**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Review of Rider AMI.In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Review of Rider AMI. | )))))))))) | Case No. 19-1903-EL-RDRCase No. 20-1672-EL-RDR |

**CONSUMER PROTECTION COMMENTS**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# INTRODUCTION

The PUCO is auditing nearly $170 million in grid modernization investments that FirstEnergy[[1]](#footnote-3) charged consumers in 2020[[2]](#footnote-4) and about $258 million charged to consumers in 2021.[[3]](#footnote-5) FirstEnergy charges consumers for grid modernization and incremental operations and maintenance expenses through the Advanced Metering Infrastructure/Modern Grid Rider (“Rider AMI”). FirstEnergy’s grid modernization investments must be prudent and charges to consumers through Rider AMI must be just and reasonable.[[4]](#footnote-6) To protect consumers, the PUCO should adopt OCC’s recommendations regarding the 2020 and 2021 Rider AMI audits.

FirstEnergy’s grid modernization programs were initially authorized by the PUCO as a pilot program in Case No. 09-1820-EL-ATA.[[5]](#footnote-7) The PUCO later approved a $516 million capital investment for FirstEnergy’s Grid Mod I proposal in Case No. 16-481-EL-UNC. [[6]](#footnote-8)

As further explained below, OCC recommends that the PUCO disallow about $5.2 million that FirstEnergy unreasonably charged consumers after its smart grid pilot program expired on June 1, 2019.[[7]](#footnote-9) The PUCO should also adopt the PUCO Staff’s recommendation to eliminate approximately $2.1 million in 2020 and 2021 incentive compensation costs associated with financial performance and transmission and generation costs.[[8]](#footnote-10)

The PUCO should also verify as part of the next Rider AMI audit whether all Grid Mod I investments are used and useful and were prudently incurred, as required by the settlements FirstEnergy agreed to and approved by the PUCO in Case No. 16-481-EL-UNC. The audit should include (but not be limited to) reconciling FirstEnergy’s performance with the findings, recommendations, and deficiencies identified by the auditor in the recently completed operational benefits assessment of Grid Mod I.[[9]](#footnote-11) And the PUCO should complete this analysis before allowing FirstEnergy to charge consumers for additional grid modernization spending through Rider AMI.[[10]](#footnote-12)

# RECOMMENDATIONS

## The PUCO should disallow over $5 million that FirstEnergy incurred after June 1, 2019 when its authorization to charge consumers for costs associated with the smart grid pilot program ended.

The PUCO should not allow FirstEnergy to charge consumers through Rider AMI for smart gid pilot program costs that FirstEnergy incurred after the program ended on June 1, 2019. Permitting FirstEnergy to charge consumers for pilot program costs after the program’s expiration would result in unjust and unreasonable rates to consumers in violation of R.C. 4905.22 and the settlements the PUCO approved in Case No. 16-481-EL-UNC.

In December 2014, FirstEnergy requested approval from the PUCO to continue, through June 1, 2019, data collection and reporting for Volt Var Optimization (“VVO”) and distribution automation studies associated with its Ohio Site Deployment, a pilot program regarding FirstEnergy’s Smart Grid Modernization Initiative.[[11]](#footnote-13) Continuing the pilot program was expected to cost an additional $8.5 million that FirstEnergy would charge consumers through Rider AMI.[[12]](#footnote-14) FirstEnergy claimed that the additional five years of studies were necessary to determine reliability benefits associated with the distribution automation technology and the potential energy savings and demand response applications for VVO.

The PUCO granted FirstEnergy’s request, but with certain modifications including the filing of annual reports on the performance of the VVO and distribution automation deployed in the pilot area.[[13]](#footnote-15) However, despite the June 1, 2019 pilot program expiration date, FirstEnergy has continued to charge consumers through Rider AMI for pilot program costs. The PUCO should not allow FirstEnergy to collect those costs from consumers.

For example, the PUCO Staff found that FirstEnergy continued to charge consumers for pilot program costs in 2020.[[14]](#footnote-16) The PUCO Staff recommended an adjustment to remove $2,387,260 in 2020 pilot program costs.[[15]](#footnote-17) The PUCO Staff also found that FirstEnergy continued to charge consumers through Rider AMI for pilot program costs in 2021.[[16]](#footnote-18) The PUCO Staff recommended an adjustment to remove $1,477,312 in 2021 pilot program costs.[[17]](#footnote-19) Further, OCC previously explained in comments regarding FirstEnergy’s 2019 Rider AMI charges that FirstEnergy appears to have incurred $1.3 million in pilot program costs between June 2019 and December 2019 after FirstEnergy’s authority to charge consumers for the costs ended.[[18]](#footnote-20)

 It is unjust and unreasonable for consumers to pay for FirstEnergy’s pilot program costs incurred after June 1, 2019. The pilot program ended almost four years ago, and the results of the pilot program studies were used by FirstEnergy to support its Grid Mod I initiative. Therefore, there is no longer a need for consumers to fund FirstEnergy’s pilot program through Rider AMI or otherwise.

