

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY**

I. INTRODUCTION

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (“Companies”) appreciate the comments provided by the Office of the Ohio Consumers’ Counsel (“OCC”), the Ohio Manufacturers’ Association Energy Group (“OMAEG”), the Ohio Cable Telecommunications Association (“OCTA”), and the Ohio Hospital Association (“OHA”, with OCC, OMAEG, and OCTA, the “Intervenors”) regarding the expanded scope portion of the 2020 Audit Report (“Audit Report”) submitted by Blue Ridge Consulting Services, Inc. (“Blue Ridge”) with respect to the Companies’ Delivery Capital Recovery Rider (“Rider DCR”).¹

The Companies appreciate that these commenters, like the Companies, agree with Blue Ridge’s recommendations. The Companies also agree with OCC’s recommendation to add interest to the refunds, which the Companies intended to do, as they have done with other refunds. Given this agreement on the Audit Report’s recommendations, the Companies respectfully ask that the

¹ Compliance Audit of the 2020 Delivery Capital Recovery (DCR) Riders of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company and Expanded Scope (8/3/2021) (the “Audit Report”). Citations to the Expanded Scope portions of Blue Ridge’s report are identified as “Expanded Scope Audit Report at ___.”

Commission approve Blue Ridge’s recommendations, so that the Companies may implement these refunds to customers.

The Companies are, however, concerned by Intervenor comments suggesting that the Commission order a new investigation covering more than a decade of the Companies’ accounting records.² To be clear, the Companies recognize and respect the Commission’s, the parties’, and their customers’ concerns regarding the transactions addressed in the Audit Report. The Companies share these concerns and have been proactive about identifying these transactions and working cooperatively with the Commission to return funds to customers. And the Commission has acted with care to address these concerns, and more generally, the circumstances surrounding HB 6, by expanding the scope of the present audit, opening three other carefully-defined, complementary cases, and reinstating the requirement for the Companies to file a base distribution rate case by May 31, 2024. An expansive and open-ended review of years of transactions runs counter to that deliberate process and is not a workable solution to addressing the Intervenor’s concerns.

The Companies also disagree with Intervenor comments calling for the imposition of additional refunds, forfeiture, and the suspension or modification of Rider DCR. These measures are neither warranted by the findings of the Audit Report nor supported by Commission precedent. The Companies likewise disagree with comments from OCTA requesting certain “improvements” to the pole attachment ratemaking process and to the excess deferred income tax (“EDIT”) balance calculations, as these recommendations are either beyond the scope of this case or better addressed in other proceedings.

² See Comments of The Ohio Hospital Association, Case No. 20-1629-EL-RDR (filed 10/4/21), (“OHA”) at 2; Consumer Protection Comments on the Audit Report Regarding FirstEnergy’s Charges to Consumers Under the Delivery Capital Recovery Rider, Case No. 20-1629-EL-RDR (filed 10/4/21) (“OCC”) at 13-16; Comments of The Ohio Manufacturers’ Association Energy Group, Case No. 20-1629-EL-RDR (filed 10/4/21) (“OMAEG”) at 4-6.

Therefore, with the exception of Blue Ridge Adjustments # 21, 22, and 23 regarding EDIT, the Companies agree with and accept Blue Ridge's recommendations. The Companies also agree with the recommendation to pay customers interest on refund amounts. The Companies respectfully disagree, however, with the additional Intervenor recommendations discussed below.

II. REPLY TO INTERVENOR COMMENTS

A. The Companies Disagree with Intervenor Recommendations to Expand the Commission's Investigation.

A common thread among the Intervenors' comments is that the Commission has not gone far enough to determine whether *any* inappropriate expenses were included in Rider DCR costs.³ Ostensibly, these comments seek to have the Commission review every expense included in Rider DCR since the rider's implementation in 2012, which would include costs dating back to June 2007. The Companies are committed to transparency before the Commission, cooperating with the Commission's audits, investigating transactions that may have been improperly included in consumer rates, and self-disclosing errors. But individually reviewing every transaction included in Rider DCR since its inception⁴ is impractical.

