

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. )

In its April 24, 2019 Entry on Rehearing (“Entry”), the Public Utilities Commission of Ohio (“PUCO”) found that FirstEnergy<sup>1</sup> is no longer bound by its commitment in the ESP II case<sup>2</sup> not to seek collection from Ohio customers of \$360 million in transmission project costs. FirstEnergy made this commitment in exchange for PUCO approval of its electric security plan.<sup>3</sup> The PUCO’s decision will force FirstEnergy’s customers to pay hundreds of millions of dollars in transmission project costs<sup>4</sup> that PJM Interconnection, LLC (“PJM”) charges to FirstEnergy.

The PUCO’s decision relies solely on Staff’s “independent review” and conclusion that FirstEnergy’s obligation was discharged by the Federal Energy Regulatory Commission’s (“FERC”) Settlement Order in EL05-121-09.<sup>5</sup> The Ohio

<sup>2</sup> *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 R.C. § 4928.143 in the Form of an Electric Security Plan (“ESP II”),* Case No. 10-0388-EL-SSO.

<sup>4</sup> Herein, “transmission project costs” refers to Legacy Regional Transmission Expansion Plan costs for certain transmission projects approved by PJM prior to FirstEnergy’s integration into PJM.

<sup>5</sup> *PJM Interconnection, LLC* 163 FERC ¶ 61,168 (2018) (“FERC Settlement Order”).

Consumers' Counsel ("OCC") and the Ohio Manufacturers' Association Energy Group ("OMAEG") each explained in comments why FirstEnergy has not satisfied its commitment in the ESP II case.<sup>6</sup> The PUCO ignored OCC's and OMAEG's arguments.

The PUCO also found that FirstEnergy's collection of transmission project costs from customers that were previously paid to PJM is a disputed issue that "remains to be determined," and that it will consider scheduling a hearing.<sup>7</sup> OCC supports an evidentiary hearing, but it should not be limited to this issue. Any hearing should also require evidence as to whether FirstEnergy satisfied its ESP II obligation, and whether it should be permitted to collect future transmission project costs from customers. These are disputed issues too. OCC and OMAEG each argue in comments that FirstEnergy should not be allowed to collect any transmission project costs from customers until it demonstrates that it has satisfied the ESP II commitment.

The Entry's findings are unjust, unreasonable, and unlawful in the following respects:

1. The Entry is unjust, unreasonable, and unlawful because it failed to address comments submitted by OCC and other interested parties in determining that FirstEnergy has satisfied its commitment in the ESP II case to forego collection from customers of \$360 million in transmission project costs.
2. The Entry is unjust and unreasonable because it determined that FirstEnergy satisfied its commitment in the ESP II case, and can collect future transmission project costs from customers and retain PJM credits, without developing a record through an evidentiary hearing.

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<sup>6</sup> OCC Comments, at 4-11; OCC Reply Comments, at 2-3; OMAEG Comments, at 4-5; OMAEG Reply Comments, at 3-5.

<sup>7</sup> See Entry, at ¶¶14-15. The Entry refers to these costs as "Disputed Legacy RTEP Costs".

The grounds for rehearing are explained in more detail in the attached  
Memorandum in Support.

Respectfully submitted,

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## I. INTRODUCTION

The PUCO invited interested parties to comment on whether FirstEnergy should be allowed to collect these transmission project costs from its customers. OCC and OMAEG each filed comments arguing that FirstEnergy should not be permitted to collect any transmission project costs charged by PJM because the FERC Settlement Order does not (and cannot) discharge FirstEnergy's commitment to customers in the ESP II case.<sup>9</sup> The Entry failed to address OCC's and OMAEG's comments. Instead, it adopted Staff's recommendation that FirstEnergy be discharged from its obligation and be allowed to collect from customers future transmission project costs charged by PJM. The Entry

<sup>9</sup> See *supra* note 6.

further found that FirstEnergy's collection of previously paid transmission project costs is an issue that "remains to be determined," and states that the PUCO will consider scheduling a hearing.<sup>10</sup>

The PUCO should consider *all* the disputed issues after an evidentiary hearing. It is unjust and unreasonable for the PUCO to ignore OCC's and OMAEG's arguments that FirstEnergy has not satisfied the ESP II commitment, and summarily determine that FirstEnergy's customers are on the hook to pay hundreds of millions of dollars in future transmission project costs.

## **II. STANDARD OF REVIEW**

Applications for rehearing are governed by R.C. 4903.10, which provides that within 30 days after issuance of a PUCO order, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." OCC entered an appearance through its Motion to Intervene in this case, and the PUCO granted OCC's Motion.

R.C. 4903.10(B) requires that an application for rehearing be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." Further, Ohio Adm. Code 4901-1-35(A) states: "An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing." In considering an application for rehearing, R.C. 4903.10(B) provides that "the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason

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<sup>10</sup> Entry, at ¶¶14-15.

therefor is made to appear.” The statute also provides: “[i]f, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.”

