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PUBLIC UTILITIES - OHIO

In re Ohio Edison Company

Supreme Court of Ohio - June 19, 2019 - N.E.3d - 2019 WL 2517837 - 2019 -Ohio- 2401

Energy management and environmental advocacy groups and Office of Ohio Consumers' Counsel (OCC) sought judicial review of order of the Public Utilities Commission, No. 14-1297-EL-SSO, modifying and approving after rehearing an electric-security plan (ESP).

Electric utilities intervened as appellees in support of Commission's decision.

The Supreme Court held that:

- Distribution modernization rider (DMR) did not qualify as incentive under ESP statute;
- Conditions placed on recovery of DMR revenue were insufficient to protect ratepayers;
- Commission properly excluded rider allowing recovery of government mandated costs in evaluating whether ESP was more favorable than market-rate offer;
- Commission properly approved rider allowing recovery of government mandated costs;
- Commission properly approved rider allowing utilities to accelerate recovery of distribution investments;
- Utilities' allegations were sufficient for rehearing as to changes to retail rate stability rider; and
- Commission properly allowed new evidence in support of utilities' challenge to changes on rehearing.

Distribution modernization rider (DMR) added to electric-security plan (ESP) did not qualify as proper incentive for electric utilities to modernize their distribution systems, as required for addition of the DMR under ESP statute; utilities were not required to make investments to modernize distribution grid in exchange for DMR revenues, DMR included no directives or timelines regarding specific distribution-modernization projects, and intention of Public Utilities Commission's staff that the DMR jump-start grid-modernization efforts did not explain how DMR would encourage utilities to invest in distribution modernization.

Conditions placed on recovery of revenue under distribution modernization rider (DMR), as component of electric-security plan (ESP), regarding location of electric utilities' headquarters and operations, control of utilities, and progress in implementing grid-modernization programs were insufficient to protect ratepayers, as required for addition of the DMR under ESP statute; DMR was not subject to refund if utilities failed to meet the conditions, it was unclear what remedy was available if Public Utilities Commission determined that utilities misused DMR funds, and Commission's initiative for future of electric distribution utility service would delay utilities' grid-modernization plan, thereby nullifying condition that progress be made in implementing modernization programs.

Public Utilities Commission properly excluded rider allowing recovery of future unforeseen costs required by federal or state mandates in evaluating whether electric-security plan (ESP) was more favorable than expected result of market-rate offer, as required for ESP approval, where no costs were to be included in the rider until electric utilities incurred actual costs for complying with

government mandates and Commission deemed the costs were prudently incurred in a separate proceeding.

Public Utilities Commission properly approved rider allowing recovery of future unforeseen costs required by federal or state mandates, as component of electric-security plan (ESP), where no other mechanism existed to recover such costs, and utilities were operating under eight-year base distribution rate freeze, so the rider was approved as mechanism to allow recovery of future government mandated costs.

Public Utilities Commission properly approved rider allowing electric utilities to accelerate recovery of distribution investments when compared to recovery through a distribution-base-rate case, as component of electric-security plan (ESP), where Commission cited evidence in support of the approval, and there was no evidence that utilities were recovering general-maintenance expenses under the rider, as opposed to only capital investments.

Electric utilities sufficiently alleged grounds on which retail rate stability rider was unlawful or unreasonable, as required for Public Utilities Commission to consider on rehearing utilities' challenge of changes to the rider, as component of electric-stability plan (ESP), where utilities alleged that a transfer of risk due to prohibition of recovery of certain costs was unreasonable, unsupported by the record, and upset the balance of interest, and utilities further alleged that the rider had been rendered unreasonable by recent order of the Federal Energy Regulatory Commission requiring review of power-purchase agreements underlying the rider.

Public Utilities Commission properly allowed electric utilities to introduce new evidence on rehearing in support of an alternative proposal for a retail rate stability rider, as component of electric-security plan (ESP), where Commission modified the rider on rehearing, which prompted utilities to offer the new evidence in support of alternative rider proposal, and, with respect to prejudice to manufacturers' association in responding to the alternative proposal, association would have had to expend additional time and resources if the Commission had opened a new ESP case, which is what association claimed the Commission should have done instead of considering the modified rider proposal.