Office of the Ohio Consumers' Counsel

November 17, 2020

Ms. Tanowa Troupe
Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

RE: *In the Matter of the 2019 Review of The Delivery Capital Recovery Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 19-1887-EL-RDR

Dear Ms. Troupe:

Attached please find reply comments for Case No. 19-1887-EL-RDR.

Yesterday, November 16, 2020, the Office of the Ohio Consumers' Counsel ("OCC") timely filed these same reply comments in Case No. 18-1542-EL-RDR, but inadvertently omitted to file the reply comments in Case No. 19-1887-EL-RDR (both case captions are on OCC's pleading). Both of the cases were consolidated earlier this year.

If you have any questions, please contact me at: 614-466-1292 or ambrosia.wilson@occ.ohio.gov.

Thank you.

Sincerely,

/s/ Ambrosia E. Wilson
Ambrosia E. Wilson (0096598)
Counsel of Record for 18-1542-EL-RDR
Assistant Consumers' Counsel

cc: Attorney Examiners, All Parties of Record

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the 2018 Review of The Delivery Capital Recovery Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	)))))	Case No. 18-1542-EL-RDR
In the Matter of the 2019 Review of The Delivery Capital Recovery Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	)))))	Case No. 19-1887-EL-RDR

CONSUMER PROTECTION REPLY COMMENTS REGARDING FIRSTENERGY'S CHARGES TO CONSUMERS FOR ITS DELIVERY CAPITAL RECOVERY RIDER
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

The PUCO should not allow FirstEnergy to overcharge consumers for vegetation management expenses through the so-called Delivery Capital Recovery Rider ("DCR" or "Rider").[1] This Rider includes FirstEnergy's 2018 costs associated with distribution and related functions.[2] In this case, Blue Ridge[3] found that FirstEnergy overstated its 2018 revenue requirement for the DCR by nearly $3.3 million by including vegetation

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[1] Under the 2008 energy law, riders (utility add-on charges) are permitted outside of a general rate case. This benefits the utilities, but not consumers. Before the energy law, all ratemaking items — whether favorable or unfavorable to the utility —would be considered together.

[2] Audit Report at 18-20 (April 30, 2019) (Specifically, these vegetation management-related recommendations include Rec-01, Rec-02, Rec-03, Rec-04, Rec-05, and Rec-11. In addition, the Auditor identified several other areas that needs further actions from FirstEnergy, the PUCO, and Staff related to FirstEnergy's vegetation management practices, internal audit, and projects with budget overrun to protect FirstEnergy's customers from paying unjust and through unreasonable rates Rider DCR).

[3] The PUCO's independent auditor selected for this audit.

management costs that were improperly capitalized (charged to consumers through Rider DCR). These costs should be excluded from Rider DCR with an adjustment to the 2018 rate base.[4]

Adoption of the Auditor recommendations, adjustments, and OCC suggested modifications might not necessarily result in refunds to customers in this proceeding because of the annual Rider DCR revenue caps currently in place.[5] However, if the OCC's and Auditor's recommendations and adjustments are adopted, many of the problems that were identified in this and other DCR audit cases (e.g. the 2017 and 2019 audits), where the PUCO has yet to rule, will finally be resolved. Adoption of these recommendations also helps make certain that FirstEnergy's distribution related capital investments ("rate base") and revenue requirements are properly recorded, calculated, and audited going forward.

OCC also reasserts other recommendations from its Initial Comments. First, that the PUCO order FirstEnergy and all other electric utilities in the state to conform with FERC accounting standards to prevent cherry-picking of capitalization language and policies that deviate from FERC standards.[6] The PUCO should also require its Staff to more actively review all of FirstEnergy's capitalization policies until FirstEnergy demonstrates conformance with FERC accounting standards.[7] The Auditor's and OCC's recommendations are reasonable and should be adopted by the PUCO to protect consumers from ultimately paying more than is just and reasonable through Rider DCR.

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[4] Audit Report at 18-20.

[5] OCC Comments at 2.

[6] *Id.*

[7] *Id.*

II. CONSUMER PROTECTION REPLY COMMENTS

The PUCO should prohibit FirstEnergy from charging customers for capitalized vegetation management expenditures that do not comply with FERC accounting requirements and are in violation of Ohio Adm. Code 4901:1-9-05.

