

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

<sup>2</sup> Audit Report at 9, Table 1.

form of a lower amount of tax savings being returned to customers over time) than what is allowed by the settlement that FirstEnergy signed in a related Tax Savings Rider case (Case No. 18-1604-EL-UNC) with OCC, PUCO Staff and many other parties.<sup>3</sup>

As OCC pointed out in its initial Comments, 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.<sup>4</sup> Nonetheless, by adopting the Auditor's recommendations and adjustments, the PUCO will establish a precedent for future cases that the correct amounts of rate base (distribution related capital investments), EDIT balances, and other ratemaking items must be used by FirstEnergy in calculating its DCR revenue requirements and charges to consumers..

## II. CONSUMER PROTECTION REPLY COMMENTS

- A. The PUCO should reject FirstEnergy's proposed adjustment to the Excess Deferred Income Taxes balances because it is contrary to the PUCO-approved settlement that FirstEnergy signed with OCC and PUCO Staff to pass back more tax savings to customers associated with a higher amount of deferred tax balances (\$28.3 million higher) and it allows FirstEnergy to inflate rate base and the revenue requirements under Rider DCR.**

The PUCO, in Case No. 18-1604-EL-UNC, adopted a settlement establishing the amount of excess accumulated deferred income taxes ("EDIT") to be returned to

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<sup>3</sup>See, *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).

<sup>4</sup> 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.

FirstEnergy customers.<sup>5</sup> That Settlement resolved the question about the treatment of the excess deferred income tax balances resulting from the TCJA.

Under the Settlement, the actual amount of the excess accumulated deferred income taxes flowing back to customers was to reflect the “final, audited balances” as of December 31, 2017.<sup>6</sup> *At that time PricewaterhouseCoopers had issued an unqualified opinion on the EDIT balances in the Settlement.* The parties to the Settlement relied upon the EDIT balances set forth in the Settlement as the basis for passing back the tax savings to customers. The amount of the EDIT balances matters to customers because the higher the EDIT balance, the more tax savings returned to customers. And the higher the EDIT balance, the lower the rate base associated with Rider DCR (customers pay a return on that rate base through Rider DCR).

However, in calculating is 2019 Rider DCR revenue requirement, the Auditor found that FirstEnergy unilaterally and improperly reduced the EDIT balances<sup>7</sup> that were agreed to by the parties in the PUCO-approved Settlement in PUCO Case 18-1604-EL-UNC. The Auditor recommended reversing FirstEnergy’s EDIT adjustments to reflect the EDIT balance agreed to within the Settlement and consider changes within the utilities’ next Rider TSA annual filing.<sup>8</sup>

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<sup>5</sup> Case No. 18-1604-EL-UNC Stipulation and Recommendation (Nov. 9, 2018), TCJA Resolutions (a)(b)(c)(d); *See also*, Audit Report at 101.

<sup>6</sup> Case No. 18-1604-EL-UNC; *See* Audit Report at 101.

<sup>7</sup> 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.

<sup>8</sup> *See* Audit Report at 105.

The PUCO should follow the Auditor's, as well as the PUCO Staff's and OCC's, recommendations and establish the 2019 Rider DCR revenue requirement based on the amount of excess accumulated deferred income taxes agreed upon by the parties in the PUCO-approved Settlement in Case No. 18-1604-EL-UNC.<sup>9</sup> It is the PUCO's responsibility is to make sure all savings related to the 2017 TCJA are returned to customers, and those savings, identified in the Settlement, were an important part of the package agreed to in the Settlement, which reached beyond federal tax issues, encompassing other issues such as distribution grid modernization.

FirstEnergy claimed that the final audit was conducted (with audit results conveyed only when FirstEnergy filed its compliance tariffs --after the parties signed the settlement and after the PUCO approved the settlement) and the final audit found that the EDIT balances were overstated by \$28.3 million. FirstEnergy claims in its Comments that "if Blue Ridge's recommendations were adopted, the total property-related EDIT returned to customers through ratemaking would be \$28.3 million higher than the actual liability recorded on the Companies' audited financial books."<sup>10</sup> There is no merit to this claim.

As pointed out by the Auditor, FirstEnergy's unilateral adjustment to the EDIT balances would *reduce* the flow back to customers all tax savings by approximately \$28.3 million, not the other way around. FirstEnergy's property-related EDIT adjustments reduce the total liability owed to customers as of December 31, 2017, by \$28.3 million.<sup>11</sup>

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<sup>9</sup> See, Case No. 18-1604-EL-UNC et al. (July 17, 2019). See also, Audit Report at 14.

<sup>10</sup> FirstEnergy Comments at 4.

<sup>11</sup> See, Audit Report at 104, Table 44.

