BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the 2019 Review of The Delivery Capital Recovery Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	)))))	Case No. 19-1887-EL-RDR

CONSUMER PROTECTION COMMENTS ON THE AUDIT REPORT REGARDING FIRSTENERGY'S CHARGES TO CONSUMERS UNDER THE DELIVERY CAPITAL RECOVERY RIDER BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

FirstEnergy[1] failed to comply with the requirements of the Delivery Capital Recovery ("DCR") Rider in 2019. Blue Ridge Consulting Services, Inc. ("Auditor"), the independent auditor selected by the Public Utilities Commissions of Ohio ("PUCO"), concluded in its Audit Report that FirstEnergy overstated its 2019 Rider DCR revenue requirement by nearly $6.5 million.[2] The Auditor recommended, among other findings, that approximately $3 million of vegetation management costs were improperly capitalized and should be excluded from the DCR revenue requirement.[3] The Auditor also recommended that the DCR revenue requirement be reduced by approximately $2.5 million because FirstEnergy did not follow the PUCO's Order in Case No. 18-1604-EL-

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[1] Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, individually and collectively.

[2] *See* PUCO Case No. 19-1887-EL-RDR, Compliance Audit of the 2019 Delivery Capital Recovery (DCR) Riders of FirstEnergy (June 12, 2020) at 9, Table 1. ("Audit Report").

[3] *See* Audit Report at 9, Table 1. The Auditor recommended four adjustments related to vegetation management for a total amount of $2,991,428.

UNC[4] regarding the balance of excess deferred income tax ("EDIT") recorded on December 31, 2017.[5]

The Auditor recommended fourteen adjustments in six categories that are related to the 2019 Rider DCR Revenue Requirements.[6] Assuming all the proposed adjustments are adopted (as they should be), the Auditor-adjusted DCR Revenue Requirement will be $330,894,063. This represents a reduction of $6.5 million ($6,532,887) from the amount of $337,426,950 filed by FirstEnergy.[7] A summary of the proposed Adjustments is included in Table 1 of the Audit Report and reproduced here (see Table 1, below).

Out of these 14 proposed adjustments, FirstEnergy has accepted Adjustment #1 through Adjustment #9. FirstEnergy agreed to reduce the rate base accounts by approximately $6.9 million and make a corresponding revenue requirement reduction of $1.05 million in future Rider DCR filings.[8] OCC considers these nine Adjustments resolved and will not comment further on them.

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[4] *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company to Implement Matters Relating to the Tax Cuts and Jobs Act of 2017,* Case No. 18-1604-EL-UNC et al. (July 17, 2019).

[5] *See* Audit Report at 9, Table 1 and 16. The Auditor recommends a reduction of $2,489,450 in DCR revenue requirement for this adjustment. In utility ratemaking, accumulated deferred income tax ("ADIT") is considered as a customer-provided source of funding and a reduction to rate base, thus lowering customers' rates from what they would otherwise be. The excess ADIT, or ("EDIT"), is essentially the amount that customers should get back because of the reduction to the corporate income tax rate.

[6] *See* Audit Report at 9, Table 1 and 16.

[7] *See* Audit Report Table 1 and Table 53.

[8] The total rate base reduction associated with these nine adjustments is $6,929,045.24 and the total revenue requirement reduction is $1,052,009. See Audit Report at 68 (Adjustment #1, for rate base reduction of $835,497 and revenue requirement reduction of $129,153); at 71 (Adjustment #2, for rate base reduction of $172,999.70 and revenue requirement reduction of $25,605); at 74 (Adjustment #3, for rate base reduction of $270,619 and revenue requirement reduction of $39,185); at 76 (Adjustment #4, for rate base reduction of $60,013.17 and revenue requirement reduction of $10,265); at 81-82 (Adjustments #5 to #8, for rate base reduction of $48,894.37 and revenue requirement reduction of $8,554); and at 85 (Adjustment #9, for rate base reduction of $5,571,040 and revenue requirement reduction of $839,247).

