

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2020 Review of The)
Delivery Capital Recovery Rider of Ohio) Case No. 20-1629-EL-RDR
Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo)
Edison Company.)

**CONSUMER PROTECTION REPLY COMMENTS REGARDING
FIRSTENERGY UTILITIES' CHARGES TO CONSUMERS UNDER THE
DELIVERY CAPITAL RECOVERY RIDER
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") supports the comments and recommendations filed by The Ohio Cable Telecommunications Association, The Ohio Hospital Association, and The Ohio Manufacturer's Association Energy Group on October 4, 2021. To protect consumers, it is clear from parties' comments and the Audit Report that the Public Utilities Commission of Ohio ("PUCO") should conduct additional investigation, and require management reform at the FirstEnergy Utilities.¹

OCC appreciates the opportunity to reply to the Comments filed by the parties, including the FirstEnergy Utilities, in the interest of consumer protection.

¹ The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

II. CONSUMER PROTECTION REPLY COMMENTS

A. Parties' comments confirm that consumer protections from the PUCO are necessary, consistent with OCC's recommendations.

In its comments, OCC raised substantial consumer protection concerns with the FirstEnergy Utilities' DCR charge and made necessary consumer protection recommendations. Comments filed by other parties confirm that OCC is not the only consumer group with such concerns and making such recommendations.

The Ohio Cable Telecommunications Association ("OCTA") pointed out that inappropriately including charges in pole attachment charges, as the FirstEnergy Utilities have done, "rank among the largest barriers to rural broadband deployment."² As OCTA explained, the inappropriate charges resulted from the FirstEnergy Utilities "recording costs associated with unrelated and questionable transactions to accounts used in calculating pole attachment rates."³ OCTA made various recommendations to the PUCO to prevent including inappropriate charges in pole attachment charges.⁴

Similar to OCC, the Ohio Hospital Association ("OHA") points out that "this year's DCR audit has a new level of importance because of the troubling information contained in the report addressing payments allegedly made to former PUCO Chair Sam Randazzo."⁵ OHA explains that "it appears that FirstEnergy may have made payments to entities that have or had a relationship with Mr. Randazzo amounting to \$14,441,982[,]" and that "it appears that \$6,487,604 of these payments may have been passed on to

² OCTA's Comments (filed October 4, 2021) at 1.

³ *Id.* at 2.

⁴ *Id.* at 3-4.

⁵ OHA's Comments (filed October 4, 2021) at 1.

customers through the DCR Rider.”⁶ Like OCC, OHA “is concerned the auditor has not gone far enough to fully investigate the actions of FirstEnergy[]” and “implores the Commission: (1) to investigate the basis for payments made to Mr. Randazzo; and (2) expand the scope of this investigation as necessary to determine any inappropriate funding by FirstEnergy through the DCR Rider.”⁷

The Ohio Manufacturers’ Association Energy Group (“OMA”) asserts that over the last ten years, the FirstEnergy Utilities “have unlawfully used customer dollars to enrich themselves and buy influence in Ohio.”⁸ In fact, according to OMA, “[t]he Audit Report and other documents produced in th[is] proceeding uncover a scheme where the FirstEnergy entities have abused their corporate structure and accounting systems to use customer dollars from Commission-approved rates to wield power in Ohio at the expense of their customers.”⁹ OMA is in agreement with OCC that consumers are entitled to a refund of all inappropriate dollars spent by the FirstEnergy Utilities and the need for an expanded PUCO investigation.¹⁰ “The Commission should take a deeper dive into the FirstEnergy Utilities’ books and do a thorough investigation of all costs paid for by customers and included in base rates, including such things as costs associated with the naming rights for FirstEnergy Stadium.”¹¹

⁶ *Id.*

⁷ *Id.* at 2.

⁸ OMA’s Comments (filed October 4, 2021) at 1.

⁹ *Id.* at 2.

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 3.

