

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Edison Company, The Cleveland Electric	)	Case No. 19-2080-EL-ATA
Illuminating Company, and The Toledo	)	Case No. 19-2081-EL-AAM
Edison Company for Approval of a	)	
Decoupling Mechanism.	)	

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**COMMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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FirstEnergy's application to charge customers more than \$17 million in "decoupling" charges is deficient—so deficient, in fact, that the PUCO should reject it entirely. The application fails because FirstEnergy's calculation of its proposed decoupling charges is largely a mystery. That's a result of FirstEnergy failing to include enough information for parties to decipher the basis for its proposed charge. Indeed, it cannot even be determined if FirstEnergy is collecting for the same alleged revenue loss twice—from both its lost revenue charge and now its proposed decoupling charge.

Decoupling is when customers engage in energy efficiency to lower their utility bills and then, ironically, the utility (here FirstEnergy) seeks to charge customers for the revenue that it purportedly "lost" as a result of consumers saving money from the energy efficiency. It's a bit circular for consumers. While House Bill 6 allows utilities to file an application for decoupling, the PUCO should scrutinize those applications for consumer protection under ratemaking law. The PUCO should protect customers from paying more than what is just and reasonable and should limit the charges to only what is authorized under the law. The Office of the Ohio Consumers' Counsel ("OCC") respectfully requests that the PUCO (i) find that FirstEnergy has failed to meet its burden

of proving that its decoupling application complies with R.C. 4928.471, and (ii) deny the application.

At a bare minimum, the PUCO should require FirstEnergy to provide substantially more information for regulatory analysis, including all supporting documentation and calculations for the proposed rates before any approval of charges to consumers. In the meantime, the PUCO could approve FirstEnergy's decoupling rider as a zero rate rider to comply with the statutory requirement<sup>1</sup> that it rule on the application within 60 days (*i.e.*, by January 20, 2020) and then update the rider in the future once the legitimacy of the proposed charges has been confirmed.

## **I. BACKGROUND**

In July 2019, the Ohio General Assembly passed Amended Substitute House Bill Number 6, 133rd General Assembly ("House Bill 6" or the "Bill").<sup>2</sup> The primary impact of House Bill 6 is that Ohioans will pay hundreds of millions of dollars to bail out uneconomic coal and nuclear power plants. Proponents of the Bill asserted, however, that the Bill would result in a net reduction in electric bills for Ohio consumers as a result of the elimination of energy efficiency and renewable mandates. It is not clear that this will actually be true because, among other things, (a) at least some Ohio utilities plan to file applications to continue their energy efficiency programs, even after the mandates end, and (b) House Bill 6 allows utilities to file an application for "decoupling" charges, which can cost customers tens of millions of dollars per year.

While the energy efficiency mandates will likely end after 2020, at least some of Ohio's electric utilities have stated that they will file applications to continue the programs anyway,

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<sup>1</sup> See R.C. 4928.471(B) (requiring the PUCO to approve the application within 60 days of it being filed).

<sup>2</sup> <https://www.legislature.ohio.gov/legislation/legislation-votes?id=GA133-HB-6>

including charging customers for those programs.<sup>3</sup> These programs could continue to cost customers tens -if not hundreds- of millions of dollars per year. As one example, the PUCO has allowed Columbia Gas to charge consumers for programs even though there are no statutory mandates for natural gas energy efficiency. Columbia Gas customers could pay more than \$200 million for Columbia's current programs (more than \$33 million per year for six years), which includes consumers paying for Columbia's profits (shared savings).<sup>4</sup> Vectren Energy recently filed an application to charge customers about \$6 million per year for natural gas energy efficiency programs, including a request that customers pay for Vectren's profits (shared savings).<sup>5</sup> FirstEnergy itself charges customers for energy efficiency programs as part of its most recent electric security plan, a commitment that continues through 2023 (past the expiration of mandates under HB 6).<sup>6</sup>

Further, House Bill 6 allows utilities to file an application to charge customers for “decoupling.”<sup>7</sup> When customers engage in energy efficiency, they use less energy, and utilities collect less money. Decoupling is generally designed to allow the utility to collect additional revenues from other customers to make up for any revenue shortfall that they allege to be a result of customers being energy efficient (even if customers purchased energy efficient products on their own, outside of a utility-run energy efficiency program).

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<sup>3</sup> Some have started to refer to such non-mandated programs as “voluntary.” There is nothing “voluntary” about the charges to consumers for these programs—customers pay for them, whether they like it or not.

<sup>4</sup> See Case No. 16-1309-GA-UNC.

<sup>5</sup> Case No. 19-2084-GA-UNC, Application, Attachment A at 8, Table 1 (Nov. 22, 2019).

<sup>6</sup> See Case No. 14-1297-EL-SSO.

<sup>7</sup> R.C. 4928.471.

Decoupling can cost customers a lot of money. For example, in a 2018 filing, AEP filed an application to charge customers more than \$21 million for decoupling for a single year.<sup>8</sup> AEP's 2019 filing requests nearly \$10 million.<sup>9</sup> DP&L recently filed a decoupling application seeking to charge customers more than \$11 million.<sup>10</sup> (OCC is challenging DP&L's proposal, but its application for rehearing in that case, filed January 29, 2019, has not been ruled upon.) In this case, FirstEnergy proposes decoupling charges of \$17 million for one year, more than \$12 million of which would be paid by residential customers.

The PUCO should scrutinize FirstEnergy's application to protect customers from paying any more than what is authorized under the law and ensure that they are not double charged. Otherwise, customers might never realize the purported benefit of lower electric bills as promised by proponents of House Bill 6.

## **II. RECOMMENDATIONS**

### **A. To protect consumers, FirstEnergy must meet its burden of proving that its decoupling application is consistent with all applicable laws, including House Bill 6 (codified in relevant portion in R.C. 4928.471).**

The PUCO has consistently held that the applicant bears the burden of proof in PUCO proceedings. *See, e.g., In re Application of [FirstEnergy]*, Case No. 18-1604-EL-UNC, Opinion & Order ¶ 106 (July 17, 2019) (“utilities continue to bear the burden of proof for any application submitted for our consideration”); *In re Application of the Ohio Bell Tel. Co.*, No. 84-1435-TP-AIR, 1985 Ohio PUC LEXIS 7, at \*79 (Dec. 10, 1985) (“The applicant has the burden of establishing the reasonableness of its proposals.”); *In re Application of the Ottoville Mut. Tel. Co.*, Case No. 73-356-

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<sup>8</sup> *See* Case No. 18-375-EL-RDR, Application Schedule 1 (Feb. 28, 2018).

<sup>9</sup> Case No. 19-571-EL-RDR, Application Schedule 1 (Apr. 5, 2019).

<sup>10</sup> Case No. 18-1605-EL-RDR.

Y, 1973 Ohio PUC LEXIS 3, at \*4 (Nov. 13, 1973) (“the applicant must shoulder the burden of proof in every application proceeding before the Commission”). In this proceeding, FirstEnergy needs to provide supporting documentation and demonstrate that its proposed decoupling charges are consistent with all applicable laws. As discussed below, FirstEnergy’s application has not done so. Likewise, OCC has no burden of proof obligation whatsoever.

**B. The PUCO must protect consumers by confirming that any “decoupling” charges are not duplicative of charges that customers are already paying to FirstEnergy for “lost revenues.”**

The law requires the PUCO to ensure that customers do not pay the same charges twice. Under House Bill 6 (codified in R.C. 4928.471), “[i]f the commission determines that approving a decoupling mechanism will result in a double recovery by the electric distribution utility, the commission shall not approve the application unless the utility cures the double recovery.” In this case, FirstEnergy’s application lacks sufficient detail to determine whether double-charging will occur, so there is the potential for double recovery.

In the past, FirstEnergy has charged customers for “lost revenues” through its energy efficiency rider. The collection of lost revenues are similar to decoupling in that it is designed to compensate the utility for revenues it would have received if customers did not engage in energy efficiency. Earlier this year, FirstEnergy filed a report of its energy efficiency rider in which it identified tens of millions of dollars in charges for lost revenues for 2018 (in addition to charges for energy efficiency program costs and utility profits).<sup>11</sup> These reports do not explain how the lost revenues were calculated and do not provide underlying documents supporting the amounts proposed to be collected from consumers.

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<sup>11</sup> Case No. 17-2277-EL-RDR, Demand Side Management and Energy Efficiency Rider (Rider DSE) Report in Support of Staff’s 2018 Annual Review Submitted by Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company (Mar. 29, 2019).

More recently, FirstEnergy filed updates to its energy efficiency riders.<sup>12</sup> In a cover letter to those tariff updates, FirstEnergy claimed that “revenue resulting from implementation of section 4928.66 of the Revised Code, excluding program costs and shared savings, and recovered pursuant to an approved electric security plan, is being removed from” the energy efficiency rider.<sup>13</sup> In that case, however, FirstEnergy provided no supporting documentation whatsoever; it filed a cover letter, and tariff sheets, with no workpapers, no testimony, no supporting calculations, no exhibits, and no other information. Thus, there is no basis for anyone to know how FirstEnergy calculated those rates, whether they in fact removed lost revenues, or anything else. OCC has complained about FirstEnergy’s barebones tariff-only filings, arguing that FirstEnergy must be required to provide supporting information for its new rates.<sup>14</sup> Yet FirstEnergy continues to make these types of incomplete filings expecting approval.

The point is, by law, the PUCO cannot allow FirstEnergy to charge customers twice for the same thing. Are FirstEnergy’s proposed decoupling charges in this case duplicative of charges that customers are already paying through FirstEnergy’s energy efficiency rider? No one knows (other than FirstEnergy) because FirstEnergy has refused to file any supporting documents in its energy efficiency rider cases and has filed minimal information in this docket, with limited supporting documentation. Until FirstEnergy makes an affirmative showing in this docket, supported by evidence, that its proposed decoupling charges do not duplicate other charges, the PUCO must reject the decoupling charges under R.C. 4928.471(D).

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<sup>12</sup> Case No. 19-1904-EL-RDR.

<sup>13</sup> See Case No. 19-1904-EL-RDR.

<sup>14</sup> See, e.g., Case No. 18-1646-EL-RDR, Comments by the Office of the Ohio Consumers’ Counsel (Jan. 2, 2019); Objections to FirstEnergy’s Proposal to Increase Consumers’ Energy Efficiency Rates and Decrease Transparency in the PUCO’s Ratemaking Process by the Office of the Ohio Consumers’ Counsel (July 1, 2019).

**C. FirstEnergy’s application lacks sufficient detail for the PUCO to determine whether the charges to consumers are lawful, and thus, it must be denied.**

As described above, FirstEnergy has not provided enough information for the PUCO to determine whether the application complies with R.C. 4928.471(D), which, among other things, prohibits double-charges to consumers. This alone warrants rejection of FirstEnergy’s application. But the application is deficient on a grander scale than this. FirstEnergy provided very little support for any of the numbers provided in its application.

For each of its electric distribution utilities, FirstEnergy calculated the difference between “2018 Base Distribution Revenue” and “2019 Base Distribution Revenue.”<sup>15</sup> But FirstEnergy did not provide enough information for the PUCO to meaningfully evaluate these numbers. FirstEnergy did not explain how it defines base distribution revenue, did not provide any underlying accounting records to support its numbers, and did not provide a witness who can explain how these numbers were derived. The rest of FirstEnergy’s calculations are similarly unexplained. FirstEnergy calculated the difference between “2018 Revenue from ORC 4928.66” and “2019 Revenue from ORC 4928.66” but did not provide supporting documentation. FirstEnergy notes in its application that the rate design is “aligned with existing base distribution rates,” but it says nothing more about rate design.<sup>16</sup> There is no way for the PUCO or anyone else to verify whether FirstEnergy accurately “aligned [the rate design] with existing base distribution rates.” FirstEnergy calculated rates based on forecasted kWh for February to December 2020 but did not provide any support for these projections.<sup>17</sup> Nor is it clear whether this forecast is accurate, given that FirstEnergy used 11 months (February through December) instead of 12. If FirstEnergy is calculating rates using 11 months

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<sup>15</sup> See Application, Exhibit A, P. 1, P. 2, P. 3.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

instead of 12, as appears to be the case, then the resulting rates would be higher than they should be.<sup>18</sup>

In short, FirstEnergy's application falls woefully short of meeting its burden to prove that the proposed decoupling charges to consumers are lawful.

**D. To protect consumers, the PUCO should only approve FirstEnergy's request for a decoupling rider by setting the rider at zero until FirstEnergy can cure the deficiencies in its application.**

As explained above, FirstEnergy has failed to provide adequate information for the PUCO to approve charges to customers for decoupling. If the PUCO does approve a decoupling rider (given that the law requires the PUCO to rule on the application within 60 days), it should set the rider at zero. There should then be a detailed review (audit) by the PUCO Staff or an independent third party, and a hearing regarding the 2018 Base Distribution Revenue and 2018 Revenue from ORC 4928.66.<sup>19</sup> It is especially important that the PUCO determine that FirstEnergy's purported 2018 revenues are accurate because future decoupling charges will be based in part on these 2018 revenue numbers.<sup>20</sup> Further, the tariff for any approved decoupling rider should include language allowing customers to receive a refund if any decoupling charge is later found to be unjust, unreasonable, or unlawful by the PUCO or Supreme Court of Ohio.

### **III. CONCLUSION**

Although the law allows utilities to file applications for decoupling, the PUCO must protect consumers from any proposal to charge customers for decoupling that is unlawful, and the PUCO

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<sup>18</sup> When calculating a per kWh rate, the projected kWh is the denominator, and a higher denominator resulting from higher projected kWh would necessarily result in lower rates.

<sup>19</sup> Other Ohio utilities' decoupling mechanisms were approved only after parties had substantial due process and not on an expedited 60-day basis.

<sup>20</sup> See R.C. 4928.471(B) (decoupling revenues to the "twelve-month period ending on December 31, 2018").



should minimize any such charges to consumers. FirstEnergy bears the burden of proof in this case, and its deficient application does not satisfy that burden. The PUCO should reject the application and deny FirstEnergy's request to charge customers more than \$17 million in 2020 for decoupling.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 17th day of December 2019.

/s/ Christopher Healey  
Christopher Healey  
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Comments Comments by The Office of The Ohio Consumers' Counsel  
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