

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Update to the Distribution)	
Modernization Rider Contained in the Tariffs of)	Case No. 17-2280-EL-RDR
Ohio Edison Company, The Cleveland Electric)	
Illuminating Company and The Toledo Edison)	
Company)	

**REPLY COMMENTS TO THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
OBJECTIONS TO THE PUCO'S STAFF'S RECOMMENDATIONS REGARDING THE
DISTRIBUTION MODERNIZATION RIDER OF OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON
COMPANY**

I. INTRODUCTION AND FACTUAL BACKGROUND

On October 12, 2016, the Commission adopted Staff's proposal for the Ohio Edison Company, The Cleveland Electric Illumination Company and The Toledo Edison Company ("Companies") to establish a Distribution Modernization Rider ("Rider DMR").¹ Rider DMR was subsequently reaffirmed by the Commission on rehearing including the Commission's decision that a third-party monitor "assist Staff and work with FirstEnergy and FirstEnergy Corp. to ensure that Rider DMR funds are expended appropriately."² On November 3, 2016, the Companies filed their first Rider DMR compliance tariff.³ On December 6, 2016, Staff filed its Review and Recommendation that the compliance tariff appropriately reflected the

¹ *In the Matter of the Application of [the Companies'] for Authority to Provide for a Standard Service Offer Pursuant to O.R.C. §4928.143*, Case No. 14-1297, Fifth Entry on Rehearing (October 12, 2016).

² *Id.* at Eighth Entry on Rehearing at p. 49 (August 16, 2017).

³ Case No. 16-2003-EL-RDR.

Commission's orders.⁴ On December 21, 2016 the Commission approved the Rider DMR rates to become effective January 1, 2017.⁵

Almost identical to OCC's "Objections" in this case, OCC (and the Ohio Manufacturers' Association Energy Group("OMAEG")) argued at that time that the Commission should reject the Companies' filing of Rider DMR because the Companies have not shown "sufficient progress" related to grid modernization efforts⁶, or, in the alternative that Rider DMR be "subject to refund."⁷ On December 21, 2016, the Commission denied OCC and OMAEG's Motion to Reject finding that progress towards grid modernization was intended to "be an ongoing commitment throughout the entire recovery period or Rider DMR, not just a precondition."⁸ In addition, the Commission reiterated its Fifth Entry on Rehearing in Case No. 14-1297-EL-SSO that Rider DMR should not be subjected to refund because "[m]aking Rider DMR subject to refund would be counterproductive and impose additional risks on the Companies."⁹

Rider DMR provides that "[t]he charges contained in this Rider shall be updated on an annual basis. No later than December 1st of each year, the Company will file with the PUCO a request for approval of the Rider charges which, unless otherwise ordered by the PUCO, shall become effective on a service rendered basis on January 1st of each year." In accordance with the rider, the Companies filed an update on December 1, 2017 that became effective on January 1, 2018.¹⁰ Subsequently, the Tax Cuts and Jobs Act of 2017 ("TCJA"), which reduced the

⁴ *Id.*

⁵ *Id.*

⁶ In its Objections, OCC refers to this as "actual distribution modernization efforts, which clearly demonstrates a lack of understanding of the Commission's purpose of adopting DMR. (OCC Objections at p. 1.)

⁷ *Id.* at OCC and OMAEG's Motion to Reject Rider DMR (December 8, 2016). At any rate, OCC and OMAEG's assertion that the Companies have not demonstrated progress towards grid modernization is moot because the Companies recently filed an application for a distribution modernization plan. *See* Case No. 17-2436-EL-UNC.

⁸ *Id.* at Finding and Order at pp. 3-4 (December 21, 2016).

⁹ *Id.* at p. 5 (citing Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing at 97).

¹⁰ Case No. 17-2280-EL-RDR.

federal corporate income tax rate from 35 percent to 21 percent, became effective January 1, 2018.

Even though the Companies' Rider DMR current rates became effective on January 1, 2018 (and incorporated the former federal corporate income tax rate),¹¹ and the Companies were not required to do so until December 1, 2018, the Companies proactively filed to update Rider DMR on January 12, 2018 to reflect the new federal corporate income tax rate.¹² On February 1, 2018, Staff filed its Review and Recommendation indicating that the January 12, 2018 update of Rider DMR "accurately reflect the new tax rates" and recommending that the new rates become effective on March 1, 2018.¹³

On February 14, 2018, the OCC filed its Objections to the PUCO Staff's Recommendation ("Objections")¹⁴ incorrectly: 1) arguing that the Companies are "not proposing to give its 1.9 million consumers the savings of the lowered federal corporate tax rate for January and February of 2018" and; 2) repeating that Rider DMR "should be made explicitly subject to refund."¹⁵ Not only are OCC's Objections completely devoid of merit and should be, as they previously have been, disregarded by the Commission, they are also procedurally improper. Therefore, at a minimum, the Commission should strike OCC's Objections.

