THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY FOR AUTHORITY TO PROVIDE FOR A STANDARD SERVICE OFFER PURSUANT TO R.C. 4928.143 IN THE FORM OF AN ELECTRIC SECURITY PLAN.	**CASE NO. 14-1297-EL-SSO**

FINDING AND ORDER

Entered in the Journal on December 18, 2024

I. SUMMARY

{¶ 1} The Commission approves Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's proposed tariffs, subject to the modifications directed by the Commission.

II. PROCEDURAL HISTORY

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or the Companies) are electric distribution utilities (EDUs) 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 electric distribution utility 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 a 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 R.C. 4928.143.

{¶ 4} R.C. 4928.143(C)(2)(b) provides that if a utility terminates an application for an ESP or if the Commission disapproves an application, the Commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent SSO, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent SSO is authorized.

{¶ 5} On March 31, 2016, the Commission modified and approved, pursuant to the stipulations, FirstEnergy's application for its fourth ESP (ESP IV) to commence on June 1, 2016, and continue through May 31, 2024, pursuant to R.C. 4928.143. (Opinion and Order (Mar. 31, 2016); Fifth Entry on Rehearing (Oct. 12, 2016); Eighth Entry on Rehearing (Aug. 16, 2017)).

{¶ 6} On April 5, 2023, FirstEnergy filed an application (Application) to establish the Companies' fifth ESP for a period to commence on June 1, 2024 (ESP V). By Opinion and Order, the Commission approved the Application, as modified by Staff's recommendations and the Opinion and Order. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 23-301-EL-SSO (*ESP V Case*), Opinion and Order (May 15, 2024). ESP V was thus established, effective June 1, 2024.

{¶ 7} R.C. 4928.143(C)(2)(a) states that if the Commission modifies and approves an application for an ESP, the EDU may withdraw the application, thereby terminating it. On October 29, 2024, the Companies filed a notice of withdrawal of its application and amended application filed in the *ESP V Case*, pursuant to this statute. The Commission accepted that withdrawal in the *ESP V Case* contemporaneously with this Finding and Order.

{¶ 8} On October 29, 2024, FirstEnergy also filed a motion to amend the ESP IV tariffs and proposed tariffs (Proposed Tariffs) in this proceeding to implement the provisions, terms and conditions of ESP IV, its most recent ESP prior to ESP V.

{¶ 9} On November 13, 2024, memoranda contra were filed by Staff, Northeast Ohio Public Energy Council (NOPEC), Retail Energy Supply Association (RESA), Ohio Energy Leadership Council (OELC), and jointly by the Office of the Ohio Consumers' Counsel (OCC) and Northeast Ohio Aggregation Coalition (NOAC). On November 20, 2024, replies were filed by Nucor Steel Marion, Inc. (Nucor), FirstEnergy, Ohio Energy Group (OEG), OELC, and jointly by Ohio Manufacturers' Association Energy Group (OMAEG) and The Kroger Co. (Kroger).

III. Discussion

{¶ 10} The Commission notes that many parties simultaneously filed their comments or responses in both this proceeding and the *ESP V Case*. All arguments related to FirstEnergy's notice of withdrawal will be addressed in the *ESP V Case*. We will address in this Finding and Order only the arguments related to motion to amend the ESP IV tariffs and Proposed Tariffs in this proceeding.

{¶ 11} FirstEnergy explains that it is concurrently filing a notice of withdrawal in the *ESP V Case* and this motion to implement their prior ESP, ESP IV, in this proceeding. The Companies ask that the Commission approve certain limited modifications to the ESP IV tariffs, which they say should remain in effect until a subsequent SSO is approved by the Commission. Unless otherwise requested, they ask that the tariffs operate under the same terms and conditions that existed at the end of ESP IV.

A. Return to ESP IV

{¶ 12} FirstEnergy, Staff, OELC, OEG, and Nucor, support the reimplementation of ESP IV after ESP V has been withdrawn, while recommending various modifications to ESP IV described in more detail below. OELC says that returning FirstEnergy to ESP IV would follow the precedent set when the Commission returned the Dayton Power and Light Company (DP&L) to ESP I when it withdrew from ESP II, citing *In re the Application of the*

Dayton Power and Light Co. to Establish a SSO in the Form of an Electric Security Plan, Case No. 08-1094-EL-SSO (*DP&L ESP I Case*), Finding and Order (Aug. 26, 2016) at ¶ 20.