The Auditor also makes eight recommendations regarding FirstEnergy's internal audits, vegetation management, cost overruns of projects, cost categories, work orders in service but not unitized, work order backlog, depreciation expense, and excess deferred income taxes ("EDIT').[9] OCC supports all the recommendations by the Auditor and the adjustments identified in the Audit Report and urges the PUCO to fully adopt them.

Table 1: Impact of Blue Ridge's Findings on Rider DCR Revenue Requirement

Adj #	Description	CEI	OE	TE	Total
	As Filed	**$ 145,965,683**	**$ 152,331,663**	**$ 39,129,604**	**$ 337,426,950**
1	Project Cancelled (13287571)	-	(129,153)	-	(129,153)
2	AFUDC Over Accrued (14370958)	-	(25,605)	-	(25,605)
3	AFUDC Over Accrued (14650547)	-	(39,185)	-	(39,185)
4	AFUDC Over Accrued (TW-000947-S-5)	-	-	(10,265)	(10,265)
5	Retirements Not Recorded (15521094)	-	(2,028)	-	(2,028)
6	Retirements Not Recorded (15667460)	-	-	(3,822)	(3,822)
7	Retirements Not Recorded (15957370)	-	-	(2,448)	(2,448)
8	Retirements Not Recorded (15993546)	-	-	(256)	(256)
9	Not in service (15298831)	-	(839,247)	-	(839,247)
10	VM-Exp, Codes 05, 36, 14, and 30	(1,399,214)	-	-	(1,399,214)
11	VM-Exp, Codes 05, 36, 14, and 30	-	(1,122,072)	-	(1,122,072)
12	VM-Exp, Codes 05, 36, 14, and 30	-	(8,504)	-	(8,504)
13	VM-Exp, Codes 05, 36, 14, and 30	-	-	(461,638)	(461,638)
14	Regulatory Liability TCJA	(837,018)	(1,475,707)	(176,726)	(2,489,450)
	Impact of All Adjustments	**(2,236,232)**	**(3,641,500)**	**(655,155)**	**(6,532,887)**
	Recommended Rider DCR Revenue Requirements	**$ 143,729,451**	**$ 148,690,163**	**$ 38,474,449**	**$ 330,894,063**

The adoption of these recommendations and adjustments might not result in refunds to customers in this proceeding because of the annual DCR revenue caps currently in place.[10] Nonetheless, if the Auditor's recommendations and adjustments are adopted, it will ensure on a going-forward basis that the correct amounts of rate base (distribution related capital investments), EDIT balances, and other ratemaking items are being used by FirstEnergy in calculating its DCR revenue requirements and rates.

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[9] See Audit Report at 16-18.

[10] The Adjusted 2019 Annual DCR Revenue Cap is $308,071,757 and the Auditor-recommended revenue requirement (assuming all adjustment were adopted by the PUCO) is $330,894,063. See Audit Report at 9 and 110. The estimated actual 2019 DCR collection is $314,309,828, which is less than the Auditor-recommended revenue requirement. So there does not appear to be any DCR overcharge in 2019 even assuming all adjustments recommended by the Auditor were adopted.

II. CONSUMER PROTECTION COMMENTS

A. The PUCO should prohibit FirstEnergy from charging customers through Rider DCR for unreasonably capitalized vegetation management expenditures.

FirstEnergy improperly charging vegetation management expenses through Rider DCR is not a new issue. This problem has been repeatedly identified and quantified in previous compliance audits of Rider DCR.[11] It is time for the PUCO to direct FirstEnergy not to include these vegetation management expenditures in Rider DCR. For example, FirstEnergy has improperly enjoyed broad and unreasonable leeway to remove any tree or limb outside a corridor, call it a "capital" cost, and then collect a return on and of this cost from customers through Rider DCR. This is wrong because such costs are not related to the initial tree-trimming costs such as the initial construction cost of the distribution line or permits. If the tree clearing occurred during the construction, then capitalizing the tree clearance is appropriate. Otherwise these expenses are part of FirstEnergy's ongoing operation and maintenance tree-trimming costs. They should not be included in the revenue requirement of Rider DCR.