Blue Ridge ("Auditor") correctly found that FirstEnergy's expenses for the initial trimming of vegetation outside a corridor (right-of-way), or "off-corridor," had been improperly capitalized and should instead be recorded as operation and maintenance expenses.[8] In capitalizing these expenses, FirstEnergy is able to charge customers a return on and of the expenses, as though the expenses were a rate base item. That capitalizing increases the rates that customers pay. FirstEnergy's counterarguments for capitalizing these vegetation management expenses are unpersuasive.

In its comments, FirstEnergy's rationale for capitalizing vegetation management costs is that they are related to initial clearing of vegetation and "performing this capitalized work eliminates or mitigates the need to go back and perform additional work later."[9] But the Auditor found that the description of the vegetation management expenditures in cost categories (05, 36, 14 and 30) are inappropriate for capitalization because they are not identified or associated with the *initial* vegetation clearing costs associated with the construction of the transmission or distribution lines.[10]

Under FERC guidelines, authorized tree-trimming capitalization costs include the tree-trimming costs associated with the *initial* clearing of the right of way, including the cost of permits during the initial construction of the transmission or distribution lines.[11]

[8] Audit Report at 41.

[9] FirstEnergy Comments at 3.

[10] Audit Report at 46 and 67.

[11] Identified as FERC Account 365 in the Audit Report at 40.

All future vegetation management costs are considered ordinary maintenance expenses and should be considered as expenses and collected from customers in base rates. FERC Account 593 defines these costs as work performed for the purpose of preventing failure, restoring service ability, and maintaining the life of plant.[12] But FirstEnergy has broadened its capitalization policy beyond the FERC guidelines by including costs that it claims are tied to the initial clearing as an "expansion" of the initial clearing.[13] But these so-called expansion costs are merely the routine maintenance costs that occur on a periodic basis long after the initial right of way has been cleared for the construction of the transmission or distribution line. And FirstEnergy uses its expanded tree-trimming capitalization policies to justify collecting costs through the DCR that it would otherwise be unable recover through the rider by calling the work an "expansion."[14]

FirstEnergy's overly broad policies for DCR tree-trimming costs include:

1. The removal of tree(s) located outside the right-of-way that have grown into the right-of-way;

2. initial removal of overhanging limbs greater than 15 feet above the highest conductor attached to the pole;

3. cutting tree(s) outside the right-of-way to prevent threats to facilities that require no future maintenance, and

4. notification costs of property owners that the activities each of the activities identified above will occur.

FirstEnergy's capitalization policy is then used to inappropriately earn a return on and of these costs under the DCR, even though they are maintenance costs that are

[12] Audit Report at 40.

[13] FirstEnergy Comments at 3.

[14] *Id*.

expensed under FERC accounting standards. The PUCO should require FirstEnergy to expense these costs as maintenance in distribution bases rates.

FirstEnergy also disputes the Auditor's recommendation that all electric utilities conform their accounting policy to be consistent with FERC accounting standards.[15] FirstEnergy claims that its accounting policy fully conforms to GAAP[16] accounting guidance.[17] What FirstEnergy omits is that while it may choose to adhere to GAAP accounting standards, it is *required,* under the Ohio Adm. Code 4901:1-09-05, to follow FERC accounting standards. Otherwise, a utility could cherry-pick whatever accounting standards it decides are in its shareholders' best interest at any given time without regard for uniformity, standards, and transparency in how accounting data is reported. Just as FirstEnergy has done here.

FirstEnergy also argues that the PUCO has "full discretion and authority to establish its own accounting rules"[18] and thus should allow FirstEnergy to deviate from FERC accounting standards.[19] The PUCO may have such discretion. But even if the PUCO were to exercise this discretion to permit FirstEnergy to use non-FERC definitions in defining vegetation management capitalization costs, that is not conclusive to ratemaking treatment. Generally accepted accounting principles ("GAAP") is an

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[15] *Id*. at 3-4.

[16] Generally accepted accounting standards.

[17] FirstEnergy Comments at 3-4.

