determine if the recovery of the additional funds is appropriate at that time and to file revised final tariffs, subject to further Commission review. The Commission notes that all costs or credits included in Rider NMB may be subject to further adjustments following the audit in the next Rider NMB update filing. We also find that it is unnecessary to hold a hearing in this matter.

III. ORDER

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That the motions to intervene in these proceedings filed by OCC, OELC, and OEG be granted. It is, further,

{¶ 19} ORDERED, That FirstEnergy's application be approved, subject to Staff's recommendations, in accordance with this Finding and Order. It is further,

{¶ 20} ORDERED, That FirstEnergy's revised tariff sheets for Rider NMB be approved and become effective no earlier than April 1, 2024, subject to further review by the Commission. It is, further,

{¶ 21} ORDERED, That FirstEnergy be authorized to file, in final form, complete copies of their revised final tariffs in each company's respective TRF docket, as well as in this case docket. It is, further,

{¶ 22} ORDERED, That the effective date of the revised final tariffs shall be a date not earlier than April 1, 2024, and the date upon which two complete copies are filed with the Commission as directed. It is, further,

{¶ 23} 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,

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

COMMISSIONERS:
Approving:
Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters
John D. Williams

JWS/dmh