To protect consumers, it is clear from parties' comments that the PUCO should conduct additional investigation and require management reform at the FirstEnergy Utilities.

B. To protect consumers, the PUCO should prohibit the FirstEnergy Utilities from charging consumers for capitalized vegetation management expenditures that do not comply with FERC accounting requirements.

The Audit Report recommended excluding certain vegetation management capitalization costs (\$3,114,129).¹² That recommendation should be adopted to protect consumers. As the Audit Report found, including certain vegetation management capitalization costs is in conflict with the Federal Energy Regulatory Commission's Uniform System of Accounts.¹³ This results in consumers paying more under the DCR charge. FirstEnergy's assertion that this issue has been resolved in prior PUCO orders is baseless and wrong.¹⁴ This issue has been identified by the Auditor repeatedly and not resolved up to now.¹⁵

The Auditor has identified and made similar recommendations in the 2017, 2018, 2019, and 2020 Audit Reports.¹⁶ The Auditor identified several cost categories that should not be charged to capital.¹⁷ In capitalizing these expenses, the FirstEnergy Utilities are able to charge consumers a return on and of the expenses, as though the expenses

¹² OCC Comments at 4.

¹³ Audit Report at 27-28.

¹⁴ FirstEnergy Comments at 2-3.

¹⁵ See Audit Report at 27-28.

¹⁶ See Audit Report at 27-28.

¹⁷ Audit Report at 59.

were capitalized as a rate base item. This improper capitalization of tree-trimming expenses harms consumers by increasing the charges they pay.

The Auditor is fully aware of the PUCO decision in Case No. 17-2009-EL-RDR.

But as the Auditor specifically states:

In accordance with the ruling in Case No. 17-2009-EL-RDR, Blue Ridge continues to believe that the Companies' vegetation management policies and processes are in conflict with FERC Uniform System of Accounts. As ordered in that case, the Companies were instructed to implement the recommendations set forth in the 2017 Audit Report, which includes adjusting its current accounting policy regarding the capitalization of certain clearing activities. Therefore, Blue Ridge continues to recommend that the Companies revise their VM Accounting Policy to be consistent with the FERC Uniform System of Accounts.¹⁸

The PUCO Staff also filed reply comments in the 2019 DCR Audit case (still pending) supporting the recommendation of the Auditor. Specifically, the PUCO staff states:

Staff has reviewed the comments filed by the Companies and finds no compelling reason or evidence why the recommended vegetation management accounting exclusions made by Blue Ridge should not be implemented. Notably, the Companies continue to not provide any evidence that their accounting policy is in accordance with the Federal Energy Regulatory Commission Uniform System of Accounts (USoA), but rather rely on the argument that the Commission does not have to follow the USoA. For the reasons stated by the Auditor in its Audit Report, and in two other DCR Compliance Audits, any vegetation costs that are not associated with the establishment of an initial right-of-way (ROW) or official expansion of a utility's right-of-way should be expensed. Using the Companies' vegetation accounting policy, what would normally be accounted for as a maintenance expense would become eligible to be capitalized simply because the Companies did not conduct vegetation management inside its right-of-way for an extended period of time, allowing the tree inside the right-of-way to grow taller than a certain height (above the height zone which the Companies define as the boundary of their right-of-way corridor).¹⁹

¹⁸ Audit Report at 28.

¹⁹ PUCO Case No. 19-1887-EL-RDR, Staff Reply Comments at 1-2 (November 16, 2020).

There is simply no basis for the FirstEnergy Utilities to conclude that this issue has been resolved. It has not been. It should be here. To protect consumers, the PUCO should adopt the Auditor's recommendation excluding certain vegetation management capitalization costs (\$3,114,129).

C. To protect consumers, the PUCO should prohibit the FirstEnergy Utilities from charging consumers for using EDIT balances that differ from those approved in the prior settlement related to the Tax Cuts and Jobs Act of 2017.

