

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	Case No. 18-1656-EL-ATA
Edison Company for Approval of a Tariff)	
Change.)	

**MOTION TO REJECT FIRSTENERGY’S JULY 31, 2020 REVISED TARIFF UPDATES
TO THE TAX SAVINGS ADJUSTMENT RIDER
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Public Utilities Commission of Ohio (“PUCO”) has consistently said that customers deserve to receive all benefits from the Tax Cuts and Jobs Act of 2017 (federal tax cuts). FirstEnergy customers receive a credit on their bills under the Tax Savings Adjustment Rider (the “tax savings rider”). And FirstEnergy agreed to provide customers those benefits when it signed a settlement agreement with the OCC and the PUCO Staff. That Settlement Agreement was approved by the PUCO on July 17, 2019.¹ FirstEnergy’s July 31, 2020 tariff filings (the “Tariff Filings”) violate the PUCO Order that approved the Settlement. The PUCO should reject FirstEnergy’s tariff filing and require FirstEnergy to refile tariffs consistent with the PUCO’s Order. The new tariffs must provide customers *all* of the benefits of the federal tax cuts, consistent with the settlement that FirstEnergy reached with OCC and other parties, and which was approved by the PUCO.

¹ Opinion & Order (July 17, 2019).

Respectfully submitted,

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/s/ Christopher Healey

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**MEMORANDUM IN SUPPORT OF MOTION TO REJECT FIRSTENERGY’S JULY 31,
2020 REVISED TARIFF UPDATES TO THE TAX SAVINGS ADJUSTMENT RIDER**

FirstEnergy, OCC, the PUCO Staff, and other parties reached a settlement that, among other things, required FirstEnergy to provide all benefits of the federal tax cuts to customers.² The PUCO approved that Settlement.³ As part of that Settlement, parties agreed that the savings to customers would “reflect the final, audited balances, including a federal and state tax gross up, as of December 31, 2017.”⁴ Despite this unequivocal language that FirstEnergy agreed to and the PUCO approved, a recent audit by Blue Ridge Consulting Services found that FirstEnergy *did not* use the “final, audited balances ... as of December 31, 2017” to give customers the full benefits of the federal tax cuts.⁵ Blue Ridge concluded that this was inconsistent with the approved Settlement.⁶

Instead, FirstEnergy made adjustments that will deprive customers of the full tax benefits and will cause them to pay higher electric bills than they should under the approved Settlement.

² Stipulation & Recommendation (Nov. 11, 2018) (the “Original Stipulation”); Supplemental Stipulation & Recommendation (Jan. 25, 2019) (the “Supplemental Stipulation,” and together with the Original Stipulation, the “Settlement”). *See also* Opinion & Order (July 17, 2019) (approving the Settlement).

³ Opinion & Order (July 17, 2019).

⁴ Original Stipulation at 9.

⁵ Case No. 19-1887-EL-RDR, Compliance Audit (June 12, 2020) (the “Blue Ridge Audit”).

⁶ *Id.* at 101-106.

The PUCO should reject FirstEnergy's adjustments to the final, audited balances. It should require FirstEnergy to file updated tariffs that are based on the rates consistent with the final, audited balances as of December 31, 2017 as reflected in the Settlement that the PUCO approved.

I. RECOMMENDATIONS

FirstEnergy and other parties agreed to the terms of a Settlement providing for credits to consumers related to the federal tax cuts. The original version of the Settlement (the Original Stipulation) was filed on November 11, 2018. It was then supplemented and modified (by the Supplemental Stipulation) on January 25, 2019.

Under the Settlement, customers receive a monthly credit on their bills under the tax savings rider. One component of those credits is related to something called excess accumulated deferred income taxes, or "EDIT." As a result of the federal tax cuts, which reduced utility's federal income tax rate from 35% to 21%, utilities are now holding onto large EDIT balances. Essentially, these EDIT balances are money that the utility expected to use to pay its taxes but no longer needs because of the now-lower tax rate.

This money needs to be returned to customers because the EDIT balance is the result of past charges to customers for the utility's taxes. Under the PUCO's Order, the EDIT balance is to be returned to customers. The larger the balance, the more money customers will receive under the tax savings rider. To determine the amount of EDIT to be returned to customers, under the Settlement, the PUCO required FirstEnergy to use the "final, audited balances, including a federal and state tax gross up, as of December 31, 2017."⁷

⁷ Original Stipulation at 9.

The Settlement included an attachment with information about FirstEnergy’s EDIT balances. This attachment (Supplemental Attachment A to the Supplemental Stipulation) shows the following pre-tax EDIT balances as of December 31, 2017: \$482,762,701 for property related normalized EDIT and \$194,393,675 for non-normalized property EDIT.⁸ Together, this totals \$677,156,376, which is the pre-tax amount that is to be returned to customers under the Settlement. At the time the Supplemental Stipulation was filed (January 25, 2019), FirstEnergy’s December 31, 2017 EDIT balances had already been audited by PricewaterhouseCoopers nearly a year earlier in February 2018.⁹ Thus, by the time the Supplemental Stipulation was filed, the “final, audited” EDIT balances as of December 31, 2017 were known to FirstEnergy—namely, the amounts reflected on Supplemental Attachment A to the Supplemental Stipulation: \$482,762,701 for property related normalized EDIT and \$194,393,675 for non-normalized property EDIT.

In the audit conducted of FirstEnergy’s 2019 Delivery Capital Recovery Riders, the PUCO-appointed auditor, Blue Ridge Consulting, further confirmed that the EDIT balances in Attachment A *were the final, audited EDIT balances as of December 31, 2017*. In the course of that audit, Blue Ridge asked FirstEnergy the following data request: “Please provide ‘the final, audited balances’ owed to customers, before and after federal and state tax gross up, as of December 31, 2017.”¹⁰ In response, FirstEnergy provided numbers identical to those found on

⁸ The distinction between “normalized” and “non-normalized” EDIT does not matter for purposes of this motion. Basically, normalized EDIT must be returned to customers over a period of years under a formula required by federal regulations, and non-normalized EDIT can be returned over a period of years at the discretion of the PUCO.

⁹ See Blue Ridge Audit at 105.

¹⁰ Blue Ridge Audit at 102.

Supplemental Attachment A to the Supplemental Stipulation: \$482,762,701 for property related normalized EDIT and \$194,393,675 for non-normalized property EDIT.¹¹

This affirmation by FirstEnergy confirms that the amounts reflected in the Settlement do reflect the final, audited balances as of December 31, 2017, and that these amounts should be used to calculate the credits to customers under the tax savings rider. But FirstEnergy's July 31, 2020 Tariff Filings do *not* use these balances. Instead, they use different numbers that reduce the amount that customers will receive in tax savings by about \$40 million.

In its July 31, 2020 Tariff Filings, FirstEnergy used the following numbers as of December 31, 2017: \$425,190,687 for property related normalized EDIT and \$212,669,012 for non-normalized property EDIT.¹² This totals \$637,859,699, compared to the \$677,156,376 amount¹³ that FirstEnergy identified as the final, audited balance as of December 31, 2017 in its response to the Blue Ridge data request. In other words, FirstEnergy has arbitrarily reduced the total property-related EDIT balance by nearly \$40 million, thus reducing the amount of credits that customers will receive under the tax savings rider by that amount. Because FirstEnergy has not used the final, audited EDIT balances as of December 31, 2017, it has violated the PUCO-approved Settlement with OCC, to the detriment of the consumers that OCC represents. This violates R.C. 4905.54, which requires utilities like FirstEnergy to "comply with every order, direction, and requirement of the public utilities commission."

Further, FirstEnergy provided no explanation for its failure to use the actual, audited balances. It simply filed tariff updates with calculations, without any mention of its deviation

¹¹ Blue Ridge Audit at 103 ("The 'final, audited balances' provided in the response matched those presented in Appendix A of the Stipulation filed on November 9, 2018, as well as the Supplemental Stipulation filed on January 25, 2019.").

¹² July 31, 2020 Tariff Filing, Attachment Page 3.

¹³ Again, negative \$482,762,701 for property related normalized EDIT and negative \$194,393,675 for non-normalized property EDIT.

from the Settlement. The PUCO should not allow FirstEnergy to deprive customers of tax benefits that it agreed to in a PUCO approved settlement. The PUCO should reject FirstEnergy's tariffs and order FirstEnergy to refile tariffs that are consistent with the PUCO Order approving the Settlement, passing back the amount of tax credits it agreed to, as reflected in the Settlement.

II. CONCLUSION

The Settlement requires FirstEnergy to provide credits to customers based on the final, audited EDIT balances from December 31, 2017. FirstEnergy's July 31, 2020 Tariff Filings are inconsistent with that Settlement. The PUCO approved that Settlement. FirstEnergy's filed tariffs are contrary to the PUCO's Order. The PUCO should reject these tariff filings and require FirstEnergy to file new ones that are consistent with the Settlement and the PUCO Order approving the Settlement.

Respectfully submitted,

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/s/ Christopher Healey

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion was served on the persons stated below via electronic transmission this 10th day of September 2020.

/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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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/10/2020 11:15:06 AM

in

Case No(s). 18-1656-EL-ATA

Summary: Motion Motion to Reject FirstEnergy's July 31 2020 Revised Tariff Updates to the Tax Savings Adjustment Rider by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.