**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Review of the Delivery Capital Recovery Rider Contained in the Tariffs of Ohio Edison Company, Cleveland Electric Illuminating Company, and the Toledo Edison Company.  | ))))) | Case No. 16-2041-EL-RDR |

**REPLY COMMENTS**

**BY**

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

# I. INTRODUCTION

 The Cleveland Electric Illuminating Company, Ohio Edison Company, and Toledo Edison Company (collectively “FirstEnergy”) have been collecting millions of dollars from consumers and earning a return on certain distribution plant through its Delivery Capital Recovery Rider (“DCR”).[[1]](#footnote-2) The DCR allows FirstEnergy to collect from its customers, property taxes, commercial activity tax, and associated income taxes, and an opportunity to earn a return on and of plant-in-service associated with distribution, sub-transmission, and general and intangible plant.[[2]](#footnote-3)

The Office of the Ohio Consumers' Counsel (“OCC”), PUCO Staff, and FirstEnergy filed initial comments on July 7, 2017. FirstEnergy filed comments stating that they supported all the recommendations contained in the Audit Report.[[3]](#footnote-4) PUCO Staff filed comments supporting the recommendations of the auditor and suggesting some other recommendations including Scoping non-IT projects and Emergent Projects.[[4]](#footnote-5) OCC files its Reply Comments in response to the initial comments filed in this docket.

 Through OCC’s Initial Comments and these Reply Comments, OCC asks the PUCO to recognize that customers are being asked to pay millions of dollars though the DCR charge, and ensure that these dollars are properly spent and the charges that customers are paying are just and reasonable. In order to do that, the annual audit cannot be perfunctory.

# II. RECOMMENDATIONS

## A. The PUCO Staff recommendation concerning emergent projects does not go far enough to protect consumers from over-paying for potentially imprudently incurred spending by FirstEnergy.

 Staff, in its comments, agreed with Blue Ridge that “FirstEnergy consider how they review the conditions of infrastructure projects during the budget cycle to ensure that those types of projects are adequately budgeted and incorporated into the capital budget.”[[5]](#footnote-6) Blue Ridge reported that 13 out of 71 work orders that it had reviewed (or 18%) were considered emergent projects.[[6]](#footnote-7) These are projects that were not included originally in the capital budget and apparently just arose unexpectedly throughout the year. In the 2016 audit, the emergent projects resulted in the expenditure of over $11.5 million in unplanned work orders.[[7]](#footnote-8) Such a large percentage of emergent projects from a small sample of 71 work orders (out of a total of approximately 80,000) is significant because it could indicate major flaws in FirstEnergy’s capital planning process. The sample suggests that there could be thousands of emergent work orders and considerably more dollars being collected from customers for what may be imprudently incurred expenses resulting in unwarranted charges to consumers. The PUCO Staff recommended that the PUCO direct FirstEnergy to undertake a review of the capital planning process and to report the findings.[[8]](#footnote-9) Further the PUCO Staff recommended that the PUCO direct the Auditor to conduct an evaluation of the success of FirstEnergy in curtailing the large numbers of emergent projects in the next audit.[[9]](#footnote-10)

 While OCC appreciates the PUCO's Staff recognizing the seriousness of the cost overruns, the recommendation should go farther to protect consumers. The PUCO Staff should have recommended a more stringent standard of review for future audits of the FirstEnergy DCR. More stringent standards would provide a financial incentive for FirstEnergy to reduce the number of emergent projects through better capital planning. Customers pay charges for a return on and of the Utility's investment under the DCR charge. Collection of DCR costs from customers is practically guaranteed in the current regulatory schema. FirstEnergy has little if any incentive to properly plan its capital budget under the current DCR review process

 In establishing a standard of review for the DCR audits, the PUCO should require the auditor to perform a more detailed examination of all 2016 emergent work orders that are included in the DCR where the value exceeds $500,000. The auditor should review these emergent work orders to verify that collections from customers through the DCR rider are just and reasonable. Emergent projects that exceed $1 million in total costs should be presumed imprudent. As outlined in OCC initial comments, FirstEnergy could overcome this rebuttable presumption by presenting evidence to show that the Utility's emergent work orders were not the result of its imprudent actions. On behalf of FirstEnergy’s 1.9 million residential customers, the OCC asks the PUCO establish a stricter standard of review for DCR audits, requiring a detailed examination of all emergent work orders above a $500,000 investment that are included in the DCR charged to customers.

## B. The PUCO Staff recommendation concerning FirstEnergy fully scoping non-IT project prior to implementation does not go far enough to protect consumers.