{¶ 13} OCC, NOAC, OMAEG, and Kroger assert that FirstEnergy should not be allowed to return to ESP IV because it was part of the Ohio House Bill 6 (H.B. 6) scandal and involved an illegal "side agreement." These parties assert that ESP IV established interruptible load credits in economic load response program rider (Rider ELR) that were favorable to industrial customers as part of the side deal. They also add that numerous benefits of ESP V would be lost if ESP IV were reinstated. Specifically, OMAEG and Kroger note that the demand side management and energy efficiency rider (Rider DSE2) should have been terminated years ago, yet the Proposed Tariffs continue the rider at zero, citing Proposed Tariffs; *In re the Application of Ohio Edison Co., The Cleveland Electric Illum. Co., and The Toledo Edison Co. for Approval of their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans*, Case Nos. 16-743-EL-POR, et al., Finding and Order (Nov. 18, 2020) at ¶ 8.

{¶ 14} OCC, NOAC, and NOPEC argue that the Commission should not reinstate ESP IV because the law allows a utility to return to its most recent SSO as defined in R.C. 4928.141, not its most recent ESP. They state that the most recent SSO does not include distribution-related changes associated with ESP IV, and the SSO consists of only the pass through of competitively-bid generation services. Specifically, these parties contend that the Commission should require the Companies to eliminate all distribution-related riders as not a necessary part of ESP IV. OCC, NOAC, and NOPEC explain that this process would protect customers, serve as a disincentive for utilities to withdraw from an ESP, and incentivize utilities to update their rates and charges.

{¶ 15} FirstEnergy and OEG specifically dispute this interpretation of R.C. 4928.141, stating that it is at odds with Commission precedent and the statute. They argue that the Commission has previously allowed a utility to reinstate its prior ESP without limiting that utility in the way proposed by OCC, NOAC, and NOPEC, citing *DP&L ESP I Case*, Finding and Order (Aug. 26, 2016); Second Finding and Order (Dec. 18, 2019). OEG

contends that the legislature has clarified that SSO means an MRO or ESP, citing R.C. 4928.141, reasoning that, had the legislature intended to require utilities to revert to a generation-only structure, it could have required the utility to move to an MRO. FirstEnergy adds that R.C. 4928.143(C)(2)(b) permits a withdrawing utility to revert to its most recent SSO, which it says was ESP IV. Additionally, FirstEnergy states that the Commission has already rejected similar arguments as "flawed" and "not persuasive," citing *DP&L ESP I Case*, Fifth Entry on Rehearing (June 16, 2021) at ¶ 16. OEG adds that OCC, NOAC, and NOPEC's interpretation would result in adverse rates to customers.

{¶ 16} The Commission notes that R.C. 4928.141 requires each EDU to "provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. To that end, the electric distribution utility shall apply to the public utilities commission to establish the standard service offer in accordance with section 4928.142 or 4928.143 of the Revised Code." R.C. 4928.142 states that an EDU "may establish a standard service offer price for retail electric generation service that is delivered to the utility under a market-rate offer." R.C. 4928.143 provides that "[f]or the purpose of complying with section 4928.141 of the Revised Code, an electric distribution utility may file an application for public utilities commission approval of an electric security plan . . . ." Thus, we find that, under the plain language of the statute, an SSO may be either an MRO or an ESP. Further, R.C. 4928.143(C)(2)(b) states, in relevant part:

> If the utility terminates an application pursuant to division (C)(2)(a) of this section . . . the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's *most recent standard service offer*, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or section 4928.142 of the Revised Code, respectively. (Emphasis added)

Nowhere does the statute direct that the Commission only continue the provisions, terms, and conditions related to competitively-bid generation services, and the statute does not provide that the Commission eliminate all distribution-related riders as not a necessary part of an ESP. Accordingly, we find that the enumerated provisions authorized to be part of an ESP by R.C. 4928.143(B)(2) are provisions, terms and conditions of an ESP and must be continued if an EDU withdraws an ESP as authorized by R.C. 4928.143(C).