To protect consumers, the PUCO should adopt the Auditor's recommendation of reducing the DCR revenue requirement of \$2,285,896 from the Excess Deferred Income Taxes ("EDIT") balance adjustments.²⁰ The FirstEnergy Utilities' continued insistence on using the EDIT balances different from those included in the settlement in Case No. 18-1604-EL-UNC is without merit and should be rejected.²¹

This is also not a new issue. It was addressed in the 2019 DCR Audit Report²² and in this Audit Report.²³ Specifically, the Auditor recommends reductions in the DCR revenue requirements of \$795,662 for CEI, \$1,331,512 for Ohio Edison, and \$158,722 for Toledo Edison, respectively, to account for the use of EDIT balances that are different from those agreed in the prior settlement for calculating DCR charges.²⁴

The Auditor states:

Blue Ridge found the Companies' response to lack clarity, casting doubt on the actual meaning of "final, audited balances." PricewaterhouseCoopers performed the external audit of the December 31, 2017, financial statements, and they issued an unqualified opinion on February 20, 2018— months prior to the Stipulation,

²⁰ OCC Comments at 4.

²¹ FirstEnergy Comments at 3-5.

²² Audit Report at 31.

²³ Audit Report at 104-109.

²⁴ Audit Report at 20-21.

filed on November 9, 2018, as well as the Supplemental Stipulation, filed on January 25, 2019. Since no specific true-up provisions exist in the Stipulation to adjust to the 2017 filed tax returns and other later known variables, Blue Ridge recommends restoring the EDIT balances to reflect those agreed to within the settlement and allowing parties to consider the Company's changes, such as the assertion that there is no EDIT associated with AFUDC equity, within the next Rider TSA annual filing. With respect to the reclass adjustments, Blue Ridge is neutral on their adoption since they have no impact on the total agreed upon liability to be refunded to customers. The EDIT categories with varying amortization periods are judgmental to some extent and an audit opinion would not render such definitional determinations official or correct.

Blue Ridge recommends reversing all EDIT adjustments, except for reclasses between normalized and non-normalized property, so that the Total Property EDIT reflected in Rider DCR matches the Total Property EDIT as of December 31, 2017, in the Stipulation. The scope of Blue Ridge's current investigation is limited to the property related EDIT balances in Rider DCR. Blue Ridge therefore has not and cannot validate the reclass from property to non-property was appropriately reflected in the new credit mechanism. The following table presents the result of Blue Ridge's recommendation.²⁵

There is no basis for the FirstEnergy Utilities to continue using the EDIT balances that are different from those approved in the settlement in Case No. 18-1656-EL-ATA.

OCC has filed comments in the 2019 DCR Audit case explaining that:

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. 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.²⁶

These comments are equally applicable in the current 2020 DCR Audit case. To protect consumers, the PUCO should adopt the adjustments and recommendations proposed in

²⁵ Audit Report at 107.

²⁶ PUCO Case No. 19-1887-EL-RDR, OCC Comments at 7 (July 27, 2020).

the Audit Report regarding this issue. It should reduce the DCR revenue requirements in the amounts of \$795,662 for CEI, \$1,331,512 for Ohio Edison, and \$158,722 for Toledo Edison, respectively, so that consumers do not pay unreasonable and unjust DCR charges. The EDIT balances agreed in the prior settlement should also be used, on a going-forward basis, in calculating future DCR charges.

III. CONCLUSION

The FirstEnergy Utilities arguments opposing the Auditor's findings are unpersuasive. The PUCO should take decisive steps regarding the FirstEnergy Utilities' policy, process, and accounting of vegetation management programs – as the Auditor and OCC recommend. The improperly recorded EDIT balances used by the FirstEnergy Utilities in calculating the DCR charges should also be adjusted based on those approved in the prior settlement – as the Auditor and OCC recommend.

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 14th day of October 2021.

/s/ William J. Michael

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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: Comments Consumer Protection Reply Comments Regarding FirstEnergy Utilities' Charges to Consumers Under the Delivery Capital Recovery Rider by Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.