 Staff’s comments recommend that FirstEnergy undertake a review of their planning process “to improve the methodology for fully scoping non-IT projects[.]”[[10]](#footnote-11) However, this recommendation does not go far enough to solve the problem. In both the 2015 and 2016 DCR Audit Reports, the auditor identified a significant number of projects that FirstEnergy included in the DCR rider where the actual project costs exceeded the original budget by more than 15%.[[11]](#footnote-12) For the 2016 Audit, FirstEnergy overran the capital budget by more than 15% for 18 programs out of a sample of 71 programs.[[12]](#footnote-13) The amount of the overrun was approximately $34.4 million for these 18 programs.[[13]](#footnote-14) For the 2015 DCR Audit, there were 15 projects out of a sample of 56 total programs reviewed by the auditor where the overrun exceeded the original cost estimate by more than 15%.[[14]](#footnote-15) The amount of the overrun exceeded the original cost estimates for these programs was over $20.8 million.[[15]](#footnote-16)

 Similar to the recommendation that the PUCO Staff made concerning emergent projects above, it also recommended that the Commission direct the Auditor to conduct an evaluation of the success of FirstEnergy’s efforts to curtail the number of capital projects that are overrun by more than 15%.[[16]](#footnote-17) The PUCO Staff recommended the Auditor make specific corrective recommendation and/or adjustments in the next audit.[[17]](#footnote-18) However, considering that this issue was raised originally in the 2015 DCR audit, it is unreasonable for FirstEnergy to have not taken corrective action prior to the 2016 audit. Customers are forced to wait for the 2017 DCR audit before it can be determined whether FirstEnergy is fully scoping non-IT programs prior to implementation.

 To ensure that there are sufficient incentives for FirstEnergy to implement the auditor findings, OCC reiterates its previous recommendation that more stringent standards of review be established for projects funded through the DCR rider. This includes FirstEnergy being required to disclose all work orders over $1 million where the total costs exceed the original budget by more than 15%. The auditor can then determine the extent to which the cost overruns are just and reasonable before customers are required to pay for the overruns. Furthermore, cost overruns that have exceeded the scoped budget by more than 30% should be presumed imprudent. There would be a rebuttable presumption that FirstEnergy could overcome by presenting evidence that the cost overruns were prudently incurred.

# III. CONCLUSION

 OCC asks the PUCO to act upon the concerns of its Staff and OCC regarding the emergent projects and significant cost overruns for capital projects that have been included in FirstEnergy’s DCR. The customers of FirstEnergy should not be asked to continue to pays costs that may not be just and reasonable.

 Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Reply Comments was served on the persons stated below via electronic transmission, this 7th day of August 2017.

 */s/ Ajay Kumar*

Ajay Kumar

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1. Compliance Audit of the 2016 Delivery Capital Riders of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company at 7 (May 1, 2017) *hereinafter* “Audit Report”. [↑](#footnote-ref-2)
2. Id. at 7. [↑](#footnote-ref-3)
3. Initial Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company at 2-3 (July 7, 2017). [↑](#footnote-ref-4)
4. Initial Comments of the Staff of the Public Utilities Commission of Ohio at 3-7 (July 7, 2017). [↑](#footnote-ref-5)
5. Id. at 6. [↑](#footnote-ref-6)
6. Audit Report at 52. [↑](#footnote-ref-7)
7. Initial Comments of the Office of the Ohio Consumers' Counsel at 6 (July 7, 2017). [↑](#footnote-ref-8)
8. Initial Comments of the Staff of the Public Utilities Commission of Ohio at 6. [↑](#footnote-ref-9)
9. Id. [↑](#footnote-ref-10)
10. Initial Comments of the Staff of the Public Utilities Commission of Ohio at 6. [↑](#footnote-ref-11)
11. Audit Report at 53-57. [↑](#footnote-ref-12)
12. Id. at 53. [↑](#footnote-ref-13)
13. Initial Comments of the Office of the Ohio Consumers' Counsel at 3. [↑](#footnote-ref-14)
14. *In the Matter of the Review of the Delivery Capital Recovery Rider Contained in the Tariffs of Ohio Edison Company, Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 15-1739-EL-RDR, Audit Report at 60 (April 22, 2016)*.* [↑](#footnote-ref-15)
15. *In the Matter of the Review of the Delivery Capital Recovery Rider Contained in the Tariffs of Ohio Edison Company, Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 15-1739-EL-RDR, OCC Initial Comments at 4. [↑](#footnote-ref-16)
16. Initial Comments of the Staff of the Public Utilities Commission of Ohio at 6. [↑](#footnote-ref-17)
17. Initial Comments of the Staff of the Public Utilities Commission of Ohio at 6. [↑](#footnote-ref-18)