

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Non-Market-)
Based Services Rider Contained in the Tariffs of)
Ohio Edison Company, The Cleveland Electric) Case No. 18-1818-EL-RDR
Illuminating Company and The Toledo Edison)
Company.)

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

I. INTRODUCTION

FirstEnergy¹ is attempting to renege on the promise it made to protect Ohio customers from paying \$360 million for transmission project costs. These transmission costs resulted from FirstEnergy's own unilateral decision to move into a different regional transmission organization. FirstEnergy made this commitment to customers as part of its so-called electric security plan in Case No. 10-0388-EL-SSO ("ESP II").² The PUCO must now enforce FirstEnergy's commitment to customers.

¹ Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively "FirstEnergy").

² OCC Comments at 6.

II. RECOMMENDATIONS

A. FirstEnergy’s claim that the FERC Settlement Order extinguishes FirstEnergy’s obligation to protect Ohio customers from paying \$360 million in transmission project costs is meritless and should be rejected.

FirstEnergy asserts that “there is no question”³ that the FERC Settlement Order absolves it of its obligation to forgo collection of \$360 million of transmission project costs⁴ from customers. But as fully explained in OCC’s Comments, there are several reasons why FirstEnergy’s claim fails.⁵ First, the nullification language upon which FirstEnergy relies was never adopted by the PUCO in the ESP II Order.⁶ Second, *avoided* transmission project costs resulting from the FERC Settlement Order have nothing to do with transmission project costs that PJM has actually *charged* to FirstEnergy. It is these actual PJM charges that FirstEnergy has paid, but must forgo collection of, from its customers that would satisfy its commitment.⁷ And third, even if FirstEnergy’s avoided transmission project costs did satisfy its obligation to customers (they do not), FirstEnergy’s own cost calculations show that it would not avoid \$360 million in transmission project costs until 2045.⁸

FirstEnergy further contends that the customer protection obligation has been satisfied because “customers have received the benefit of the bargain” through

³ FirstEnergy 3/29 Comments at 5-6.

⁴ Legacy Regional Transmission Expansion Plan costs (defined herein as “transmission project costs”) represent charges approved by PJM Interconnection, LLC (“PJM”) prior to FirstEnergy’s transmission affiliate’s integration into PJM.

⁵ OCC Comments at 4-11.

⁶ *Id.* at 4-7; *See also* Ohio Manufacturers’ Association Energy Group (“OMAEG”) Comments at 4-5.

⁷ *Id.* at 7-9.

⁸ *Id.* at 9-11.

FirstEnergy's "aggressive litigation efforts" in the FERC Settlement Order proceedings.⁹ Not only is there no evidence to support FirstEnergy's claim, but it is beside the point. The threshold issue the PUCO must resolve is whether FirstEnergy has been charged \$360 million in transmission project costs by PJM and whether FirstEnergy has forgone recovering those costs from customers. Simply put, the plain language of the ESP II Order speaks for itself.¹⁰ And FirstEnergy's electric security plan requires more than aggressively litigating these issues. Instead, FirstEnergy must show that it was billed \$360 million in transmission project costs by PJM and that it did not charge its customers for those billings. FirstEnergy falls short in this respect because it can only show that it has been billed approximately \$121 million¹¹ and not collected that amount from customers. FirstEnergy has failed to fulfill its commitment to its customers. Consequently, the PUCO should not permit FirstEnergy to bill customers for the disputed transmission project costs at all.

B. FirstEnergy should not be permitted to recover carrying charges on disputed transmission project costs.

FirstEnergy has failed to show that it has forgone recovery from customers of \$360 million in transmission project costs as it agreed. Thus, the PUCO should summarily reject FirstEnergy's proposal to collect from customers the \$94.8 million in the disputed transmission project costs it now seeks. However, if the PUCO allows

⁹ FirstEnergy 3/29 Comments at 6-7.

¹⁰ See OCC Comments at 6-7.

¹¹ FirstEnergy Application Exhibit A, Page 4 of 6 (Lines 7, 21, and 35).

FirstEnergy to collect disputed transmission project costs from customers, it should deny FirstEnergy's request for carrying charges.

OCC agrees with the PUCO Staff and OMAEG that carrying charges would be unreasonable in this case.¹² Indeed, FirstEnergy's proposal for carrying charges on the \$94.8 million in disputed transmission project costs at the rate of 6.54%¹³ would force customers to pay an additional \$6.2 million per year. FirstEnergy asserts that carrying charges are appropriate so that it can remain "financially indifferent" to collecting the disputed transmission project costs over a three-year period.¹⁴ That argument should be rejected. By way of comparison, when determining whether a utility's request for an expense deferral is appropriate, the PUCO considers a number of factors, including whether the financial integrity of the utility would be *adversely affected*.¹⁵ And FirstEnergy presents no evidence that its financial integrity would be harmed if it is not allowed to collect carrying charges. Rather, FirstEnergy's proposal appears to be nothing more than an attempt to extract additional money from its customers.

To the extent the PUCO allows FirstEnergy to collect the disputed transmission project costs (and it should not), FirstEnergy should recover those costs from customers over a three-year period without carrying charges. FirstEnergy proposes in the alternative to collect the entire \$94.8 million from customers within the next 12-month

¹² See Staff Comments at 2; OMAEG Comments at 5-7.

¹³ Case No. 18-1818-EL-RDR, Finding and Order (Feb. 27, 2019), ¶13.

¹⁴ FirstEnergy 3/29 Comments at 8.

¹⁵ See e.g. *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods*, Case No. 17-2118-GA-AAM, Finding and Order, (April 18, 2018), at ¶¶ 24-25 (denying request for establishment of regulatory asset and expense deferral in part on the ground that there was no evidence that deferral was necessary to maintain Duke's financial integrity.).

period if the PUCO does not allow carrying charges.¹⁶ FirstEnergy's alternative proposal would be more reasonable than any order allowing FirstEnergy to impose on customers additional carrying charges.

III. CONCLUSION

FirstEnergy cannot lawfully collect from customers \$94.8 million in disputed transmission project costs without first satisfying its commitment to forgo recovery of \$360 million in transmission project costs. The PUCO should reject FirstEnergy's attempt to sidestep this commitment through its disingenuous (and erroneous) reliance on avoided cost savings through the FERC Settlement Order. FirstEnergy's customers simply deserve more. If the PUCO permits FirstEnergy to recover disputed transmission project costs from customers, FirstEnergy should not in any event be allowed to impose on customers additional carrying charges.

¹⁶ FirstEnergy 3/29 Comments at 8.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of the Office of the Ohio Consumers' Counsel has been served electronically upon those persons listed below this 15th day of April 2019.

/s/ Angela D. O'Brien _____
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