

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison)
Company, The Toledo Edison Company, and) Case No. 19-1904-EL-RDR
The Cleveland Electric Illuminating Company to)
Revise their Energy Efficiency Riders.)

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The rates that customers now pay for FirstEnergy's energy efficiency programs were automatically approved without any affirmative ruling by the Public Utilities Commission of Ohio. As a result, the Office of the Ohio Consumers' Counsel's objections¹ were not addressed. Among other things, OCC pointed out that FirstEnergy's new rates are unsupported by any workpapers or other documentation. On rehearing, the PUCO should address these issues, and others.

The automatic approval of FirstEnergy's new energy efficiency rates is unlawful and unreasonable in the following respects:²

Assignment of Error 1: It is unreasonable and unlawful for the PUCO to automatically approve FirstEnergy's energy efficiency charges to consumers because FirstEnergy provided no supporting documentation for the new rates, which violates a prior PUCO order and therefore also violates R.C. 4905.54.

Assignment of Error 2: It is unreasonable and unlawful for the PUCO to automatically approve FirstEnergy's energy efficiency charges to consumers when FirstEnergy has not met its burden of proving that its proposed rates are just and reasonable as required by R.C. 4905.22.

¹ Objections by the Office of the Ohio Consumers' Counsel (Dec. 23, 2019).

² See Ohio Adm. Code 4901-1-35(C) ("in the case of an application that is subject to automatic approval under the commission's procedures, an application for rehearing must be submitted within thirty days after the date on which the automatic timeframe has expired").

Assignment of Error 3:

It is unreasonable and unlawful under R.C. 4928.471 for the PUCO to automatically approve FirstEnergy's energy efficiency charges to consumers because FirstEnergy has failed to prove that its energy efficiency rates are not duplicative of the "decoupling" charges recently approved in Case No. 19-2080-EL-ATA.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

In this case, FirstEnergy once again prefers secrecy over transparency for its energy efficiency filings which, as automatically approved by the PUCO, cost customers millions of dollars. FirstEnergy updated the rates that its customers pay for its energy efficiency programs but refuses to publicly file any information about those rates. Every other electric utility updates its energy efficiency rates by filing an application and supporting documentation, providing at least some details about how the rates are calculated.³ But not FirstEnergy. FirstEnergy files tariff sheets with new rates and literally nothing else—no application, no testimony, no workpapers, no calculations, no exhibits, and no supporting documentation.

Based on its filing, how FirstEnergy arrived at its proposed rates is a mystery to everyone but FirstEnergy. There is simply no justification for FirstEnergy being allowed to charge customers for energy efficiency programs and utility profits (“shared savings”) on those programs if FirstEnergy continues to make meaningless tariff-sheet filings.

The PUCO should immediately set FirstEnergy’s energy efficiency riders to zero. And if FirstEnergy wants to charge customers anything other than zero (\$0.00) for its energy efficiency programs, then it should be required to file an application to approve new energy efficiency

³ See, e.g., Case No. 18-874-EL-RDR (AEP); Case No. 19-622-EL-RDR (Duke); Case No. 19-1436-EL-RDR (DP&L).

charges to consumers that are just and reasonable, including all necessary supporting documentation and calculations for those rates. After such an application is filed, the PUCO can determine whether the proposed rates are just and reasonable, as the law (R.C. 4905.22) requires. The PUCO must also confirm that FirstEnergy is not double-charging customers for both decoupling and lost revenues in violation of R.C. 4928.471.

Customers pay for these programs. They have a right to know what they are paying for. And they have a right to pay only rates that the PUCO has found to be lawful.

I. ASSIGNMENTS OF ERROR

Assignment of Error 1: It is unreasonable and unlawful for the PUCO to automatically approve FirstEnergy’s energy efficiency charges to consumers because FirstEnergy provided no supporting documentation for the new rates, which violates a prior PUCO order and therefore also violates R.C. 4905.54.

In its objections, OCC opposed FirstEnergy’s approach to these cases, where FirstEnergy files tariffs only with no supporting documentation for its energy efficiency charges to consumers.⁴ FirstEnergy did not address OCC’s objections in this docket, but it did attack them collaterally in another docket. In comments filed in Case No. 19-2080-EL-ATA, FirstEnergy claimed that its energy efficiency filing “follows the Companies’ approved rider update and audit process” as approved in FirstEnergy’s most recent electric security plan cases.⁵ In particular, FirstEnergy cited page 44 of a July 18, 2012 Opinion and Order in Case No. 12-1230-EL-SSO (the “2012 Order”).⁶ A review of the 2012 Order, however, confirms that FirstEnergy’s tariff-only filings directly contradict it.

