

**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.)	

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

The Public Utilities Commission of Ohio (“PUCO”) should grant OCC’s September 10, 2020 motion to reject FirstEnergy’s recently-filed tariffs related to the credits that customers receive as a result of the 2017 federal tax cuts.¹ As explained in OCC’s Motion, FirstEnergy’s approach would deprive consumers of nearly \$40 million in tax-related credits, and it violates the settlement (“Settlement”²) that OCC, FirstEnergy, and others signed and the PUCO approved on July 17, 2019.³ Nothing in FirstEnergy’s late-filed⁴ memorandum contra changes this fact.

¹ Motion to Reject FirstEnergy’s July 31, 2020 Revised Tariff Updates to the Tax Savings Adjustment Rider (Sept. 10, 2020) (the “Motion”).

² The Settlement consists of the November 11, 2018 Stipulation and Recommendation and January 25, 2019 Supplemental Stipulation and Recommendation.

³ See Motion at 1.

⁴ FirstEnergy filed its memorandum contra at 11:20 p.m. on September 25, 2020. See Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company to Reject Tariff of the Office of the Ohio Consumers’ Counsel. Thus, it is deemed to have been filed on September 28, 2020, which is 18 days after OCC’s Motion. OCC is filing a motion to strike FirstEnergy’s memorandum contra concurrently.

I. REPLY

A. Nothing in FirstEnergy's tariffs or the PUCO's July 17, 2019 Order provides that FirstEnergy's updated tariffs were automatically approved as of September 1, 2020.

In its memorandum contra, FirstEnergy argues that its recently-filed tariffs were automatically approved, effective September 1, 2020.⁵ In support of this claim, FirstEnergy cites Rider TSA tariff sheet no. 91.⁶ But Rider TSA tariff sheet no. 91 says nothing about rates being automatically approved as of September 1, 2020. To the contrary, it says, “No later than December 1st of each year, the Company will file with the PUCO a request for approval of the Rider credit which, unless ordered by the PUCO, shall become effective on a service rendered basis on January 1st of each year.”⁷ It is unclear how FirstEnergy could interpret this language as supporting automatic approval as of a different and much earlier date, September 1.

In support of its claim, FirstEnergy also cites the PUCO's July 17, 2019 Opinion and Order in this case, wherein the PUCO approved the Settlement.⁸ Again, it is not clear how FirstEnergy arrived at this conclusion. Nothing in that order says anything about Rider TSA rates going into effect automatically on September 1.

The PUCO should reject FirstEnergy's baseless claim that its July 31, 2020 tariff filing was automatically approved as of September 1, 2020. Thus, OCC's Motion is timely, and the PUCO can grant it.

⁵ Memorandum Contra at 2.

⁶ Memorandum Contra at 2.

⁷ See Rider TSA, Sheet 91.

⁸ Memorandum Contra at 2.

B. OCC's Motion it consistent with the approved Settlement.

Under the approved Settlement, customers are entitled to credits based on the “final, audited balances” of FirstEnergy’s excess accumulated deferred income taxes (“EDIT”).⁹ In its memorandum contra, FirstEnergy argues that the balances reflected in the approved Settlement—which are \$40 million higher than what FirstEnergy is now using—were “illustrative” and thus subject to change.¹⁰ But as OCC explained in the Motion, the “illustrative” numbers found in the approved Settlement were not illustrative at all. They were based on an audit by PricewaterhouseCoopers performed long before the Settlement was filed.¹¹ And FirstEnergy itself subsequently admitted that the “final, audited balances” were the same as those identified as “illustrative” in the Settlement.¹² So FirstEnergy’s claim that it can unilaterally change its EDIT balances, to the \$40 million detriment of consumers, is inconsistent with the approved Settlement.

II. CONCLUSION

For the reasons set forth herein and in the Motion, the PUCO should protect consumers by granting the Motion. Customers deserve *all* benefits of the 2017 federal tax cuts, and FirstEnergy does not have the right to unilaterally deny some of those benefits to customers.

⁹ Stipulation and Recommendation at 9 (Nov. 11, 2018).

¹⁰ Memorandum Contra at 3.

¹¹ Motion at 3.

¹² Motion at 3-4.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply was served on the persons stated below via electronic transmission this 30th day of September 2020.

/s/ Christopher Healey

Christopher Healey

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