II. OCC'S ASSERTION THAT THE COMPANIES HAVE NOT REFLECTED THE NEW FEDERAL CORPORATE INCOME TAX RATE IN RIDER DMR IS FACTUALLY NOT CORRECT.

Without citing to any evidence or calculation, OCC incorrectly asserts that the Companies in their January 12, 2018 voluntary update did not reflect the new federal corporate

¹¹ Rider DMR update was filed prior to the passage of the TCJA.

¹² Case No. 17-2280-EL-RDR.

¹³ *Id.*

¹⁴ OCC editorially calls its filing "Objections to the PUCO Staff's Recommendations on FirstEnergy's Proposed Revision to its Tariff for Charging Consumers the Distribution Modernization Rider").

¹⁵ *Id.* at p. 1.

income tax rate of 21% for January or February 2018.¹⁶ OCC goes so far as to allege (again without evidence) that this “deprive[d] consumers of an over \$6 million benefit flowing from the reduced taxes.”¹⁷ This is simply not true. First, OCC’s assertion demonstrates a fundamental misunderstanding of how Rider DMR is calculated. Rider DMR is calculated annually. The revenue requirement includes income taxes calculated on an annual revenue requirement. The Companies were not required to re-calculate the rider to reflect the new federal corporate income tax rate until December 1, 2018, which would have included a reconciliation of the Rider DMR rates in effect for 2018 based on the higher 35% federal income tax rate, to go into effect January 1, 2019. However, the Companies proactively updated Rider DMR nearly eleven months early by filing an update on January 12, 2018 – just eleven days after the effective date of the TCJA - to flow the benefits of the lower federal income tax rate back to customers starting March 1, 2018. In addition, and contrary to OCC’s assertion, the proposed Rider DMR rates to become effective March 1, 2018 **do** reflect a reconciliation of the lower income tax rate as of January 1, 2018. The Companies recalculated the annual revenue requirement of Rider DMR with the 21% federal corporate income tax rate and then removed the estimated Rider DMR revenues to be collected from January and February 2018 Rider DMR rates. The remaining amount was calculated to be recovered from customers over the remaining 10 months of 2018. Put simply, the customers are getting the benefit of a lower income tax rate starting January 1, 2018 in the Rider DMR rate that becomes effective on March 1. Staff correctly found that Rider DMR “accurately reflect[s] the new tax rates.”¹⁸ For those reasons, the Commission should disregard OCC’s Objections.

¹⁶ *Id.* at p. 3.

¹⁷ *Id.*

¹⁸ Case No. 17-2280-EL-RDR at Staff Review and Recommendation.

III. THE COMMISSION HAS ALREADY FOUND THAT RIDER DMR SHOULD NOT BE SUBJECT TO REFUND.

In its next objection, OCC argues that the Commission should make Rider DMR subject to refund.¹⁹ As discussed above, OCC has already made this argument several times. The Commission has repeatedly rejected it because "[m]aking Rider DMR subject to refund would be counterproductive and impose additional risks on the Companies."²⁰ And, as the Companies have already argued before, "there has been no 'event' since the Commission issued the Fifth Entry on Rehearing that would justify revisiting the Commission's decision to not make Rider DMR subject to refund."²¹ The Commission should reiterate its prior rulings here and disregard OCC's Objection.

IV. THE COMMISSION SHOULD STRIKE THE OCC'S OBJECTIONS.

In addition to the improper Objections specific to Rider DMR, OCC improperly uses this filing to voice its displeasure with everything from prudence reviews, quarterly updates, to refunds. OCC does not even attempt to cite to a rule or order that permits it to make this kind of pleading – because there is none. Instead, OCC chooses to expend administrative resources making the same arguments it has made before and proffering irrelevant objections.²² The Commission should simply strike OCC's objections.

¹⁹ *Id.* at OCC Objections, p. 4.

²⁰ Case No. 16-2003-EL-RDR, Finding and Order. at p. 5 (citing Case No. 14-1297-EL-SS, Fifth Entry on Rehearing at 97).

²¹ Case No. 14-1297-EL-SSO, Memorandum Contra OCC and OMAEG Motion to Reject, at p. 10 (December 15, 2016).

²² For example, OCC discusses quarterly updates when Rider DMR is an annual update.

V. CONCLUSION

For those reasons, the Commission should disregard or strike OCC's objections.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On February 23, 2018, the foregoing document was filed on the Public Utilities Commission of Ohio's Docketing Information System. The PUCO's e-filing system will electronically serve notice of the filing of this document and the undersigned has served courtesy copies to the following parties:

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Summary: Reply to The Office of Ohio Consumers' Counsel's Objections to PUCO Staff Report electronically filed by Ms. Carrie M Dunn-Lucco on behalf of The Toledo Edison Company and The Cleveland Electric Illuminating Company and Ohio Edison Company