The Companies will continue to cooperate completely with the Commission's ongoing, deliberate audit and review process. The expanded scope Audit Report was prepared based on the Commission's identification of additional vendor transactions disclosed in FirstEnergy Corp.'s Form 10K filed on February 18, 2021 and the Companies' provision of information to Staff regarding those transactions. And, just days before comments to the Audit Report were due, the

³ See OCC at 13; *see also* OMAEG at 11.

⁴ OCC at 13-15.

Commission directed Blue Ridge to again expand the scope of the 2020 audit “to determine if the costs of the naming rights for FirstEnergy Stadium have been recovered from ratepayers.”⁵

These Commission processes for reviewing transactions have been effective. But the Intervenor’s calls for an open-ended review of all Rider DCR-related transactions would lead to an unwieldy audit and a massive imposition on the Commission’s and the auditor’s resources which is not warranted.⁶

B. Forfeiture and Additional Consumer Refunds are Not Warranted in this Proceeding.

OMAEG and OCC both argue the Commission “should do more than merely require the [Companies] to return the improper charges to consumers” to deter future violations.⁷ Attributing the accounting errors to alleged corporate separation issues and an unfounded assertion of intentional conduct, the Intervenor asks the Commission to require that the Companies (1) forfeit \$3.5 million for penalties related to 346 “violations” of the Commission’s order approving Rider DCR,⁸ (2) pay customers interest on refund amounts,⁹ and (3) make additional refunds for charges without supporting documentation, regardless of whether those charges impacted rates.¹⁰ While the Companies intended to include interest on the refund amounts using their approved cost of

⁵ Entry, Case No. 20-1629-EL-RDR (9/29/21) at ¶ 1.

⁶ OCC also relies on the incorrect premise that the Commission’s Order approving Rider DCR requires “pre-approval” of each payment included in the rider calculation. *See* OCC at 10. Rather, Rider DCR was established in ESP II to provide the opportunity to recover costs associated with incremental rate base since the last rate case, subject to annual audit and adjustment. This annual audit, conducted by Blue Ridge, has been conducted since the inception of Rider DCR and serves as the review and approval process directed by the Commission in its Orders approving Rider DCR.

⁷ OCC at 2; OMAEG at 11.

⁸ OCC at 10, 12.

⁹ OCC at 7-8.

¹⁰ OMAEG at 11-12.

long-term debt, the Companies respectfully disagree with the assessment of additional financial penalties.

At the outset, issues surrounding the Companies' adherence to the Commission's corporate separation rules are not properly raised in this proceeding.¹¹ As the Intervenors are aware, the Companies are subject to a separate audit concerning their compliance with those rules.¹² Proposed remedies based on alleged corporate separation violations are simply outside the scope of the Rider DCR audit.

Further, the Companies have not "feigned ignorance" or intentionally misallocated charges through Rider DCR.¹³ Forfeiture, which is not required,¹⁴ is typically used to punish intentional bad acts or repeat offenders.¹⁵ Here, OCC assumes, with no record support, that the Companies intentionally misallocated charges through Rider DCR. That speculative assertion is wholly undermined by the fact that the Companies self-disclosed information regarding the transactions subject to the expanded scope audit. The Companies have likewise agreed with all of the

¹¹ OCC at 12; OMAEG at 9-10.

¹² See Case No. 17-974-EL-UNC, Compliance Audit Report (Sept. 13, 2021).

¹³ OCC at 13; OMAEG at 2, 9.

¹⁴ Ohio Rev. Code § 4905.54 ("Except as otherwise specifically provided in section 4905.95 of the Revised Code, the public utilities commission *may assess* a forfeiture of not more than ten thousand dollars for each violation or failure against a public utility or railroad that violates a provision of [Chapters 4901., 4903., 4905., 4907., and 4909] or that after due notice fails to comply with an order, direction, or requirement of the commission that was officially promulgated. Each day's continuance of the violation or failure is a separate offense. All forfeitures collected under this section shall be credited to the general revenue fund.") (emphasis added).