Specifically, the PUCO should adopt the Auditor's recommendation to reduce by approximately \$3 million the DCR revenue requirement[12] and approximately \$16.7 million in distribution plant (or rate base)[13] for vegetation management work orders

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[11] *See* PUCO Case No. 17-2009-EL-RDR, Compliance Audit of the 2017 Delivery Capital Recovery (DCR) Riders of FirstEnergy (May 11, 2018) at 23, Rec-10, and PUCO Case No. 18-1542-EL-RDR, Compliance Audit of the 2018 Delivery Capital Recovery (DCR) Riders of FirstEnergy (April 30, 2019) at 18, Rec-01 and Rec-03.

[12] *See* Audit Report at 61 (Adjustment #10 through Adjustment #13). \$2,991,478 = \$1,399,214 + \$1,122,072 + \$8,504 + \$461,638.

[13] *See* Audit Report at 61, Table 26.

charged to Cost Codes 05, 14, 30, and 36 as identified in the Audit Report. These Cost Categories include:[14]

- Cost Category 05—Off Corridor or removal of on corridor tree with overhang
- Cost Category 36—Cut Tree in the Clear Off Corridor No Future Maintenance Required.
- Cost Category 14—Overhead Limb Removal
- Cost Category 30—Property Owner Notification Capital

Based on the Federal Energy Regulatory Commission ("FERC") system of accounts, these four categories of costs are not related to "the cost of the initial cost, including the cost of permits," therefore, these tree-trimming costs should not be capitalized.[15]

The Auditor also determined that FirstEnergy "did not provide sufficient detailed documentation to support the inclusion of capital charges to the DCR or to support verification of work according to current VM policies."[16] For example, neither the vendor invoices nor time sheets were signed off by FirstEnergy representatives. FirstEnergy did not take pictures or have any other supporting data for the removals other than time sheets.[17] This is further evidence that the accounting for these costs was questionable. As a related matter, OCC supports the Auditor's other recommendations contained in Recommendation (Rec-02) regarding the policy, process, and accounting system related to FirstEnergy's vegetation management.[18] Specifically, OCC agrees that the PUCO should direct FirstEnergy:[19]

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[14] *See* Audit Report at 60.

[15] *See* Audit Report at 36.

[16] *See* Audit Report at 39.

[17] *Id.*

[18] *See* Audit Report at 16-17.

[19] *Id.*

a. To supplement the vegetation management policies and procedures to provide more detail in support of the time sheet task codes used by contractors such as taking a before and after picture in support of work performed and charged to the appropriate task codes.

b. To revise the vegetation management Accounting Policy to be consistent with the FERC Uniform System of Accounts in the absence of a PUCO policy on the determination of capital and expense vegetation management activity.

OCC supports these recommendations because they will help bring transparency to the issue that will allow parties to review whether such expenses are prudently incurred and properly documented. The FERC Uniform System of Accounts is in place and the state of Ohio has adopted FERC accounting for regulatory purposes.[20] There is no valid reason for FirstEnergy not to apply the FERC accounting standard and system for vegetation management purposes.

B. To protect consumers, the PUCO should prohibit FirstEnergy from unilaterally changing the Excess Deferred Income Tax balances that were agreed to in a Settlement and approved by the PUCO in Case No. 18-1604-EL-UNC. FirstEnergy's actions denied consumers a $28.3 million benefit under the Settlement, and improperly increased the 2019 DCR revenue requirement by $2.5 million.