In making this adjustment, FirstEnergy also improperly increased (to consumers' detriment) its Rider DCR rate base, and consequently increased the 2019 DCR revenue requirement by approximately \$2.5 million.<sup>12</sup>

The Auditor's recommendations addressing this issue should stand.<sup>13</sup> To protect consumers, the PUCO should prohibit FirstEnergy from unilaterally changing the excess deferred income tax balances that were agreed to in the 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. To protect consumers, FirstEnergy's DCR revenue requirement should be reduced by approximately \$2.5 million as the Auditor recommended.<sup>14</sup>

**B. The PUCO should prohibit FirstEnergy from charging customers through Rider DCR for improperly capitalized vegetation management expenditures.**

The Auditor correctly found that FirstEnergy's costs for the initial trimming of vegetation outside a corridor, or "off-corridor," had been improperly capitalized and should instead be recorded as operation and maintenance expenses.<sup>15</sup> FirstEnergy's arguments for capitalizing these vegetation management expenses are unpersuasive.

FirstEnergy's rationale for capitalizing vegetation management costs is that they are related to initial clearing of vegetation and "performing this capitalized work

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<sup>12</sup> See Audit Report at 9, Table 1.

<sup>13</sup> See Audit Report at 101-104.

<sup>14</sup> *Id.* at 106.

<sup>15</sup> Audit Report at 60.

eliminates or mitigates the need to go back and perform additional work later.”<sup>16</sup> But the Auditor found that the description of the work found in the inclusion of vegetation management expenditures in cost categories (05, 36, 14 and 30) are inappropriate for capitalization because they are not identified as initial vegetation management costs.

FirstEnergy further contends in its Comments that its investments in tree-trimming could “extend the in-service life of the conductors and serve future generations of customers”<sup>17</sup> and thus should be capitalized. This claim should similarly be rejected because operational and maintenance activities, such as tree-trimming, can also benefit future generations of customers and extend the in-service life of conductors. But these expenditures are treated as operational expenses and not capitalized.

FirstEnergy also disputes the Auditor’s recommendation that the utilities conform their accounting policy to be consistent with the FERC Uniform System of Accounts.<sup>18</sup> FirstEnergy argues that the PUCO has “full discretion and authority to establish its own accounting rules”<sup>19</sup> and thus should allow FirstEnergy to deviate from the Uniform System of Accounts. The PUCO does have such a discretion. But FirstEnergy still needs to demonstrate its own accounting rules are sound and reasonable and it has failed to do so. The PUCO should adopt the Auditor’s recommendation to require FirstEnergy to conform its accounting policy to FERC’s standard so that issues regarding vegetation management costs can be better resolved on a going-forward basis.

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<sup>16</sup> FirstEnergy Comments at 5.

<sup>17</sup> *Id.*

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

<sup>19</sup> FirstEnergy Comments at 5-6.

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, for example, involved with the initial construction cost of the distribution line. If the tree clearing occurred during the construction, then capitalizing the tree clearance is appropriate (if the capitalization of an expense is at all proper). 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.

FirstEnergy also takes issue with the Auditor’s recommendation that the utilities supplement their vegetation management policies and procedures to provide more detail in support of the time sheet task codes used by contractors,<sup>20</sup> arguing that this recommendation is “unnecessary” and “costly to implement.”<sup>21</sup> The Auditor explained that the form of that support can be schematics, drawings, or pictures, concluding that “a simple method would be to take a before and after picture in support of work performed and charged to the task codes in question.”<sup>22</sup>

FirstEnergy’s claim that simple photography would be too time-consuming and data-demanding<sup>23</sup> is unpersuasive. The Auditor’s recommendation was made so that on a going-forward basis, FirstEnergy will be able to provide “sufficient detailed documentation to support the inclusion of capital charges in the DCR” and “to support

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<sup>20</sup> Audit Report at 17, 61.

<sup>21</sup> FirstEnergy Comments at 5-6.

<sup>22</sup> Audit Report at 17.

<sup>23</sup> FirstEnergy Comments at 7.

verification of work according to current vegetation management policies.”<sup>24</sup> Unless and until this is done, the vegetation management expenses at issue should be re-categorized as operations and maintenance expenses.

To protect consumers, the PUCO should adopt the Auditor’s recommendation to reduce by approximately \$3 million the DCR revenue requirement<sup>25</sup> and approximately \$16.7 million in distribution plant (or rate base)<sup>26</sup> for vegetation management work orders charged to Cost Codes 05, 14, 30, and 36 as identified in the Audit Report.

### **III. CONCLUSION**

OCC recommends, as does the PUCO Staff, that the PUCO adopt all of the recommendations and adjustments identified in the Audit Report. FirstEnergy’s arguments opposing the Auditor’s findings are unpersuasive. Specifically, the PUCO should take decisive steps regarding the policy, process, and accounting of FirstEnergy’s vegetation management programs as the Auditor recommended. 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

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<sup>24</sup>Audit Report at 17.

<sup>25</sup> See Audit Report at 61 (Adjustment #10 through Adjustment #13).  $\$2,991,478 = \$1,399,214 + \$1,122,072 + \$8,504 + \$461,638$ .

<sup>26</sup> See Audit Report at 61, Table 26.



unilateral adjustments to EDIT as the Auditor recommended. 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 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 Reply Comments was served on the persons stated below via electronic transmission this 11<sup>th</sup> day of August 2020.

/s/ Amy Botschner O'Brien  
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