¹⁵ See, e.g., *In the Matter of the Investigation of Columbia Gas of Ohio, Inc. Relative to its Compliance with the Natural Gas Pipeline Safety Standards and Related Matters*, Case No. 19-452-GA-GPS, Finding and Order, ¶ 9 (February 27, 2019) (ordering forfeiture for repeated failures); *In the Matter of the Investigation of Columbia Gas of Ohio, Inc. Relative to its Compliance with the Natural Gas Pipeline Safety Standards and Related Matters*, Case No. 20-1759-GA-GPS, Finding and Order, ¶ 12 (February 24, 2021) (ordering forfeiture where Staff found a "pattern" of over-pressurization events and previously identified Columbia Gas's deficiencies in compliance); *In the Matter of the Investigation of Columbia Gas of Ohio, Inc. Relative to its Compliance with the Natural Gas Pipeline Safety Standards and Related Matters*, Case No. 21-322-GA-GPS, Opinion and Order, ¶ 14 (September 8, 2021) (imposing forfeiture and noting that "the incident at hand bears similarity" to an over-pressurization event that occurred the year prior).

recommendations made by Blue Ridge with respect to the vendor payments.¹⁶ Beyond this, OCC's reference to 346 "violations" of the Commission's order approving Rider DCR is off base. The Audit Report does not conclude that the Companies violated a Commission order (or any statutes or rules); rather, it recommends adjustments to the Rider DCR revenue requirements for costs that should not have been included in the rider, not dissimilar from recommendations to adjust the Rider DCR revenue requirements that have been included in prior year's audits. Adjustments for accounting errors are not uncommon in audit proceedings, and each adjustment recommended by an auditor does not rise to the level of a sanctionable violation.¹⁷

Finally, OMAEG's argument that the Commission should require the Companies to refund any charges "without supporting documentation" regardless of any rate impact is unreasonable. OMAEG incorrectly claims that the Companies recommend "retaining customers' monies" for each identified vendor transaction that did not impact rates.¹⁸ That argument is fundamentally flawed. If a transaction did not impact rates, the Companies did not collect from their customers any of the costs associated with that transaction. The Companies are therefore not "retaining" any funds paid by their customers. And for the same reason, there is nothing to refund.

The Companies do not dispute that cost allocation errors resulted in some additional charges to customers. The Companies have, however, proactively worked with the Commission

¹⁶ *In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of First Energy*, Case No. 20-1629-EL-RDR, Comments of Ohio Edison Company, The Cleveland Electric Company, and the Toledo Edison Company (Oct. 4, 2021) at 5-7 (agreeing to implement recommendations related to customer refunds and rate exclusions, among other recommendations).

¹⁷ OCC also incorrectly suggests that each of the 346 vendor payments identified in the audit report concerns Rider DCR revenue requirements. While Blue Ridge reviewed each of these payments as directed by the Commission, only 67 of the 346 payments affected the Rider DCR revenue requirement. *See* Expanded Scope Audit Report at 19. The remaining vendor payments related to other rate mechanisms.

¹⁸ OMAEG at 2.

to identify and address those charges, and will continue to do so. For these reasons, the Companies disagree with the imposition of additional financial penalties.

C. Neither a Suspension nor Modification of Rider DCR Is Warranted.

OCC contends that the Commission should “suspend collecting the DCR charge.”¹⁹ But this drastic measure is not called for here. As the Commission has recognized, Rider DCR is integral to the Companies’ ability to invest in infrastructure, allowing the Companies to earn a return of and on plant in service associated with distribution, subtransmission, general, and intangible plant.²⁰ “These distribution investments are necessary to maintain distribution reliability at current levels.”²¹ And an indefinite suspension of Rider DCR would imperil the Companies’ ability to make such investments and could negatively impact distribution reliability in the Companies’ service territory.