In calculating its 2019 Rider DCR revenue requirement, FirstEnergy unilaterally and improperly reduced the EDIT balances[21] that were agreed to by the parties in a Settlement approved by the PUCO in Case No. 18-1604-EL-UNC.[22] In doing so, FirstEnergy improperly increased (to consumers' detriment) its Rider DCR rate base, and consequently increased the 2019 DCR revenue requirement by approximately $2.5

[20] *See* Audit Report at 36.

[21] In utility ratemaking, excess accumulated deferred income taxes ("EDIT") or excessive ADIT is a customer-provided source of funding and would lead to a reduction of rate base and consequently a reduction in the rates charged to customers.

[22] *See,* Case No. 18-1604-EL-UNC et al. (July 17, 2019). See also, Audit Report at 14.

million.[23] The PUCO should establish the 2019 Rider DCR revenue requirement based on the amount of EDIT agreed upon by the parties and approved by the PUCO. The PUCO must "respect its own precedents in its decisions to assure predictability, which is essential in all areas of the law, including administrative law."[24] The PUCO should not authorize different EDIT balances, chosen unilaterally by FirstEnergy in this proceeding without a legal basis.

FirstEnergy's adjustments to Property EDIT Balances as of December 31, 2017, and contrasted to the Settlement adjustments, is shown in Table 43 of the Audit Report.[25]

FirstEnergy's unilateral adjustment of the agreed-upon EDIT balance has two harmful effects to consumers. One is to reduce the amount owed to customers under the approved Settlement by approximately $28.3 million.[26] The second harmful effect of FirstEnergy's unilateral EDIT balance adjustment is to increase the rate base used in the calculation 2019 Rider DCR revenue requirement by $2.5 million. EDIT balance is considered a customer-supplied source of funding and should be treated as a reduction to rate base. However, FirstEnergy's unilateral and unreasonable reduction of the EDIT balance as of December 31, 2017 will instead increase the rate base used in calculating the 2019 DCR revenue requirement. The PUCO should not allow that to happen.

OCC supports the Auditor's recommendation that all EDIT adjustments made by FirstEnergy, except for reclassification between normalized and non-normalized

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[23] *See* Audit Report at 9, Table 1.

[24] *Office of Consumers Counsel v. Pub. Util. Comm'n*, 10 Ohio St. 3d 49, 50-51 (1984).

[25] *See* Audit Report at 104, Table 43.

[26] *See* Audit Report at 104, table 44.

property, be reversed "so that the Total Property EDIT reflected in Rider DCR matches the Total Property EDIT as of December 31, 2017 in the Settlement."[27] In this way, the PUCO would make certain that the 2019 Rider DCR revenue requirement is based on the amount of EDIT agreed upon by the parties in the Settlement approved by the PUCO in FirstEnergy's previous order.[28]

FirstEnergy's explanations regarding its adjustments to the EDIT balances are not persuasive.[29] As the Auditor observed, the agreed-upon EDIT numbers in the Settlement adopted by the PUCO were based on "final, audited balances" in financial statements audited and certified by the outside CPA firm, PricewaterhouseCoopers, with an unqualified opinion on February 28, 2018.

III. CONCLUSION

OCC recommends that the PUCO adopt all of the recommendations and adjustments identified in the Audit Report. Specifically, the PUCO should take decisive steps regarding the policy, process, and accounting of FirstEnergy's vegetation management programs. The improperly capitalized expenditures of tree-trimming should be removed from the 2019 Rider DCR revenue requirement and DCR rate base. The PUCO should also reverse FirstEnergy's unilateral adjustments to EDIT. If this unilateral adjustment that defies the PUCO order is allowed, it could preclude approximately $28.3 million tax savings that should be returned to customers through another rider (Rider TSA), and would increase the 2019 DCR revenue requirement by approximately $2.5

[27] *See* Audit Report at 14-15, and 18.

[28] *See*, Case No. 18-1604-EL-UNC.

[29] *See* Audit Report at 104-105.

million. Customers should not be overcharged for FirstEnergy's tax obligation and unnecessary vegetation management expenditures.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission this 27th day of July 2020.

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