

**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.)	

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

FirstEnergy's decoupling rider tariffs should include broad language guaranteeing customers refunds if a subsequent audit shows that customers were overcharged. But FirstEnergy wants to limit the scope of such audits to a single issue: whether charges to customers will result in "double recovery" for the utility.¹ The Public Utilities Commission of Ohio ("PUCO") should not adopt FirstEnergy's narrow approach, which limits necessary consumer protections. Instead, the decoupling rider tariff should remove the reference to "double recovery" as follows: "The credits or charges contained in this Rider shall be updated on an annual basis, and 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 Commission ~~that finds this Rider will result in a double recovery.~~"

¹ See Compliance Tariffs filed in this docket 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>.

I. REPLY

A. **The Order did not say that customers will only be entitled to a refund if charges under the decoupling rider would result in “double recovery” to the utility.**

Although FirstEnergy accuses the Office of the Ohio Consumers’ Counsel (“OCC”) of misstating the PUCO’s Order² (with inflammatory and false claims that OCC did so “appallingly” and “recklessly”), it is in fact FirstEnergy who distorts the Order for its own benefit. It is true that paragraph 30 of the Order addresses the issue of potential double-charges to consumers under FirstEnergy’s decoupling rider and energy efficiency rider. But the critical language in this paragraph is that the refund language in the tariff is to address refunds for “*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.”³

This language is important and refutes FirstEnergy’s interpretation. By using the phrase “any future audit,” the PUCO intended refunds for consumers based on “any” audit, not just an audit of the “double recovery” issue. As OCC explained in the Motion,⁴ an audit could uncover any number of overcharges—errors, omissions, miscalculations—many of which would not be considered “double recovery.”⁵ For the PUCO to give effect to the phrase “*any* future audit,” the refund language cannot be limited solely to audits related to the “double recovery” issue. The PUCO should reject FirstEnergy’s attempt to narrow the scope of potential refunds to customers, which is contrary to the plain language of the Order.

² Finding & Order (Jan. 15, 2020) (the “Order”).

³ Order ¶ 30 (emphasis added).

⁴ Motion to Modify Compliance Tariffs Consistent with Commission Finding and Order (Feb. 6, 2020) (the “Motion”).

⁵ Motion at 2.

B. FirstEnergy concedes that customers should receive refunds in precisely the manner that OCC recommends, so there is no reason for its opposition to OCC's proposed tariff language.

In its memorandum contra, FirstEnergy concedes that R.C. 4928.471(B) requires refunds to customers if a subsequent review of the rider charges uncovers *any* over-charges, including those based on errors, omissions, or miscalculations.⁶ OCC's proposed modification to the tariff refund language precisely achieves this result, consistent with the Order. That being the case, there is no basis for FirstEnergy's continued opposition to OCC's proposed refund language. And there would be no reason to adopt FirstEnergy's more limited refund language, which is designed to *not* provide customers refunds unless the overcharge is a "double recovery."

FirstEnergy also points out that the tariff states that the rider "shall be adjusted annually to reconcile any over recovery or under recovery from the prior year."⁷ According to FirstEnergy, this language is all that is needed. But this language refers to the annual reconciliation process, where FirstEnergy will file new tariff sheets, and those rates will be automatically approved 60 days later. That is not the same as an audit, where overcharges might be discovered at a later date. Thus, to adequately protect consumers, the refund language must be broad enough to cover a subsequent audit that occurs after the 60-day automatic annual approval.

II. CONCLUSION

Based on OCC's Motion and FirstEnergy's Memo Contra, the parties seem to agree that if customers are overcharged under FirstEnergy's decoupling rider, they should receive a refund, regardless of the reason for the overcharges. OCC's proposed refund language achieves this

⁶ Memorandum Contra of [FirstEnergy] to Motion to Modify Compliance Tariffs by the Office of the Ohio Consumers' Counsel at 4-5 (Feb. 21, 2020) (the "Memo Contra").

⁷ Memo Contra at 5.

result. FirstEnergy's proposed refund language does not because it limits refunds to circumstances resulting from "double recovery." OCC respectfully requests that the PUCO order FirstEnergy to modify its compliance tariffs to include OCC's refund language. OCC's proposed language, unlike FirstEnergy's, provides adequate protection to consumers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply was served on the persons stated below via electronic transmission, this 26th day of February 2020.

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Summary: Reply Reply in Support of 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