## The PUCO should adopt the PUCO Staff’s recommendations in the 2020 and 2021 audits, including a disallowance of about $2.1 million in unauthorized incentive compensation costs associated with FirstEnergy’s Grid Mod I.

For the 2021 audit period, the PUCO Staff found that FirstEnergy used an inaccurate return on equity rate resulting in a $1.23 million overcharge to consumers through Rider AMI.[[19]](#footnote-21) The PUCO Staff also found that FirstEnergy used incorrect formulas for calculating Accumulated Tax Depreciation.[[20]](#footnote-22) The 2022 audit should verify that FirstEnergy has fully corrected these issues.

In both the 2020 and 2021 Rider AMI audits, the PUCO Staff further found that FirstEnergy improperly included incentive compensation costs in Rider AMI.[[21]](#footnote-23) Disallowing the pilot program costs after June 1, 2019 as OCC recommends above should result in the removal of incentive compensation costs that FirstEnergy improperly included in the pilot program.

But in 2021, FirstEnergy also inappropriately included incentive compensation costs in Rider AMI for Grid Mod I associated with financial performance, transmission, and generation totaling $1,176,671.[[22]](#footnote-24) For 2020, FirstEnergy inappropriately included incentive compensation costs in Rider AMI for Grid Mod I, totaling $945,084.[[23]](#footnote-25) Consumers should not be required to pay for unauthorized incentive compensation costs in Rider AMI. The PUCO should adopt the Staff Recommendations regarding removal of the incentive compensation charges from the AMI rider.

## As part of the next audit of Rider AMI, the PUCO Staff should verify that Grid Mod I investments are used and useful and were prudently incurred under the audit and review standards set forth in the settlements approved by the PUCO in Case No. 16-481-EL-UNC.

FirstEnergy’s deployment of Grid Mod I as approved by the PUCO is now close to completion.[[24]](#footnote-26) FirstEnergy filed its annual report regarding charges to consumers under Rider AMI for 2022, which should include the costs associated with FirstEnergy’s third year of spending for Grid Mod I.[[25]](#footnote-27) The 2020 and 2021 Rider AMI audits have focused on FirstEnergy’s capital expenditures and incremental O&M expenses represented in the filed schedules, and compliance with the PUCO’s order approving the settlements in Case No. 16-481-EL-UNC. However, the settlement in Case No. 16-481-EL-UNC further requires verification that Grid Mod I investments are used and useful and were prudently incurred.[[26]](#footnote-28) To date, there has been no audit of the Grid Mod I program verifying that FirstEnergy’s spending under Rider AMI has resulted in used and useful capabilities and benefits for consumers.

The PUCO required an operational benefits assessment of Grid Mod I to evaluate the functionality and performance of the deployment including the potential for an independent cost benefit analysis of the spending for the program.[[27]](#footnote-29) An operational benefits assessment performed by auditor Daymark Energy Advisors was completed in late 2022.[[28]](#footnote-30) The report identified several deficiencies in FirstEnergy’s practices for tracking data and verifying accuracy of benefits.[[29]](#footnote-31) Thus, it unclear whether the benefits of Grid Mod I exceed the costs, or whether Grid Mod I has actually produced used and useful capabilities and benefits for consumers.

OCC recommends that the PUCO require the PUCO Staff to verify as part of the next audit of Rider AMI whether all Grid Mod I investments are used and useful and were prudently incurred as required under the settlement in Case No. 16-481-EL-UNC. This includes (but is not limited to) reconciling FirstEnergy’s performance with the findings, recommendations, and deficiencies identified in the Grid Mod I operational benefits assessment by Daymark Energy Advisors for the PUCO Staff.[[30]](#footnote-32) This analysis should be completed before the PUCO approves any additional spending by FirstEnergy for phase II of its grid modernization plan and charges to consumers under Rider AMI.[[31]](#footnote-33)

# CONCLUSION

Ohio law (R.C. 4905.22) and the settlement agreed to by FirstEnergy in Case No. 16-481-EL-UNC require FirstEnergy’s grid modernization investments to be prudent and Rider AMI charges to consumers to be just and reasonable. To protect consumers, the PUCO should adopt OCC’s recommendations set forth above.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of these Consumer Protection Comments was served on the persons stated below via electronic transmission, this 3rd day of May 2023.

 */s/* *Angela D. O’Brien*

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 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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**20-1672-EL-RDR**

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1. Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively “FirstEnergy”). [↑](#footnote-ref-3)
2. *In the Matter of Staff’s Review of Select Tariffs of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 19-1903-EL-RDR, Report in Support of Staff’s 2020 Annual Review of the Advanced Metering Infrastructure / Modern Grid Rider (Rider AMI) Submitted by Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company, (February 26, 2021) at Exhibit F. [↑](#footnote-ref-4)
3. *In the Matter of Staff’s Review of Select Tariffs of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company,* Case No. 20-1672-EL-RDR, Report in Support of Staff’s 2021 Annual Review of the Advanced Metering Infrastructure / Modern Grid Rider (Rider AMI) Submitted by Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company, (February 28, 2022) at Exhibit F. [↑](#footnote-ref-5)
4. R.C. 4905.22; *See also* Case No. 16-481-EL-UNC, Opinion and Order (July 17, 2019), at ¶ 33. [↑](#footnote-ref-6)
5. *See In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Ohio Site Deployment of the Smart Grid Modernization Initiative and Timely Recovery of Associated Costs*, Case No. 09-1820-EL-ATA, *et al.*, Finding and Order (May 28, 2015). [↑](#footnote-ref-7)
6. *In the Matter of the Filing by Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company of a Grid Modernization Business Plan,* Case No. 16-481-EL-UNC, Opinion and Order (July 17, 2019). [↑](#footnote-ref-8)
7. *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Ohio Site Deployment of the Smart Grid Modernization Initiative and Timely Recovery of Associated Costs*., Case No. 09-1820-EL-ATA, Finding and Order (May 28, 2015) at 3. [↑](#footnote-ref-9)
8. *In the Matter of Staff’s Review of Select Tariffs of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company,* Case No. 19-1903-EL-RDR, Staff Report (March 24, 2022) at 2. *In the Matter of Staff’s Review of Select Tariffs of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company,* Case No. 20-1672-EL-RDR, Staff Report (February 1, 2023) at 3. [↑](#footnote-ref-10)
9. Case 16-481-EL-UNC, Operational Benefits Assessment of FirstEnergy Ohio’s Grid Mod I, (November 14, 2022) (“Grid Mod I Audit Report”). [↑](#footnote-ref-11)
10. *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Phase Two of Their Distribution Grid Modernization Plan*, Case No. 22-704-EL-UNC, Application (July 15, 2022). [↑](#footnote-ref-12)
11. Case No. 09-1820-EL-ATA, FirstEnergy Application (December 22, 2014). [↑](#footnote-ref-13)
12. *Id.* at 5. [↑](#footnote-ref-14)
13. Case No. 09-1820-EL-ATA, Finding and Order (May 28, 2015) at 3. [↑](#footnote-ref-15)
14. Case No. 19-1903-EL-RDR, Staff Report (March 24, 2022) at 2. [↑](#footnote-ref-16)
15. *Id.* [↑](#footnote-ref-17)
16. Case No. 20-1672-EL-RDR, Staff Report (February 1, 2023) at 4. [↑](#footnote-ref-18)
17. *Id.* [↑](#footnote-ref-19)
18. *See In the Matter of the Review and Audit of the Advanced Metering Infrastructure Rider of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company,* Case No. 18-1647-EL-RDR, Comments on FirstEnergy’s SmartGrid Charges, by Office of the Ohio Consumers’ Counsel (May 19, 2021) at 1-2. [↑](#footnote-ref-20)
19. Case No. 20-1672-EL-RDR, Staff Report (February 1, 2013) at 2. [↑](#footnote-ref-21)
20. *Id*. [↑](#footnote-ref-22)
21. Case No. 19-1903-EL-RDR, Staff Report (March 24, 2023) at 2. Case No. 20-1672-EL-RDR, Staff Report (February 1, 2023) at 3. [↑](#footnote-ref-23)
22. *Id*. [↑](#footnote-ref-24)
23. *Id*. [↑](#footnote-ref-25)
24. *See* Case No. 16-481-EL-UNC, Opinion and Order (July 17, 2019) (Approving the three-year deployment schedule for the Grid Mod I as proposed by FirstEnergy). [↑](#footnote-ref-26)
25. *In the Matter of Staff’s Review of Select Tariffs of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 21-1130-EL-RDR, Report (February 28, 2023). [↑](#footnote-ref-27)
26. Case 16-481-EL-UNC, Opinion and Order (July 17, 2019) at ¶ 33. [↑](#footnote-ref-28)
27. *Id.* at ¶ 44. [↑](#footnote-ref-29)
28. Grid Mod I Audit Report. [↑](#footnote-ref-30)
29. *See e.g.,* Grid Mod I Audit Report, at 1-5 (Summary of Findings and Recommendations). [↑](#footnote-ref-31)
30. *Id*. [↑](#footnote-ref-32)
31. *See* *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Phase Two of Their Distribution Grid Modernization Plan*, Case No. 22-704-EL-UNC, Application (July 15, 2022). [↑](#footnote-ref-33)