{¶ 17} Further, our decision in this proceeding is consistent with Commission precedent. In the *DP&L ESP I Case*, OCC argued that the Commission erred when it continued the terms of DP&L's "electric security plan" rather than continuing the utility's "standard service offer." OCC alleged that the SSO means only the costs of energy generation to serve SSO customers; an ESP is much broader and can include all charges enumerated in R.C. 4928.143(B)(2). OCC claimed that these enumerated charges are part of the ESP but not part of the SSO. The Commission rejected this claim, finding that, under the plain language of R.C. 4928.141, an SSO may be a MRO or an ESP. Therefore, the Commission affirmed its decision to restore all of the provisions, terms and conditions of DP&L's first ESP, as required by R.C. 4928.143(D)(2)(b). *DP&L ESP I Case,* Fifth Entry on Rehearing (Jun. 16, 2021) at ¶ 14, 16. The Commission should "respect its own precedents in its decisions to assure the predictability which is essential in administrative law." *In re Application of Ohio Power Co.,* 144 Ohio St.3d 1, 2015-Ohio-2056, 40 N.E.3d 1060 at ¶ 16 (*quoting Cleveland Elec. Illum. Co. v. Pub. Util. Comm.,* 42 Ohio St.2d 402, 431, 330 N.E.2d 1 (1975), *superseded on other grounds by statute as recognized in Babbit v. Pub. Util. Comm.,* 59 Ohio St.2d 81, 89, 391 N.E.2d 1376 (1979)). OCC and OMAEG have not persuaded the Commission to deviate from our precedent here.

{¶ 18} Regarding the claim by OMAEG and Kroger regarding the continuation of Rider DSE2 in ESP IV, the Commission notes that Rider DSE2 is currently set to zero and may only be populated with the approval of the Commission. Thus, we find that OMAEG and Kroger have not demonstrated any prejudice regarding the continuation of Rider DSE2.

{¶ 19} With respect to the claim by OCC, NOAC, OMAEG, and Kroger that FirstEnergy should not be permitted to return to ESP IV because ESP IV is related to the H.B. 6 scandal because of an undisclosed "side deal," the Commission notes that the controlling statute, R.C. 4928.143(C)(2)(b) requires that the Commission restore the "provisions, terms and conditions" of the previous SSO and provides no exception for extraordinary circumstances. Nonetheless, the Commission is investigating the circumstances surrounding the alleged "side deal" in a separate proceeding, and we will take all appropriate actions supported by the evidence presented in that proceeding.

B. Modifications Generally

{¶ 20} Staff argues that the Revised Code, although it allows a utility to withdraw from its ESP, requires it to revert to the provisions, terms, and conditions of the most recent SSO, citing R.C. 4928.143(C)(2)(b); *DP&L ESP I Case*, Second Finding and Order (Dec. 18, 2019) at ¶ 27. Staff argues that there is only one exception to that general rule, and modifications are allowed if they pertain to purchased power, citing *DP&L ESP I Case*, Second Finding and Order (Dec. 18, 2019) at ¶¶ 36-40. OEG and Nucor agree with Staff, noting that it would be consistent with precedent, citing *DP&L ESP I Case*, Second Finding and Order (Dec. 18, 2019).

{¶ 21} OCC and NOAC oppose allowing the Companies to cherry-pick terms from ESP V that would continue in ESP IV.

{¶ 22} The Commission finds that, in this Finding and Order, the Companies are not being allowed to select terms from ESP V that would continue in ESP IV. We note that, when an EDU returns to a prior ESP pursuant to R.C. 4928.143(C)(2)(d), the Commission has limited authority to approve modifications to the prior ESP. R.C. 4928.143(C)(2)(b) provides that if the utility terminates an application for an ESP, the Commission shall issue such order as is necessary to continue the *provisions, terms, and conditions* of the EDU's most

recent SSO, along with any expected increases or decreases in fuel costs from those contained in that offer.

{¶ 23} Nonetheless, we note that R.C 4928.02(G) provides that it is the policy of the state of Ohio to recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment. We have found that such flexible regulatory treatment is necessary when an EDU returns to a prior SSO in order to protect the public interest, maintain reasonable rates, ensure the integrity of existing contracts, and otherwise protect Ohio's competitive bid process for procuring wholesale power. *DP&L ESP I Case*, Third Entry on Rehearing (Dec. 14, 2016) at ¶ 18.