The statutory standard for abrogating or modifying some portions of the Order is met here. The PUCO should grant and hold rehearing on the matters specified in this Application for Rehearing and abrogate or modify the Order consistent with OCC’s Recommendations herein.

### **III. RECOMMENDATIONS**

- A. Rehearing should be granted because the Entry is unjust, unreasonable, and unlawful because it failed to address comments submitted by OCC and other interested parties in determining that FirstEnergy has satisfied its commitment in the ESP II case to forego collection from customers of \$360 million in transmission project costs.**

The February 21, 2019 Staff Report determined that, given the FERC Settlement Order, “FirstEnergy has satisfied its obligations and should be able to both recover future RTEP costs through the NMB rider as well as retain credits associated with costs it has paid to date.”<sup>11</sup> Staff confirmed its finding in the April 15, 2019 Supplemental Staff Report.

In response to the Staff Report, OCC and OMAEG each argued in comments that the terms of the ESP II Settlement do not allow the FERC Settlement Order to nullify FirstEnergy’s obligation because the language on which Staff and FirstEnergy rely was

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<sup>11</sup> 2/21 Staff Report, at 2.

not approved by the PUCO in the ESP II case.<sup>12</sup> OCC further argued that, even if the FERC Settlement Order did apply under the ESP II Settlement, FirstEnergy would not satisfy its commitment to forego collection from customers of \$360 million in transmission project costs until 2045.<sup>13</sup> These arguments are not addressed at all in the Entry. Instead, the PUCO adopted Staff's finding with virtually no explanation why.<sup>14</sup>

Ohio customers deserve an explanation of why the PUCO is allowing FirstEnergy to renege on the commitment it made (in return for approval of its electric security plan in the ESP II case) to forego collection from customers of \$360 million in transmission project costs. The Entry's blind acceptance of Staff's "independent review"<sup>15</sup> – which has not been cross-examined – is not sufficient. It is well-settled by the Supreme Court of Ohio that R.C. 4903.09 requires “the PUCO's order [to] show, in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion.”<sup>16</sup> For this reason, rehearing on this issue should be granted.

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<sup>12</sup> *supra* note 6.

<sup>13</sup> OCC Comments, at 9-11.

<sup>14</sup> Entry, at ¶14.

<sup>15</sup> *Id.*

<sup>16</sup> *Industrial Energy Users-Ohio v. PUC* (2008), 117 Ohio St.3d 486, 493 (quoting *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 312).

**B. The Entry is unjust and unreasonable because it determined that FirstEnergy satisfied its commitment in the ESP II case, and can collect future transmission project costs from customers and retain PJM credits, without developing a record through an evidentiary hearing.**

The PUCO wrongly determined that beyond Staff’s independent review, “no further evidence is necessary” to determine whether FirstEnergy satisfied its ESP II commitment. The PUCO’s determination requires reconsideration, because the effect of the decision is significant. Indeed, the Entry will require FirstEnergy’s customers to pay hundreds of millions of dollars in transmission project costs that PJM will charge FirstEnergy in the future.

On the other hand, the PUCO appropriately found that FirstEnergy’s collection of transmission project costs from consumers that it paid to PJM in the past is an issue that “remains to be determined.”<sup>17</sup> The Entry also appropriately contemplates scheduling a hearing to further consider this issue.<sup>18</sup>

Whether FirstEnergy satisfied its commitment in the ESP II case is a complex issue with significant financial consequences to FirstEnergy’s customers. There is no justification for the PUCO *not to consider* this issue based on a record developed through an evidentiary hearing. Thus, the PUCO should reconsider its findings that FirstEnergy satisfied its commitment in the ESP II case and is permitted to collect from customers future transmission project costs. The PUCO should set an evidentiary hearing to consider all the contested issues in this case.

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<sup>17</sup> Entry, at ¶14.

<sup>18</sup> *Id.*, at ¶15.

#### IV. CONCLUSION

Whether FirstEnergy satisfied its commitment to forego collection from customers of \$360 million in transmission project costs is an issue that has significant consequences for FirstEnergy consumers. As such, the PUCO's decision in this case should be based on a complete evidentiary record and contain a complete explanation of its findings. Adopting Staff's findings without explanation, and ignoring opposing arguments, is unjust and unfair to consumers. The PUCO should consider all of the disputed issues in this case based on a record developed through an evidentiary hearing. FirstEnergy's customers deserve, and Ohio law requires, nothing less.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Second Application for Rehearing of the Office of the Ohio Consumers' Counsel has been served electronically upon those persons listed below this 24th day of May, 2019.

/s/ Angela O'Brien  
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**Case No(s). 18-1818-EL-RDR**

Summary: App for Rehearing Second Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of O'Brien, Angela D.