

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Edison Company, The Cleveland Electric	)	Case No. 19-2080-EL-ATA
Illuminating Company, and The Toledo	)	Case No. 19-2081-EL-AAM
Edison Company for Approval of a	)	
Decoupling Mechanism.	)	

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**MOTION TO MODIFY COMPLIANCE TARIFFS  
CONSISTENT WITH COMMISSION FINDING AND ORDER  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Public Utilities Commission of Ohio (“PUCO”) approved FirstEnergy’s charges to consumers for “decoupling” under House Bill 6.<sup>1</sup> In its Order, the PUCO protected consumers by requiring FirstEnergy to modify its decoupling rider tariffs to allow refunds for customers based on subsequent audits of the decoupling rider charges: “the Commission directs FirstEnergy to file revised tariffs which specify that the funds collected through Rider CSR should be subject to refund, based on the results of any future audit ordered by the Commission and conducted by Staff or a third-party consultant of the Companies’ Rider CSR and/or Rider DSE.”<sup>2</sup>

FirstEnergy then filed updated tariff sheets, which it claimed were “[i]n response to and in compliance with the” Order.<sup>3</sup> But FirstEnergy’s updated tariff sheets do not comply with the Order. FirstEnergy included the following language in the updated tariffs: “this Rider shall be adjusted annually to reconcile any over or under recovery from the prior year, with additional

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<sup>1</sup> Finding and Order (Jan. 15, 2020) (the “Order”).

<sup>2</sup> Order ¶ 30.

<sup>3</sup> See Tariff Updates (Jan. 31, 2020), *available at* <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=0bdf562b-f516-4ef2-b29e-9b78ec1673a6>, <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=6fe58987-8a83-4588-a5b5-aa1c64f40f9d>, and <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=4a191fd9-8543-4a9f-bd33-42bf9914f60d>.

reconciliation based upon the result of any future audit ordered by the Commission that finds this Rider will result in a double recovery.”<sup>4</sup> This language violates the Order because it limits reconciliation of the rider exclusively to a finding of a “double recovery,” despite the Order stating that refunds shall be based on “any audit.” The PUCO should reject FirstEnergy’s compliance tariffs and require FirstEnergy to amend them to remove the language stating that any such refund may be based solely on an audit finding of a “double recovery.”

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers’ Counsel

/s/ Christopher Healey

Christopher Healey (0086027)  
Counsel of Record  
Angela O’Brien (0097579)  
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<sup>4</sup> See *supra* footnote 3.

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**MEMORANDUM IN SUPPORT**

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Newly enacted House Bill 6 (codified in R.C. 4928.471) allows utilities like FirstEnergy to charge customers for “decoupling.” The PUCO approved such charges to customers under a decoupling rider for each of FirstEnergy’s electric distribution utilities (Ohio Edison, Cleveland Electric, and Toledo Edison). Concerned that customers could be overcharged under the decoupling rider, the PUCO ordered FirstEnergy to modify its decoupling rider tariffs to allow customers to receive refunds based on subsequent audits of the decoupling rider charges: “the Commission directs FirstEnergy to file revised tariffs which specify that the funds collected through Rider CSR should be subject to refund, based on the results of any future audit ordered by the Commission and conducted by Staff or a third-party consultant of the Companies’ Rider CSR and/or Rider DSE.”<sup>5</sup>

FirstEnergy did not comply with the Order. Instead, FirstEnergy wants to limit any refunds to customers for a finding of “double recovery.” Its filed tariffs state that “this Rider shall be adjusted annually to reconcile any over recovery or under recovery from the prior year, with additional reconciliation based upon the result of any future audit ordered by the

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<sup>5</sup> Order ¶ 30.

Commission that finds this Rider will result in a double recovery.”<sup>6</sup> But, nothing in the PUCO’s order limits such audits to the issue of “double recovery.” Instead, the Order states that refunds shall be allowed based on “any audit” of the decoupling rider.<sup>7</sup>

An audit of FirstEnergy’s charges could uncover any number of issues that might require a refund, including errors, omissions, and miscalculations in FirstEnergy’s annual decoupling filings. Because the annual decoupling filings can be automatically approved without PUCO action, the only potential for identifying these types of necessary adjustments might be through a subsequent audit. These types of issues would not necessarily constitute “double recovery,” because that phrase refers to the same charges being made under both the decoupling rider and the energy efficiency rider. Thus, if the tariff only allows refunds based on “double recovery,” customers might be left with no remedy, even if an audit identifies overcharges.

Indeed, the risk of harm to consumers is real. In an earlier case involving FirstEnergy’s alternative energy rider, the PUCO audited the rider charges and found that FirstEnergy overcharged customers by \$43 million—charges that would not be considered “double recovery”—and the Ohio Supreme Court ruled that FirstEnergy simply got to keep the money because there was no refund language in the tariff.<sup>8</sup> Unless the PUCO orders FirstEnergy to change its tariff language here, the same would happen if a later audit found overcharges that were not based on “double recovery.”

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<sup>6</sup> See Tariff Updates (Jan. 31, 2020), available at <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=0bdf562b-f516-4ef2-b29e-9b78ec1673a6>, <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=6fe58987-8a83-4588-a5b5-aa1c64f40f9d>, and <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=4a191fd9-8543-4a9f-bd33-42bf9914f60d>.

<sup>7</sup> Order ¶ 30.

<sup>8</sup> *In re Alternative Energy Rider Contained in the Tariffs of Ohio Edison Co.*, 153 Ohio St.3d 289 (2018).

The Order does not limit subsequent audits in this way, so there is no basis for FirstEnergy to affect such a limitation through its compliance tariffs. OCC respectfully requests that the PUCO order FirstEnergy to amend the language in the tariff to remove this audit limitation.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ Christopher Healey

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion was served on the persons stated below via electronic transmission, this 6th day of February 2020.

/s/ Christopher Healey  
Christopher Healey  
Assistant Consumers' Counsel

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: Motion Motion to Modify Compliance Tariffs Consistent with Commission Finding and Order by the Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Healey, Christopher