C. SSO Procurement Process

{¶ 24} The first modification the Companies request relates to the SSO procurement process. They ask that the procurement process continue in its current form as approved in ESP V by honoring existing contracts with winning bidders, maintaining the auction schedule approved by the Commission, and maintaining the competitive bidding process (CBP) modifications implemented in ESP V. They say that the CBP modifications include reduction of the maximum contract length from 36 months to 24 months, adopting a capacity proxy price mechanism where there is no base residual auction price at the time of the auction, changes to certain supplier collateral requirements, and use of updated bidding documents.

{¶ 25} Staff, RESA, NOPEC, and Constellation Energy Generation LLC and Constellation NewEnergy Inc. (together, Constellation)[1] agree with FirstEnergy's proposal. Staff argues that it would be consistent with Commission precedent to allow modifications to the SSO procurement process and recommends that FirstEnergy's proposed

[1] Constellation's arguments were filed as comments in the *ESP V Case* but not filed in this proceeding. Its arguments will be addressed here.

modifications be approved. RESA asserts that the modifications will maintain the integrity of the CBP, avoid bidder confusion, and allow non-shopping customers to continue to benefit from market-based rates. NOPEC argues that failure to honor existing contracts or changes to the established auction schedule would be disruptive to the market. NOPEC also notes that R.C. 4928.143(C)(2)(b) supports adjustments to fuel costs upon reversion to the prior SSO.

{¶ 26} The Commission agrees that the SSO procurement process should be continued in its current form, including modifications made in ESP V. We note that, in every ESP, including ESP IV, the Commission has maintained continuing jurisdiction to modify the procurement process set forth in the ESP in consultation with the EDU, the auction manager, and the Commission's consultant. *In re the Procurement of SSO Generation as Part of the Fourth Electric Security Plan for Customers of Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.,* Case Nos. 16-776-EL-UNC, et al., Second Entry on Rehearing (Feb. 24, 2021) at ¶ 33.

D. Rider NMB Modifications

{¶ 27} The Companies also ask for a modification of the non-market based services rider (Rider NMB) pilot program such that the ESP V directives would be implemented. The Companies state that, in the *ESP V Case*, they were ordered to open the program to new participants. FirstEnergy explains that it has already begun implementing that expansion, so they ask to maintain the program in its expanded form to avoid potential market disruptions. RESA supports this proposal, noting that it will preserve contracts that have already been made.

{¶ 28} Staff recommends that the Companies' proposal be approved, noting that the Commission has previously allowed modifications relating to transmission riders, citing *DP&L ESP I Case*, Finding and Order (Aug. 26, 2016) at ¶ 24. But Staff suggests limiting new participants to those who have already signed contracts with a competitive supplier to

provide transmission service before the date that FirstEnergy reverts to ESP IV. Staff reasons that this compromise would protect customers who have entered into contracts while ensuring limited modifications to ESP IV.

{¶ 29} OELC supports Staff's proposal but proposes a slight modification, such that the expanded program be open to customers who submit enrollment forms and enter a supply agreement by December 31, 2024.[2] OELC explains that the enrollment process takes many weeks or months to conclude, so Staff's recommendation would be too restrictive. OELC reasons that some of its members have taken affirmative steps to enroll in the enlarged pilot program in reliance on the Commission's approval in the *ESP V Case*.

{¶ 30} The Companies respond that, if Staff's recommendation to limit participants to those who have signed contracts by a certain date is adopted, they do not have visibility into those contracts but will make best efforts to implement the recommendation.

{¶ 31} The Commission agrees with Staff that we have no authority to extend the opportunity for new participants in the Rider NMB pilot program beyond the effective date of the tariffs implementing the return to ESP IV. We also agree with FirstEnergy that the Companies have no means to track the contracts entered into by customers with CRES providers. Accordingly, the expansion of the Rider NMB pilot program will be open for any customer that enters into a CRES contract facilitating participation in the pilot program and provides written notice to FirstEnergy prior to the effective date of the return to ESP IV.

E. Rider ELR Modifications

{¶ 32} Next, FirstEnergy asks for two modifications to the Rider ELR that were approved in the *ESP V Case*. First, it asks that the provision that authorizes participants to

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[2] OELC previously argued in its memorandum contra for the full 100 MW expansion with no enrollment time limits but changed its recommendation in its reply brief.

participate in a demand response program by PJM Interconnection LLC be included in ESP IV, with credits reduced by $2/kilowatt (kW)/month. Second, the Companies ask to continue providing participants the opportunity to annually reset their firm service levels. They argue that these modifications are necessary to avoid market disruptions to Rider ELR participants who have relied on those terms in making business decisions.

