

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2017 Review of the                    )  
Smart Grid Modernization Initiative                    )  
Contained in the Tariffs of Ohio Edison                ) Case No. 16-2166-EL-RDR  
Company, The Cleveland Electric                    )  
Illuminating Company, and the Toledo                )  
Edison Company.    )

In the Matter of the Application of Ohio                )  
Edison Company, The Cleveland Electric                )  
Illuminating Company, and The Toledo                ) Case No. 17-2276-EL-RDR  
Edison Company to update the tariff for                )  
Rider AMI.    )

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**REPLY COMMENTS FOR CONSUMER PROTECTION  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

The Public Utilities PUCO of Ohio (“PUCO”) should protect the 1.9 million residential customers of the FirstEnergy utilities<sup>1</sup> by protecting customers from paying for \$774,535 in 2018 costs that were not authorized as part of FirstEnergy’s Ohio Site Deployment pilot.<sup>2</sup> The PUCO only approved the pilot program through June 1, 2019,

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<sup>1</sup> The Ohio Edison Company, The Cleveland Electric Illuminating company, and The Toledo Edison Company (collectively, “FirstEnergy”).

<sup>2</sup> The Ohio Site Deployment was comprised of various studies, including a Volt Var Optimization study, a Distribution Automation study and a consumer behavior study (“CBS”) conducted in two phases. It was addressed by the PUCO over several different cases. In case 09-1820-EL-ATA, FirstEnergy filed its Application for Approval of the Smart Grid Modernization Initiative. The stipulation in the 2009 case committed FirstEnergy to developing a proposal to pursue federal funds that may be available for smart grid investment. FirstEnergy’s proposal was selected for award negotiations from the Department of Energy on October 27, 2009. The following November, FirstEnergy applied to the PUCO for approval of the proposed Ohio Site Development pilot, which was to be a 3 year (but later extended to 5 years) pilot program involving 44,000 customers in CEI’s territory, as part of FirstEnergy’s Smart Grid Modernization Initiative. In 2010, the PUCO approved FirstEnergy’s application for the Ohio Site Deployment of its Smart Grid Initiative filed in Case No. 09-1820-EL-ATA. (*See* 10-388-EL-SSO, Opinion and Order at 13 (August 25, 2010)). The PUCO required that no part of the Site Deployment would be completed without matching Department of Energy funding in an equal amount. (*Id.* at 14).

and only for costs that were matched by the Department of Energy. Therefore, customers should not have to pay for any costs incurred by FirstEnergy after the pilot program ended, or for costs the PUCO has not authorized. Finally, the PUCO should direct FirstEnergy to modify its Application and calculate the reductions of its 2018 AMI revenue requirement based on the above recommendations and return any resulting reductions in the 2018 Rider AMI charges to customers immediately through an adjustment to the 2019 AMI Rider charges to be collected in 2020. Doing so is consistent with the PUCO Staff's recommendation to exclude those costs from the charges to customers for the Ohio Site Deployment pilot that were not matched by Department of Energy funds and were therefore unapproved.

## **II. RECOMMENDATIONS**

### **A. The PUCO should protect consumers by disallowing unauthorized charges for FirstEnergy's pilot program from being collected from FirstEnergy's customers.**

#### **1. FirstEnergy should not charge customers for grid modernization expenses that were not approved by the PUCO.**

The PUCO allowed FirstEnergy to collect (through the rider) 100% of the on-going data collection and maintenance costs for the VOLT-VAR and Distribution Automation studies in the pilot service area after June 1, 2015.<sup>3</sup> However, FirstEnergy argues that certain expenses (capital installations totaling \$676,912) were approved by the PUCO because they were "data collection" expenses.<sup>4</sup> FirstEnergy defines "data

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<sup>3</sup> *See Id.*

<sup>4</sup> *See* FirstEnergy Comments at 2-3.

collection” expenses as including communication backhaul, servers, software upgrades, and field devices such as reclosers.<sup>5</sup>

In this case, FirstEnergy has provided no evidence that these additional expenses were directly related to “data collection” for its studies therefore they cannot be “PUCO Approved.” Expenses that are not PUCO approved are neither prudent, just, nor reasonable.<sup>6</sup> And FirstEnergy has the burden of proof to justify that its expenses are prudent, just, and reasonable. FirstEnergy cannot meet that burden.