Alternatively, OCC claims that, during the pendency of a management audit and investigation, the return on equity (“ROE”) under Rider DCR should be reduced by 200 basis points from 10.50% to 8.50%.²² This proposal should be rejected for several reasons. For one thing, such a reduction is premature without any supporting findings in the Audit Report. Indeed, this point is underscored by the disproportionate penalty OCC seeks. The cumulative impact of the vendor transactions on the Rider DCR revenue requirement over the seven-year period of 2014-2020 was \$3.24 million.²³ But OCC’s recommended revenue requirement penalty, when properly taking into account the income tax impact of a 200 basis point reduction to the ROE,

¹⁹ OCC at 17.

²⁰ Case No. 14-1297-EL-SSO, Opinion and Order (March 31, 2016), at 93.

²¹ *Id.*

²² OCC at 16.

²³ *See* Expanded Scope Audit Report at 19, 21.

amounts to over \$15 million annually—far out of proportion with the cumulative impact of the vendor payments.²⁴ OCC’s proposal would likewise circumvent the established annual Rider DCR audit process. The ROE reduction proposed by OCC would not allow for any sort of reconciliation process if future identified Rider DCR revenue requirement adjustments are less than the \$15 million annual impact proposed by OCC.

D. OCTA’s Requests to Improve Pole Attachment Rate Calculations and Resolve Excess Deferred Income Tax Balances Are Misplaced.

Instead of commenting on the Audit Report, OCTA seeks procedural changes to the pole attachment ratemaking process. OCTA recommends that the Commission direct the Companies to (1) substantiate their future pole attachment rate adjustment applications by including explanations and detailed utility-specific documentation; (2) identify the specific sources of the formula inputs in their rate adjustment applications; (3) submit affidavits affirming the accuracy and veracity of their rate adjustment applications; (4) provide rate adjustment applications (and detailed utility-specific documentation) to the OCTA concurrent with its filings; and (5) work cooperatively with the parties in their pole attachment rate adjustment proceedings to allow for more successful reviews and analyses of those applications.²⁵ On its face, OCTA’s submission has little to do with this proceeding or the Audit Report’s findings. While certain of OCTA’s recommendations may be reasonable, the Companies respectfully suggest that OCTA’s suggestions be addressed in the Companies’ pole attachment rate proceedings.

As for OCTA’s position regarding the treatment of EDIT balances,²⁶ the Companies, as explained in their initial comments, disagree with Blue Ridge’s recommendations because the

²⁴ The \$11.7 million revenue requirement impact asserted by OCC fails to consider income tax implications.

²⁵ Initial Comments, Case No. 20-1629-EL-RDR (filed 10/4/21) (“OCTA”) at 3-4.

²⁶ OCTA at 4.

balances reflected in Rider DCR are consistent with the terms of the Stipulation and Recommendation approved by the Commission on July 17, 2019 in Case No. 18-1604-EL-UNC.²⁷ For this reason, OCTA’s assertion that the Commission “should resolve the outstanding issue” of the Companies’ compliance with the July 17, 2019 Order is incorrect.

III. CONCLUSION

The Companies appreciate the opportunity to further comment on the auditor’s comprehensive report and to address the Intervenors’ comments. In addition to agreeing with Intervenor recommendations requesting the payment of interest on refunded amounts, the Companies respectfully reiterate their request that the Commission:

1. Decline to adopt Blue Ridge’s Adjustments # 21, 22, and 23 regarding EDIT;
2. Adopt and accept the remaining adjustments and recommendations in the 2020 Audit Report, including the expanded scope portion.

²⁷ Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, Case No. 20-1629-EL-RDR (filed 10/4/21) (“Comments”) at 3-5.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Comments by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company were filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 14th day of October, 2021. The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Ryan A. Doringo _____

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Summary: Reply Comments electronically filed by Ryan A. Doringo on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company