{¶ 33} As to the proposed modification that participants may retain their right to find their own curtailment service provider (CSP) with a reduction in credit of $2/kW/month, Staff generally agrees. Staff would limit the ability for participants to utilize their own CSP to those who have a signed contract with a CSP before the date that FirstEnergy reverts to ESP IV. As to the proposed modification that would allow participants to reset their firm service level annually, Staff recommends that this modification be rejected. Staff explains that this reset was not permitted in ESP IV, and there would be no disruption to markets if the restriction were reimposed.

{¶ 34} Nucor, OEG, and OELC disagree with Staff's recommendation to disallow annual firm service levels to be reset. They say that ESP IV included language allowing for the adjustment of a customer's firm load in certain circumstances, which should continue to apply. Further, OEG states that the ESP IV tariffs also allow customers to increase their firm loads annually without FirstEnergy approval.

{¶ 35} OELC supports Staff's proposed modifications to Rider ELR that would allow an agreement between an end user and provider to remain in place if a contract was executed before FirstEnergy reverts back to ESP IV and to reject FirstEnergy's request to annually reset firm service levels.[3] OELC adds that many of its members have already reset

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[3] In its memorandum contra, OELC initially supported FirstEnergy's proposal, but clarified that it supports Staff's recommendation in its reply brief.

their firm service levels in accordance with the provisions of ESP V, which represents the culmination of significant time and effort.

{¶ 36} The Companies respond that, if Staff's recommendation to limit participants to utilize their own CSP to those who have signed contracts by a certain date is accepted, they do not have visibility into those contracts but will make best efforts to implement the recommendation.

{¶ 37} With respect to the first proposed modification, the Commission agrees with Staff that we have no authority to extend the opportunity for new participants in the Rider ELR beyond the effective date of the tariffs implementing the return to ESP IV. We also agree with FirstEnergy that the Companies have no means to track the contracts entered into by customers with CSPs. Accordingly, similar to the Rider NMB pilot program, Rider ELR will be open for any customer that enters into a contract with a CSP and provides written notice to FirstEnergy prior to the effective date of the return to ESP IV.

{¶ 38} With respect to the second proposed modification, we agree with Nucor, OEG, and OELC that ESP IV included language allowing for the adjustment of a customer's firm load in certain circumstances, which should continue to apply until a new ESP is approved. We also agree with OEG that the provisions of the ESP IV tariffs that allow customers to increase their firm loads annually without FirstEnergy approval should be reinstated.

F. Stewardship Programs Modifications

{¶ 39} As for stewardship programs, the Companies propose to reinstate the ESP IV stewardship programs with certain modifications. They also anticipate that the commitments would be pro-rated during the period the Companies remain in ESP IV. Of the three programs in ESP IV: the CEI Fuel Fund ($1.39 million per year in bill payment assistance to CEI customers); the OPAE Fuel Fund ($1 million per year in bill payment assistance to the Companies' service territories); and the Customer Advisory Agency ($1

million per year), FirstEnergy proposes modifications to two of those programs. It asks to competitively bid administration of the CEI Fuel Fund and to expand eligibility to customers from all three of the service territories. Next, the Companies ask to redirect funding for the Customer Advisory Agency to the CEI Fuel Fund to increase the range of customers who can benefit. Additionally, FirstEnergy states that it will reinstate its commitment to spend $3 million per year without cost recovery to support economic development and energy conservation programs. The amount unused as of May 31, 2024, would be rolled forward and included in the Companies' commitment when reinstating this provision.

{¶ 40} Staff argues that the proposed modifications to competitively bid the $1.39 million fuel fund and expand the fuel fund to be available to customers of all three companies be rejected because there is no statutory basis for the modification. Staff states that R.C. 4928.143(C)(2)(a) gives the Commission only limited authority to modify an ESP upon reversion, and there is no exception that would authorize these modifications. On the other hand, Staff does not oppose the modification to redirect the $1 million Customer Advisory Agency funding to the CEI Fuel Fund because ESP IV contemplated transferring that funding to the fuel fund.