Additionally, FirstEnergy admitted in its comments that in 2018 it expanded (without PUCO approval) the footprint of its Ohio Site Deployment Pilot program.<sup>7</sup> The PUCO simply did not authorize an expansion of the pilot program and the purchase of additional equipment to support the expansion of the pilot program.<sup>8</sup> These unapproved expansion costs should be refunded to consumers through an adjustment to the 2019 Rider AMI charges to be collected in 2020.

The PUCO should accept OCC’s and its Staff’s recommendation to disallow FirstEnergy’s unauthorized pilot program expansion expenses totaling \$676,912. The PUCO should also require FirstEnergy to calculate the costs for its unapproved 2018 “expansion” and refund those charges to consumers to protect consumers for overpaying for their electric service.

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<sup>5</sup> *See Id.* at 3.

<sup>6</sup> *See* R.C. 4909.17 (No rate or charge shall be effective until the PUCO, by order, determines it to be just and reasonable).

<sup>7</sup> *See* FirstEnergy Comments at 3 (“In 2018 the Companies made...capital investments associated with the Ohio Site Deployment by expanding the installation and testing new smart grid devices in CEI’s pilot footprint”).

<sup>8</sup> *See Id.* at 2.

**2. Customers should not be charged for FirstEnergy’s capital installation costs that were not “expressly” approved for collection from customers in Rider AMI because they did not meet the PUCO’s Department of Energy (“DOE”) match requirement.**

The OCC in its initial comments explained that when the PUCO approved FirstEnergy’s original application for the establishment of the Ohio Site Development of the smart grid initiative, the PUCO ordered that “the Companies shall not complete any part of the Ohio Site Development that the United States Department of Energy (DOE) does not match funding in equal amount.”<sup>9</sup> But FirstEnergy now claims that the PUCO’s condition no longer applies after its later approval of Rider AMI.<sup>10</sup> FirstEnergy is mistaken.

FirstEnergy asserts that its costs are “expressly” permitted in its PUCO approved Rider AMI.<sup>11</sup> But FirstEnergy provided no citation for this “express” permission. Instead, FirstEnergy rests on the notion that its PUCO approved tariff language from Rider AMI, in conjunction with its 2015 Study Completion Application somehow “effectively” supersedes a previous PUCO Order (that FirstEnergy now disagrees with because it wants to improperly keep \$676,912 in improper charges to consumers).<sup>12</sup> Furthermore, FirstEnergy later contradicts itself with its own conclusion by stating that the PUCO’s approval of FirstEnergy’s requests post-dates and *effectively* supersedes the DOE match

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<sup>9</sup> See OCC Comments at 2; see also *In re the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order at 13-14 (August 25, 2010).

<sup>10</sup> See FirstEnergy Comments at 5.

<sup>11</sup> See *Id.* at 5.

<sup>12</sup> See *Id.*

requirements.<sup>13</sup> But the PUCO does not “effectively” authorize Utility applications to charge consumers. Rather, approvals are “explicit.”<sup>14</sup> Moreover, the PUCO’s May 28, 2015, Finding and Order in 09-1820-EL-ATA explicitly discusses the DOE matching requirement, but it says nothing about revoking the DOE funding match requirements. In fact, FirstEnergy never even explicitly requested that the PUCO discontinue the DOE funding match requirement in its Application for Further Cost Recovery.

If the PUCO intended to contradict its August 25, 2010 Order stating “the Ohio Site Deployment would not be completed unless DOE matched funding in an equal amount,” then it would have clearly and explicitly said so. But it did not. Silence is not approval and FirstEnergy’s attempt at regulatory illusion by weaving together select parts of orders and tariffs in different cases while ignoring others should be rejected. Ohio law requires that rates charged by utilities be just and reasonable for service that is adequate.<sup>15</sup> Charges for expenses that have not been expressly approved by the PUCO cannot be rendered to consumers.

