

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application for Update to the    )  
Demand Side Management and Energy                    )  
Efficiency Rider Contained in the Tariffs of Ohio    ) Case No. 18-1646-EL-RDR  
Edison, The Cleveland Electric Illuminating        )  
Company and The Toledo Edison Company.            )

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

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FirstEnergy's filings in this case lack transparency and thus make it impossible for parties and the Public Utilities Commission of Ohio ("PUCO") to determine whether the proposed charges to consumers are just and reasonable.

FirstEnergy customers pay for its energy efficiency programs, including the administrative costs of running the programs, rebates to customers, and utility profits on the programs (sometimes called "shared savings").

In this case, FirstEnergy seeks to update the rates that customers pay for these programs through a single issue ratemaking mechanism called Rider DSE. Rider DSE is one of over a dozen add on riders that FirstEnergy residential customers pay. But FirstEnergy's filing includes nothing but tariff sheets. There is no application, testimony, workpapers, exhibits, or documentation showing how the revenue requirement was calculated or how the rates were derived. Without this information, the PUCO, parties, and the public are kept in the dark regarding the rates that FirstEnergy is charging.

The PUCO should (i) order FirstEnergy to file an application for approval of new rates, including sufficient detail regarding how those rates are calculated, and (ii) evaluate

the charges to consumers, including verifying that FirstEnergy is complying with the cost caps approved in Case No. 16-743-EL-POR.

## **I. RECOMMENDATIONS**

### **A. The PUCO should require transparency so that customers know what they are paying for.**

FirstEnergy did not file an application in this case. Instead, it simply filed updated tariff sheets with new proposed rates. Based on these filings, there is no way for OCC, the PUCO, or anyone else to evaluate those rates. How much are customers being charged for utility profits? Is FirstEnergy complying with the 4% cost cap that the PUCO ordered in FirstEnergy's most recent energy efficiency portfolio case? Is FirstEnergy limiting charges for profits to the shared savings cap (\$10 million plus tax gross-up) approved in the same case? Did FirstEnergy limit its spending consistent with the approved program budgets from its portfolio case? All of these questions need to be answered to evaluate FirstEnergy's proposed rates, but none of this information is provided in FirstEnergy's filings.<sup>1</sup>

The PUCO should order FirstEnergy to file an actual application with supporting documentation of its proposed rates. This would be consistent with PUCO precedent. In a recent case involving Dominion Energy, the utility filed an update to its energy efficiency rider rates by filing tariff sheets only.<sup>2</sup> The PUCO Staff recommended a more robust

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<sup>1</sup> While this information could be obtained through discovery, the timing in these cases does not allow a meaningful opportunity. FirstEnergy filed the tariff sheets on December 3, and the new rates automatically go into effect January 1. Even if OCC had immediately intervened and served discovery, it would not have been able to get any responses until December 24 (Christmas Eve) at the earliest, just seven days before auto approval. Further, there is no commission meeting set for the last week of December, so the earliest any order could come out would be January 2019, after the rates were already auto-approved. The burden should be on the utility to provide these details in the first instance, not on parties to extract it through discovery.

<sup>2</sup> Case No. 17-1372-GA-RDR.

filing including an application and supporting documentation.<sup>3</sup> The PUCO approved this procedure, which provides better transparency.<sup>4</sup> The PUCO should do the same here for FirstEnergy.

**B. The PUCO should ensure that FirstEnergy's charges to customers for energy efficiency programs are just and reasonable.**

**1. FirstEnergy's energy efficiency charges to customers must comply with the 4.0% cost cap approved in FirstEnergy's portfolio case.**

In FirstEnergy's most recent energy efficiency portfolio case, the PUCO ordered FirstEnergy to limit charges to customers to 4.0% of revenues.<sup>5</sup> This is an important consumer protection that limits the amount consumers can be charged for energy efficiency programs and utility profits. The PUCO must enforce the cost cap. FirstEnergy should be required to demonstrate that its proposed rates comply with the cost cap.

**2. FirstEnergy's charges to customers for utility profits ("shared savings") must comply with the shared savings cap approved in FirstEnergy's portfolio case.**

In the portfolio case, the PUCO also ruled that customers should not pay more than \$10 million per year for profits on the FirstEnergy energy efficiency programs, plus a gross-up for taxes.<sup>6</sup> At the time of that order, the application federal income tax rate was 35%, and this rate was used to calculate the tax gross up. But now, as a result of the Federal Tax Cuts and Jobs Act of 2017, the application tax rate is 21%. The PUCO should require FirstEnergy to demonstrate that (i) it is not charging customers more than

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<sup>3</sup> Case No. 17-1372-GA-RDR, Staff Review & Recommendation (June 5, 2017) ("Staff recommends that the Commission direct DEO to annually file a DSM rider application with supporting schedules in a new case record that requests Commission approval to adjust its DSM rider rate rather than merely filing an updated tariff each year.").

<sup>4</sup> Case No. 17-1372-GA-RDR, Finding & Order (Aug. 2, 2017).

<sup>5</sup> Case No. 16-743-EL-POR, Opinion & Order (Nov. 21, 2017).

<sup>6</sup> *Id.*

the approved cap on utility profits, and (ii) FirstEnergy is calculating the tax gross up properly using the 21% tax rate and not the outdated 35% tax rate.

**3. FirstEnergy's shared savings calculations should be based on net, not gross savings.**

In the context of energy efficiency programs, energy savings are first estimated using various assumptions. For example, each type of energy efficiency product has an assumed “measure life,” which is how long the product is expected to last. It also has an assumed amount of energy savings when compared to a non-energy efficient baseline product. The estimated amount of energy savings is calculated using various assumptions (some of which are found in the outdated Ohio Technical Reference Manual), including the life of the measure and the amount of energy savings. The estimated savings resulting from these assumptions are sometimes referred to as “gross” savings.

Subsequently, however, the utility's energy efficiency programs are audited through the “EM&V” process, which stands for evaluation, measurement, and verification. The audit process uses customer surveys, physical audits, and statistical analysis, among other methods, to more accurately calculate the actual savings that result from a utility's energy efficiency programs. The audit process also evaluates the extent to which customers are “free riding” on energy efficiency programs. That is, some customers would engage in energy efficiency without the programs, so the rebates they receive are a windfall, and the utility program is not actually causing those savings to occur. The savings demonstrated through the audit (which are typically, but not always, lower than the gross savings) are referred to as “net” savings.

FirstEnergy (and all other Ohio utilities) should only be permitted to charge shared savings to customers based on net savings. The net savings more accurately reflect

the actual savings that FirstEnergy's programs caused, so FirstEnergy's shareholders should only be rewarded with higher profits based on net savings. The PUCO should rule that FirstEnergy's shared savings calculations be based on net savings, not gross, to protect consumers from paying too much for utility profits on energy efficiency programs.

## **II. CONCLUSION**

The PUCO should order FirstEnergy to end its process of tariff-only rider filings. Customers deserve to know what they are paying for, and a tariff-only filing provides no transparency whatsoever. Further, the PUCO should require FirstEnergy to demonstrate that its proposed charges to customers for energy efficiency programs are consistent with the limitations that the PUCO imposed in FirstEnergy's most recent energy efficiency portfolio case.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Comments was served via electronic transmission upon the parties this 2nd day of January, 2019.

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Summary: Comments Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.