{¶ 41} Although FirstEnergy's proposed modifications to the stewardship provisions have merit, the Commission agrees with Staff that R.C. 4928.143(C)(2)(a) does not provide the Commission with the authority to approve the first two modifications to the stewardship provisions. However, with respect to the third proposed modification, Staff correctly observes that ESP IV contemplated transferring the Customer Advisory Agency funding to the CEI Fuel Fund. (Opinion and Order (Mar. 31, 2016) at 27.)

{¶ 42} Further, we agree with FirstEnergy's proposal to continue to spend $3 million per year without cost recovery to support economic development and energy conservation programs and to roll forward any amount unused as of May 31, 2024. The Commission directs Staff to work with the Companies to determine how FirstEnergy spent

these funds during ESP IV and to report to the Commission how these funds were spent in the Companies next SSO proceeding.

G. Base Rate Freeze Modification

{¶ 43} As to the base rate freeze in ESP IV, the Companies state that should be lifted, as they filed a base rate case application on May 31, 2024, which is currently pending before the Commission, citing Case No. 24-468-EL-AIR, *et al*. FirstEnergy notes that the Commission has addressed a similar situation before, at which time the Commission held that the new rates would not go into effect until the utility was operating a new SSO, citing *In re the Application of The Dayton Power and Light Co. to Increase its Rates for Electric Distribution*, Case No. 20-1651-EL-AIR, et al. (*DP&L Rate Case*), Opinion and Order (Dec. 14, 2022) at ¶ 224. However, the Companies argue that such precedent should not apply. First, they assert that their existing base rates went into effect in 2009, so they are due for updated rates, which the Commission has recognized, citing *ESP V Case*, Opinion and Order (May 15, 2024) at ¶ 121. FirstEnergy also explains that it had already filed its rate case when it filed to withdraw from ESP V, whereas DP&L filed a rate case a year after withdrawing from its ESP, citing *DP&L Rate Case*, Application (Nov. 25, 2019). Also unlike the *DP&L Rate Case*, the Companies argue that the Commission has the discretion to lift the freeze in ESP IV, citing Opinion and Order (Mar. 31, 2016) at 29, 94.

{¶ 44} Staff disagrees with FirstEnergy's proposal and recommends that the Commission reinstate the base rate freeze that was effective during ESP IV. Staff explains that while FirstEnergy was required to file a base rate case in May 2024, nothing stated that new rates could go into effect during ESP IV. Citing to the stipulation that requires the filing of a base rate case in May 2024, Staff cites the provision that FirstEnergy is not precluded from changes in rate design to be revenue neutral during ESP IV, citing *In re the Quadrennial Review Required by R.C. 4928.143(E) for the Electric Security Plans of Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.*, Case No. 13-2173-EL-RDR, et al., Stipulation and Recommendation (Nov. 1, 2021) at 14. Staff reasons that the reference to

revenue neutral changes shows that there was no intent to eliminate the ESP IV rate freeze. Staff also cites to a prior case in which the Commission allowed a rate case to proceed but froze the approved rate increase until a subsequent ESP was approved, citing *DP&L Rate Case*, Opinion and Order (Dec. 14, 2022) at ¶ 224. Staff disagrees that a modification should be made to ESP IV merely because significant time has passed since the last rate case or because a rate case is pending. Rather, Staff says that the rate case can move forward, and the rate change can be held in abeyance until a new SSO is in place, in accordance with the Commission's decision in the *DP&L Rate Case*. Staff also asserts that the rate freeze could be lifted in ESP IV with Staff's consent, but Staff does not consent at this time.

{¶ 45} NOPEC and OELC argue that the Commission should deny FirstEnergy's proposal to end the base rate freeze. The parties state that this decision would conform with recent precedent, when the Commission found that the distribution rate freeze was a provision, term, or condition of the prior ESP and thus should be enforced when the utility returns to that ESP, citing *DP&L Rate Case*, Opinion and Order (Dec. 14, 2022) at ¶¶ 190-224. OELC notes that, although FirstEnergy has been ordered to file a base rate case, no order has been made as to when the new base rates should take effect, citing *In re FirstEnergy Quadrennial Review*, Case Nos. 13-2173, et al., Opinion and Order (Dec. 1, 2021) at ¶ 55. OELC adds that FirstEnergy was aware of the possible repercussions when it filed its notice to withdraw the ESP V application. OELC emphasizes that Staff has not agreed to updated base rates, and it argues the Commission does not have the discretion to override the base rate freeze absent a filing from Staff with that approval.