⁴ OCC Objections at 2-5.

⁵ Case No. 19-2080-EL-ATA, Reply Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company (Dec. 27, 2019).

⁶ *Id.* at 5, footnote 10.

On page 44 of the 2012 Order, the PUCO references “riders listed on Attachment B of the Stipulation.” Attachment B includes FirstEnergy’s energy efficiency riders.⁷ And the 2012 Order states, quite plainly: “all filings adjusting riders listed on Attachment B should include the appropriate work papers.”⁸

FirstEnergy has not included the appropriate work papers—or any workpapers for that matter. Thus, FirstEnergy’s tariff-only filing violates the 2012 Order and thus also violates R.C. 4905.54, which provides that utilities like FirstEnergy “shall comply with every order, direction, and requirement of the public utilities commission ... so long as they remain in force.”

On rehearing, the PUCO should set all of FirstEnergy’s energy efficiency riders to zero (meaning no collection of energy efficiency expenses from customers) until FirstEnergy complies with the requirement from the 2012 Order to adequately support its proposed rates with workpapers. Such workpapers should include, but should not necessarily be limited to: (i) all calculations showing how the proposed rates are derived, (ii) all supporting documentation for those calculations (*e.g.*, kWh projections, savings assumptions, shared savings methodology, etc.), (iii) an explanation of any true-ups from prior period, (iv) typical bill comparisons, (v) documentation showing compliance with statutory benchmarks, and (vi) documentation of claimed benefits and costs used for purposes of calculating shared savings.⁹

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.¹⁰

⁷ See Case No. 12-1230-EL-SSO, Stipulation and Recommendation, Attachment B (Apr. 13, 2012) (including the “Demand Side Management and Energy Efficiency – (115),” which is the rider being updated in the current case.

⁸ 2012 Order at 44.

⁹ See, *e.g.*, Case No. 19-622-EL-RDR (Duke filing more than 700 pages of supporting documentation for its proposed update to its energy efficiency rider rates); Case No. 18-874-EL-RDR (AEP application with supporting calculations); Case No. 19-1436-EL-RDR (DP&L application with supporting calculations and bill comparisons).

¹⁰ Case No. 17-1372-GA-RDR.

The PUCO Staff recommended a more robust filing including an application and supporting documentation.¹¹ The PUCO approved this procedure, which provides better transparency.¹² And again, the PUCO already ordered FirstEnergy to file workpapers with its energy efficiency rider updates, which FirstEnergy has failed to do here.

Until FirstEnergy complies with the filing of a transparent application that fully documents the lawfulness of the costs to be collected from customers for its energy efficiency programs, the PUCO should set the applicable charge to zero.

Assignment of Error 2. It is unreasonable and unlawful for the PUCO to automatically approve FirstEnergy's energy efficiency charges to consumers when FirstEnergy has not met its burden of proving that its proposed rates are just and reasonable as required by R.C. 4905.22.

FirstEnergy has the benefit of a rider mechanism to utilize for the timely collection of energy efficiency program charges from its customers. Yet FirstEnergy fails to fully and completely support the charges that it is proposing to collect from its customers through this rider. Layered on top of FirstEnergy's failure to document and support the proposed charges, the PUCO has implemented an automatic approval process for these charges. Under this very favorable process for the utility, consumers cannot win.

Ohio law (R.C. 4905.22) requires all rates charged to customers to be just and reasonable. But in its latest tariff-only filings, FirstEnergy seeks to charge Cleveland Electric residential customers \$29 per year each, Ohio Edison residential customers \$21 per year, and Toledo Edison residential customers \$67 per year under its energy efficiency riders.¹³ But without any

¹¹ 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.”).

¹² Case No. 17-1372-GA-RDR, Finding & Order (Aug. 2, 2017).

¹³ Assuming typical usage of 1,000 kWh per month.

supporting documentation, there is no basis for the PUCO to determine whether these charges to consumers are just and reasonable. The PUCO cannot approve rates that are not just and reasonable. Consumers deserve more protection from their state government than they are receiving in this case. The PUCO should reject FirstEnergy's proposed rates and set the energy efficiency riders to zero, until such time as FirstEnergy can demonstrate that the proposed charges are just and reasonable.

FirstEnergy's likely response is that the PUCO need not consider just and reasonableness now because these rider charges will be audited at a later date.¹⁴ It may be true that the rider charges will be audited, but reliance on the after-the-fact audits delays any potential protection for consumers from paying unreasonably high rates. The PUCO Staff only recently filed (in July 2019) its review and recommendation regarding FirstEnergy's 2016 energy efficiency charges.¹⁵ The PUCO also ordered an independent audit of FirstEnergy's (and other utilities') energy efficiency riders. The independent auditor filed its reports on November 29, 2019 for the years *2014 through 2018*.¹⁶ So even if customers might someday be protected by an audit of rates that were automatically approved, those audits take time and the results are sometimes not filed until many years after the charges in question.

¹⁴ See Case No. 19-2080-EL-ATA, FirstEnergy Reply Comments at 5-6 (arguing that the approved process for its energy efficiency rider is to file tariffs only and then file supporting workpapers in a subsequent audit proceeding).

¹⁵ See Case No. 15-1843-EL-RDR, Staff Review and Recommendation (July 29, 2019).

¹⁶ See Case No. 19-0002-EL-UNC.

Assignment of Error 3. It is unreasonable and unlawful for the PUCO to automatically approve FirstEnergy’s energy efficiency charges to consumers because FirstEnergy has failed to prove that its energy efficiency rates are not duplicative of the “decoupling” charges recently approved in Case No. 19-2080-EL-ATA, as required by R.C. 4928.471.

Historically, FirstEnergy has charged customers for “lost revenues” through its energy efficiency rider. When customers engage in energy efficiency (whether through a utility program or on their own), they save money on their electric distribution bill. “Lost revenues” allows FirstEnergy to charge customers for the amount that they saved. Recently, the Ohio General Assembly passed House Bill 6. One part of this Bill allows utilities like FirstEnergy to charge customers for “decoupling.” Decoupling generally serves the same purpose as lost revenues. The law wisely provides that customers cannot be charged for decoupling and lost revenues simultaneously on account of the same energy efficiency saving: “If the commission determines that approving a decoupling mechanism will result in a double recovery by the electric distribution utility, the commission shall not approve the application unless the utility cures the double recovery.”

FirstEnergy’s application in this case lacks sufficient detail to determine whether customers will be double charged, so there is the potential for double collection. FirstEnergy filed a cover letter to its tariff updates, claiming that “revenue resulting from implementation of section 4928.66 of the Revised Code, excluding program costs and shared savings, and recovered pursuant to an approved electric security plan, is being removed from” the energy efficiency rider.¹⁷

There are several problems with this. While FirstEnergy’s statement mirrors the statutory language, it is not entirely clear that FirstEnergy is referring to lost revenues when it says “revenue resulting from implementation of section 4928.66 of the Revised Code.” Indeed, FirstEnergy’s

¹⁷ See Case No. 19-1904-EL-RDR.

proposed tariffs still state that FirstEnergy will recover “all program costs, including but not limited to any customer incentives or rebates paid, applicable carrying costs, all reasonable administrative costs to conduct such programs, *lost distribution revenues* resulting from the implementation of such programs, and any performance incentives such as shared savings.”¹⁸

More importantly, even if FirstEnergy is saying that lost revenues are no longer included in the energy efficiency rider, FirstEnergy provided no supporting documentation. Whether FirstEnergy accurately and completely removed lost revenues from its energy efficiency rider rates is unclear. Indeed, the discovery provided to OCC shows that FirstEnergy projects zero lost distribution revenues for residential customers for a six-month period (January 2020 through June 2020), but it is not clear what FirstEnergy’s plan is for the remainder of the year.

By law, the PUCO cannot allow FirstEnergy to charge customers twice for the same thing. FirstEnergy’s tariff-only filings in this case do not provide the PUCO with enough information to make that determination. To avoid any possibility of double-recovery, the PUCO should set FirstEnergy’s energy efficiency riders to zero until FirstEnergy has made an affirmative demonstration that customers will not be double-charged.

II. CONCLUSION

On rehearing, the PUCO should set FirstEnergy’s energy efficiency charge to customers at zero because FirstEnergy has not met its burden of proving that the rates are lawful. Any charges other than zero should be approved only after FirstEnergy files an application with adequate supporting documentation.

¹⁸ See, e.g., Ohio Edison Company, Tariff Sheet 115 (filed Nov. 21, 2019) (emphasis added).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for Rehearing was served via electronic transmission upon the parties this 31st day of January 2020.

/s/ Christopher Healey _____
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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: App for Rehearing Application for Rehearing by The Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Healey, Christopher