[18] *Id.*

[19] *Id.*

accounting requirement, not a ratemaking requirement.[20] And ratemaking does not necessarily follow generally accepted accounting principles.[21]

Additionally, it would be highly inappropriate. In effect, FirstEnergy is encouraging the PUCO to retroactively amend its policies and rules to approve, after the fact, FirstEnergy's inappropriate capitalization policies that occurred during the 2018 audit period. FirstEnergy must comply with FERC standards, unless those standards conflict with PUCO accounting orders, and the standards say that only the initial clearing can be capitalized.[22] The PUCO has not issued an accounting order for FirstEnergy that says otherwise. Accordingly, FirstEnergy has the burden of proving that its "expansion" of the initial clearing is not really maintenance costs that are already embedded in distribution base rates. FirstEnergy has not demonstrated that it has met this burden. And until such a demonstration is made, it would unjust and unreasonable for consumers to pay maintenance costs through the DCR rider that are also paid in base rates.

FirstEnergy has improperly enjoyed broad and unreasonable leeway to remove any tree or limb outside a corridor, call it a "capital" cost, and then collect a return on and of this cost from customers through Rider DCR. This is wrong because such costs are not related to the initial tree-trimming costs (e.g. the initial construction cost of the distribution line). If the tree clearing occurred during the construction, then capitalizing the tree clearance is appropriate. Otherwise these expenses are part of FirstEnergy's

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[20] *See* *Elyria Foundry Co. v. PUC*, 114 Ohio St.3d 305, 2007-Ohio-4164, 871 N.E.2d 1176, ¶ 19 (citing *Office of Consumers' Counsel v. Public Utilities Com.* (1983), 6 Ohio St.3d 377, 378-379, 6 Ohio B. 428, 453 N.E.2d 673; *Dayton Power & Light Co. v. Pub. Util. Comm.* (1983), 4 Ohio St.3d 91, 104, 4 Ohio B. 341, 447 N.E.2d 733), where the court has stated that accounting conventions do not control ratemaking treatment under Ohio law.

[21] *See id.*

[22] Ohio Adm. Code 4901:1-9-05.

ongoing operation and maintenance tree-trimming costs that should not be included in the revenue requirement of Rider DCR.

To protect consumers, the PUCO should adopt the Auditor's recommendation to reduce by approximately $3.3 million the DCR revenue requirement[23] and approximately $18 million in distribution plant (or rate base)[24] for vegetation management work orders charged to Cost Codes 05, 14, 30, and 36 as identified in the Audit Report. The PUCO should also require FirstEnergy and all electric utilities in Ohio to conform to FERC accounting standards in determining which vegetation management costs are capitalized and which are expensed as maintenance.

III. CONCLUSION

OCC recommends, as does the PUCO Staff,[25] that the PUCO adopt all of the recommendations and adjustments identified in the Audit Report. FirstEnergy's arguments opposing the Auditor's findings are unpersuasive. The PUCO should take decisive steps regarding FirstEnergy's policy, process, and accounting of vegetation management programs as the Auditor and OCC recommend. The improperly capitalized expenditures of tree-trimming should be removed from the 2018 Rider DCR revenue requirement and DCR rate base. Customers should not be overcharged for FirstEnergy's unnecessary and potentially duplicative vegetation management expenditures.

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[23] Audit Report at 67 (Adjustment #4), and the revenue requirement adjustments are $3,292,224 = $1,786,623 + $1,141,265, + $364,336.

[24] *Id.*, the rate base adjustments are $18,063,226 = $8,885,797 + $7,237,648 + $1,939,781.

[25] *See* Staff Comments at 1-2 (October 30, 2020) (The PUCO Staff declined to issue new comments for this case and instead incorporated its Comments from the 2019 audit (Case No. 19-1887-EL-RDR), which has been procedurally combined with this case by Entry (September 29, 2020). However, Staff noted that is fully supports the auditor's recommendations made in both cases and reserves the right to file reply comments).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Reply Comments was served on the persons stated below via electronic transmission this 16th day of November 2020.

/s/ Ambrosia E. Wilson
Ambrosia E. Wilson
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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