{¶ 46} The Commission finds that the distribution rate freeze is one of the "provisions, terms, and conditions" of ESP IV, as contemplated by R.C. 4928.143(C)(2)(b), and, therefore, the distribution rate freeze should be continued until a new SSO has been approved by the Commission. Accordingly, the Companies' pending distribution rate case should continue to move forward, but new distribution rates will not be implemented until a new SSO is approved. This is consistent with the treatment of a similar provision in DP&L's first ESP. *DP&L Rate Case*, Case No. 20-1651-EL-AIR, et al., Opinion and Order (Dec.

14, 2022) at ¶ 224. Nonetheless, we also agree with FirstEnergy that the distribution freeze may be lifted, and new distribution rates may be implemented if proposed by the Companies with the concurrence of Staff.

H. Distribution Rider Reversions

{¶ 47} Unlike the proposed modifications described above, the Companies ask that the distribution riders be reinstated under the same terms as they existed at the end of ESP IV. Specifically, they propose that the Delivery Capital Recovery Rider (Rider DCR) would include an annual aggregate revenue cap of $390 million, with increases of $15 million per year after. Similarly, FirstEnergy proposes that the Advanced Metering Infrastructure/Modern Grid Rider would be calculated as it was under ESP IV. As for the Storm Cost Recovery Rider (Rider SCR) and Vegetation Management Cost Recovery Rider (Rider VMC), these will be eliminated because they were established as part of ESP V. Explaining further, the Companies state that those balances will remain on the books as regulatory assets to be addressed in a future case, and the storm cost deferral mechanism will be reinstated pursuant to the terms of ESP IV.

{¶ 48} Staff agrees with FirstEnergy's proposal that Rider DCR should have an annual aggregate revenue cap of $390 million but disagrees with the proposed $15 million increase per year. Staff explains that the Rider DCR cap as of May 31, 2024, was $390 million, and there was no provision to allow the cap to increase above that amount.

{¶ 49} In response, FirstEnergy disagrees with Staff's proposal to disallow annual $15 million increases for Rider DCR. Rather than interpreting the $390 million cap to apply from May 31, 2024, and following, the Companies contend that it should be interpreted similarly to other provisions the Commission has allowed to continue. For instance, they say that new base distribution rates would not go into effect prior to June 1, 2024. FirstEnergy also notes that, although DP&L's ESP I base rate freeze was set through a specific date at the end of the ESP I term, the base rate freeze resumed when DP&L reverted

to ESP I after its withdrawal, citing *DP&L ESP I Case*, Stipulation and Recommendation (Feb. 24, 2009) at 10. Additionally, FirstEnergy states that DP&L's rate stabilization charge rider included an end date, but the Commission allowed it to continue beyond that date, citing *DP&L ESP I Case*, Entry on Rehearing (Feb. 19, 2013) at 4-5. For these reasons, the Companies assert that Rider DCR should continue to increase by $15 million annually while the Companies operate under ESP IV.

{¶ 50} As to storm cost deferral, Staff agrees that the ESP IV storm cost deferral should be reinstated but clarifies that the Companies should not be permitted to defer storm costs incurred while ESP V was in effect.

{¶ 51} FirstEnergy clarifies that it will not seek to recover storm costs incurred during ESP V in ESP IV. Rather, expenses incurred and deferred under ESP V will remain on the Companies' books and will be subject to review and recovery in its next ESP. FirstEnergy states that its proposal is consistent with Staff's comments, and it does not object to Staff's clarifications. The Companies say that this process would be consistent with Commission precedent, citing *In re the Application of The Dayton Power and Light Co. d/b/a AES Ohio for Approval of Its Electric Security Plan*, Case No. 22-900-EL-SSO, Opinion and Order (Aug. 9, 2023) at 30-31, 93-94.

{¶ 52} With the clarification provided by the Companies, the Commission agrees with the proposed elimination of Riders VMC and SCR. We further agree that storm damage expenses incurred and deferred under ESP V should remain on the Companies' books and be subject to review and recovery in its next ESP. These expenses were deferred with the Commission's authorization while ESP V was in effect, and, in any event, the Companies may seek deferrals under the authority of R.C. 4905.13, independent of any authority under R.C. 4928.143.