Simply stated, any costs that FirstEnergy seeks to collect from customers that do not meet the DOE match requirement should be disallowed. The OCC agrees with the PUCO Staff and reasserts its recommendation that FirstEnergy should not be permitted to charge customers for such disallowed expenses.<sup>16</sup> The PUCO should protect consumers against paying these improper, unjust, and unreasonable expenses.

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<sup>13</sup> *See Id.*

<sup>14</sup> According to Merriam-Webster, “explicit” means fully revealed or expressed without vagueness, implication, or ambiguity; leaving to questions as to meaning or intent. In contrast, “effectively” means acceptably, adequately....” <https://www.merriam-webster.com/thesaurus>.

<sup>15</sup> *See* R.C. 4909.17.

<sup>16</sup> *See* OCC comments at 3.

**B. The FirstEnergy Utilities should not be able to collect costs related to the Ohio Site Deployment pilot program after June 1, 2019.**

The PUCO Order in 09-1820-EL-ATA did specifically (explicitly) approve FirstEnergy's request to continue the Ohio Site Deployment Pilot Program until June 1, 2019.<sup>17</sup> Furthermore, the Order approved the Utilities request to spend approximately \$8.5 million in operating and maintenance costs.<sup>18</sup> FirstEnergy admits that it previously (and improperly) collected capital costs through the Rider AMI rider as a reason why it should be able to collect the capital costs from 2018.<sup>19</sup> But FirstEnergy did not provide a citation to which Rider AMI filings it is referring to. And even if a previous undefined Staff audit did not reveal that capital costs were improperly included in the Rider AMI, this does not mean that FirstEnergy has authorization to continue improperly collecting unauthorized capital costs from consumers. The PUCO should act to protect consumers against FirstEnergy's attempts to collect unauthorized expenses through Rider AMI. As part of the PUCO's 2019 audit of Rider AMI and the final audit of the Ohio Site Deployment pilot, OCC urges the PUCO to protect consumers by verifying that between June 1, 2015 and June 1, 2019, only O&M costs associated with the Ohio Site Deployment pilot program were collected through Rider AMI. All other unauthorized charges should be refunded to consumers. Furthermore, the PUCO Staff audit should confirm that the Ohio Site Deployment pilot program costs ended on June 1, 2019. Any

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<sup>17</sup> See *In re the Application of FirstEnergy for Approval of Ohio Site Development of the Smart Grid Modernization Initiative and Timely Recovery of Associated Costs*, Case 09-1820-EL-ATA, et. al, Finding and Order at 3 (May 28, 2015).

<sup>18</sup> See *Id.*

<sup>19</sup> See FirstEnergy Comments at 7 ("Further, the Companies note that similar maintenance and repair expenses have been included in prior Rider AMI filings with no exceptions identified").

additional expenses after that date for the Ohio Site Deployment program should be returned to customers because they were not approved by the PUCO.

### III. CONCLUSION

The PUCO should protect consumers against paying \$774,535 in unapproved, unjust, and unreasonable rates through Rider AMI by excluding FirstEnergy's improper capital expenditures that should instead be expensed and collected from customers through base rates. Moreover, as OCC recommended in its initial comments,<sup>20</sup> FirstEnergy should be directed to modify its Application and calculate the reductions to the 2018 AMI revenue requirement to account for the disallowance of the \$774,535 already identified and for any unauthorized "expansion" expenses that FE incurred and improperly charged to Rider AMI. FirstEnergy. The resulting revenue requirement reductions to the 2018 Rider AMI charges should be returned to customers immediately through an adjustment of the 2019 AMI Rider charges to be collected in 2020.

Respectfully submitted,

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<sup>20</sup> See *Id.*

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Reply Comments was served on the persons stated below via electronic transmission, this 8th day of May 2020.

/s/ Ambrosia E. Wilson  
Ambrosia E. Wilson  
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Summary: Comments Reply Comments for Consumer Protection by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Wilson, Ambrosia E.