

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of Ohio Adm.)
Code Chapter 4901:1-1 Rules Regarding) Case No. 18-276-AU-ORD
Utility Tariffs and Underground Utility)
Protection Services.)

**COMMENTS FOR A RULE TO PROVIDE FOR REFUNDS TO CONSUMERS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
NORTHEAST OHIO PUBLIC ENERGY COUNCIL
NORTHWEST OHIO AGGREGATION COALITION
AND
EDGEMONT NEIGHBORHOOD COALITION**

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The PUCO has invited comment on its rules regarding utility tariffs. The opportunity to comment is appreciated. Utility tariffs set forth the terms and conditions (including rates) for service to utility consumers, so tariffs are very important. The importance of tariffs was recently underscored by the Ohio Supreme Court, in an opinion where it sided with FirstEnergy’s claim that the PUCO could not make FirstEnergy refund \$43 million to consumers for FirstEnergy’s renewable energy overcharges.¹ There, the Court found that the PUCO was barred from ordering refunds because the PUCO had not made FirstEnergy’s tariffs subject to refund.² In another recent denial of refunds, the Court found unlawful the PUCO’s allowance of a so-called distribution modernization rider (subsidy charge) for FirstEnergy. There, the Court denied half a billion dollars in refunds to two million consumers (where the PUCO had not protected consumers by making the charge subject to refund).³ In that case, the PUCO had rejected a

¹ *In re Alternative Energy Rider Contained in the Tariffs of Ohio Edison Co.*, 153 Ohio St.3d 289, 2018-Ohio-229, ¶¶ 15-20.

² *Id.*

³ *In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401, ¶ 23 (“despite our finding that the DMR is unlawful, no refund is available to ratepayers for money already recovered under the rider”).

motion by OCC and the Ohio Manufacturers' Association, in 2016, to make FirstEnergy's subsidy charge subject to refund.⁴

Supreme Court Justice Pfeifer highlighted the extreme injustice to Ohio consumers when they are denied refunds for charges later found to be unlawful:

[T]he PUCO asserted that a refund under the circumstances would be tantamount to retroactive ratemaking, something it is not authorized to engage in.

It is unconscionable that a public utility should be able to retain \$368 million that it collected from customers based on assumptions that are unjustified. The problem stems from this court's 1957 decision [in *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*] Clearly the time has come to overturn this case.

...

[I]t boggles the mind that this court would ever countenance such a proposition: that a public utility should be allowed to fatten itself on the backs of Ohio residents by collecting unjustified charges.

...

Allowing AEP to retain the \$368 million that it collected based on charges that were not justified is unconscionable. Doing so because of a 50-year-old case that is not supported by the statute on which it is based is ridiculous. The ratepayers of Ohio deserve better.⁵

Just since the advent of the 2008 energy law that favors electric utilities in ratemaking, Ohioans have lost \$1.2 billion in denied refunds for electric charges after Supreme Court reversals of PUCO orders.⁶ In this case, the PUCO issued a draft proposal for rules changes regarding tariffs. An important addition to the PUCO's proposals would be for a refund provision. Accordingly, the PUCO should adopt a new rule to this section as Ohio Adm. Code

⁴ *In re Application of Ohio Edison Co., the Cleveland Electric Illuminating Co., & the Toledo Edison Co.*, Case No. 14-1297, Finding & Order ¶ 16 (Dec. 21, 2016).

⁵ *In re Columbus S. Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462, ¶¶ 61-67.

⁶ *See In re Columbus S. Power Co.*, 128 Ohio St.3d 512, ¶ 17-20 (\$63 million); *In re: Columbus S. Power Co.*, 138 Ohio St.3d 448, ¶ 56 (\$368 million); *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166 (\$330 million); *In re Application of Ohio Edison Co.*, Slip Opinion No. 2019-Ohio-2401, ¶ 23 (\$456 million collected through June 2019).

4901:1-1-04. The new rule should be titled “Refund language in tariffs.” The rule should require refund language that is substantially similar to language that the PUCO has previously approved, as follows:⁷

O.A.C. 4901:1-1-04 Refund language in tariffs

All utility rider tariffs shall include the following refund language: “This tariff is subject to reconciliation or adjustment, including but not limited to, increases, decreases or refunds. Such reconciliation or adjustment shall be calculated so that the rates or charges under the tariff fully compensate utility customers for charges determined to be unlawful, unreasonable, or imprudent by the Commission in the docket those rates were approved or the Supreme Court of Ohio.”

It is time for justice for consumers on the refund issue. Given the Supreme Court’s recent acknowledgment that PUCO subject-to-refund tariffs would solve the injustice, this rulemaking is the forum to right this wrong.

⁷ See, e.g., Columbia Gas Tariff Sheet No. 74.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served on the persons stated below via electronic transmission, this 13th day of January 2020.

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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 for a Rule to Provide for Refunds to Consumers by The Office of The Ohio Consumers' Counsel , Northeast Ohio Public Energy Council , Northwest Ohio Aggregation Coalition and Edgemont Neighborhood Coalition electronically filed by Mrs. Tracy J Greene on behalf of Healey, Christopher