{¶ 53} With respect to Rider DCR, we agree with FirstEnergy that Rider DCR should be reinstated as Rider DCR is one of the "provisions, terms and conditions" of ESP IV. R.C. 4928.143(D)(2)(b). However, as pointed out by Staff, ESP IV provided for a total

revenue cap for Rider DCR of $390 million. Although ESP IV provided for stipulated annual increases in the revenue cap, these revenue cap increases were tied to specific dates and reduced significantly over time, from a high of $30 million in 2016 to a low of $15 million in 2022. There is no provision for an annual increase in the revenue cap after May 31, 2024. FirstEnergy argues the Commission should follow the precedent set in the *DP&L ESP I Case* where the Commission permitted DP&L to continue to recover its rate stabilization charge as one of the provisions, terms and conditions of DP&L's first ESP, when the ESP was reinstated, even though the termination date for the rate stabilization charge had been reached. We agree that this precedent should be followed, and that FirstEnergy should be permitted recovery under Rider DCR. However, in the *DP&L ESP I Case*, there was no provision to increase the rate stabilization charge, and, because there is no provision to increase the revenue cap after May 31, 2024, in this case, we will follow that aspect of the precedent as well. FirstEnergy's request for a $15 million annual increase in the Rider DCR revenue cap should be denied.

I. Inactive Rider Reversions

{¶ 54} FirstEnergy asks that the inactive riders that were eliminated as part of ESP V be restored as they existed at the end of ESP IV. It explains that, as a part of the *ESP V Case*, the net liability balance would be reconciled to customers through Rider VMC. The Companies ask to maintain on their books the aggregate remaining liability balance that has not been returned to customers in Rider VMC, which can be addressed in a future proceeding.

{¶ 55} We observe that this proposal would be consistent with R.C. 4928.143(C)(2)(b), which requires a utility to revert to the provisions, terms, and conditions of the most recent SSO upon withdrawal. We thus find the request to be appropriate and approve the request to restore these riders because they were a part of ESP IV.

J. Quadrennial Review

{¶ 56} Staff states that upon reversion, ESP IV will have been in place for more than eight years, so the Commission is required to perform a quadrennial review pursuant to R.C. 4928.143(E). Staff encourages the Commission to open a docket to perform such a review.

{¶ 57} The Commission finds Staff's recommendation to be reasonable. R.C. 4928.143(E) states that the Commission is required to test an ESP after four years and "every fourth year thereafter." Because ESP IV will have been in place for eight years when FirstEnergy reverts to that ESP, it is appropriate to perform such a review at this time. Accordingly, the Companies are directed to open a proceeding within 90 days of this order to conduct the quadrennial review required by R.C. 4928.143(E).

K. Tariff Provisions

{¶ 58} In the *DP&L ESP I Case,* the Commission determined that tariffs including riders with provisions for reconciliation and refund should include language providing that such tariffs are subject to refund "to the extent permitted by law." *DP&L ESP I Case*, Fifth Entry on Rehearing (Jun. 16, 2021) at ¶ 61-64. See also, Opinion and Order (May 15, 2024) at ¶ 152, 175. We find that all tariffs reinstated in this proceeding by the approval of the Proposed Tariffs be amended to include language providing that the tariffs are subject to refund "to the extent permitted by law."

{¶ 59} The Commission finds that the Proposed Tariffs should be approved, subject to the modifications discussed above. Therefore, the Companies are directed to file revised Proposed Tariffs, consistent with this Finding and Order, for Commission and Staff review. Such revised Proposed Tariffs should be filed with 15 days of the issuance of this Finding and Order.

IV. ORDER

{¶ 60} It is, therefore,

{¶ 61} ORDERED, That FirstEnergy's motion to implement its Proposed Tariffs be granted in part and denied in part, as ordered above. It is, further,

{¶ 62} ORDERED, That the Proposed Tariffs be approved, subject to the modifications discussed above. It is, further

{¶ 63} ORDERED, That FirstEnergy file revised Proposed Tariffs, consistent with this Finding and Order within fifteen days of the issuance of this Finding and Order. It is, further,

{¶ 64} ORDERED, That nothing in this Finding and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 65} ORDERED, That a copy of this Finding and Order be served upon each party of record in this case.

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

JWS/GAP/dmh

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Case No(s). 14-1297-EL-SSO

Summary: Finding & Order that the Commission approves Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's proposed tariffs, subject to the modifications directed by the Commission. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio.