

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)	
Delivery Capital Recovery Rider)	
Contained in the Tariffs of Ohio Edison)	Case No. 11-5428-EL-RDR
Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	
Edison Company.)	

**REPLY COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC"), an intervenor in the above-referenced proceeding, hereby files these reply comments ("Reply Comments") regarding the audit report filed by Blue Ridge Consulting Services, Inc. (Blue Ridge) on April 13, 2012.¹ Blue Ridge was retained by the Commission to conduct the audit review of Rider Distribution Capital Recovery ("DCR").²

II. CASE HISTORY

On August 25, 2010, the Commission issued an Opinion and Order approving a Stipulation and Recommendation ("ESP 2 Stipulation") authorizing Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("TE") (collectively, FirstEnergy) to establish Rider DCR

¹ OCC was not a signatory party to the Stipulation and Recommendation ("ESP 2 Stipulation") that resulted in the implementation of Rider DCR. As such, OCC's filing of these Comments is not acquiescence to the ESP 2 Stipulation nor is it a withdrawal of OCC's opposition to the ESP 2 Stipulation generally or to the Rider DCR specifically. The better protection for consumers would be to review FirstEnergy's distribution costs in a rate case using the ratemaking formula of R.C. Chapter 4909 instead of the abbreviated standards of the "DCR" approach created in a settlement.

² Entry at 1 (November 22, 2011).

effective January 1, 2012.³ Additionally, under the terms of the Stipulation, FirstEnergy agreed to submit to an annual audit review process of Rider DCR for the purpose of determining accuracy and reasonableness of the amounts for which recovery is sought.⁴

On December 5, 2011, OCC filed its Motion to Intervene. On February 2, 2012, FirstEnergy filed its Rider DCR applications for OE, CEI, and TE in Case Nos. 12-522-EL-RDR, 12-193-EL-RDR, and 12-523-EL-RDR, respectively.

On April 13, 2012, Blue Ridge filed a report (“Blue Ridge Report”) on its audit review of Rider DCR. On June 1, 2012, OCC filed Comments, and the Companies and Staff filed Joint Comments (“Joint Comments”). OCC herein replies to the Joint Comments.

III. REPLY COMMENTS

The Joint Comments include the following recommendation: “Commission Staff and the Companies agree that the Commission should adopt the recommendations contained in Blue Ridge made in its Report * * *.”⁵ The Joint Comments then noted eight bullet points identifying specific Blue Ridge recommendations that the Companies and Staff recommended the Commission adopt.⁶ OCC Comments echo the Companies’ and Staff’s Joint Comments by making the recommendation that “the Commission should order FirstEnergy to implement each of the recommendations made

³ In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan (“ESP 2”), Case No. 10-388-EL-SSO, Opinion and Order at 11 (August 25, 2011).

⁴ *In re FirstEnergy ESP 2 Case*, Case No. 10-388-EL-SSO, Stipulation at 16 (March 23, 2010); see also Opinion and Order at 25 (August 25, 2010).

⁵ Joint Comments at 1 (June 1, 2012).

⁶ *Id.* at 1-3.

in the Blue Ridge Report to assure that Rider DCR implementation is done in compliance with the ESP 2 Stipulation and that FirstEnergy's collections do not exceed the authorized cap."⁷ However, the Joint Comments did not include two of the recommendations made in the Blue Ridge Report, and noted in OCC's Comments. OCC recognizes that it is possible that FirstEnergy and the Staff -- despite their omission -- are nevertheless recommending the Commission adopt these two recommendations. Inasmuch as these two recommendations are included in the Blue Ridge Report, the Commission should adopt the following two recommendations:

A. Accumulated Deferred Income Taxes⁸

The majority of accumulated deferred income tax ("ADIT") is related to book-to-tax depreciation differences related to utility plant-in-service. However, Blue Ridge noted instances where the ADIT was not related to utility plant in service.⁹ The Blue Ridge Report made the following recommendation: "Blue Ridge recommends that the Commission clarify whether the inclusion of these non plant-in-service ADIT meet the criteria for inclusion within Rider DCR. In addition, each ADIT account should be reviewed to determine whether it is an Ohio jurisdiction item."¹⁰ FirstEnergy and the PUCO Staff did not address this recommendation in their Joint Comments. If FirstEnergy disagrees with this Blue Ridge recommendation, then the burden of proof is on FirstEnergy to demonstrate why it is just and reasonable for the non-plant-in-service ADIT and the ADIT that is not an Ohio jurisdiction account item to be included in the

⁷ OCC Comments at 6 (June 1, 2012).

⁸ OCC Comments at 4-5 (June 1, 2012).

⁹ Blue Ridge Report at 49 ("ESOP Dividends; FAS 123R-Performance Shares, Restricted Stock, and Stock Options-Cap Portion; Life Insurance; Other Post Employment Benefits- Capitalized Portion; Pensions expense- Capitalized Portion.").

¹⁰ Blue Ridge Report at 50 (April 13, 2012).

calculation of Rider DCR and paid for by customers.¹¹ FirstEnergy has not met its burden of proof.

B. Property Tax Expense¹²

FirstEnergy is authorized to collect property tax expense based upon gross plant through Rider DCR. Blue Ridge found several items related to property tax expense that impact Rider DCR revenue requirements. The FirstEnergy/PUCO Staff's Joint Comments support several recommendations made by Blue Ridge pertaining to property tax expense. But the Blue Ridge Report also makes the following additional recommendation with regard to property tax expense (that is not addressed by FirstEnergy/PUCO Staff's Joint Comments): "Since property tax is an actual expense that can be validated against third-party filings, Blue Ridge recommends that a reconciliation and adjustment to actual be done for each Rider DCR annual filing."¹³ The Blue Ridge recommendation represents a reasonable audit step to assure consumers are not being over-charged for property taxes associated with distribution-related plant investments. The Commission should require FirstEnergy to implement all of the recommendations pertaining to property tax expense.

¹¹ In that this case arose from FirstEnergy's ESP 2 Case, Case No. 10-388-EL-SSO, the burden of proof remains with FirstEnergy, see also R.C. 4928.143(C)(1).

¹² OCC Comments at 5 (June 1, 2012).

¹³ Blue Ridge Report at 58 (April 13, 2012).

IV. CONCLUSION

The Companies and Staff agreed that the Commission should adopt all the Blue Ridge Recommendations. However, the Joint Comments did not include two of the recommendations made in the Blue Ridge Report, and noted in OCC's Comments. OCC recognizes that it is possible that FirstEnergy and the Staff -- despite their omission -- are nevertheless recommending the Commission adopt these two recommendations. Inasmuch as the additional two recommendations -- pertaining to accumulated deferred income tax¹⁴ and property tax expense -- have been made by Blue Ridge, these two recommendations should also be adopted by the Commission.

Respectfully submitted,

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¹⁴ Blue Ridge recommends clarifying whether the inclusion of non plant-in-service ADIT meet the criteria for inclusion within Rider DCR. In addition, each ADIT account should be reviewed to determine whether it is an Ohio jurisdiction item.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Reply Comments by the Office of the Ohio Consumers' Counsel* was served via Electronic Mail upon the following persons on this 2nd day of July, 2012.

/s/ Larry S. Sauer

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Summary: Reply Reply Comments by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Sauer, Larry S.