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Statewide

PUCO Vacates Order Establishing Clean Air Fund Rider (Case No. 20-1143-EL-UNC)

Summary: Pursuant to the recent injunction issued by the Franklin County Court of Common Pleas, the PUCO vacated its Aug. 26, 2020 entry establishing the HB 6 Clean Air Fund Rider and authorizing the collection of up to \$170 million annually from customers in HB 6 subsidies. The PUCO stated that the Ohio Air Quality Development Authority (OAQDA) reported that in light of the injunction, payments from the Clean Air Fund made to Energy Harbor, its affiliates, and subsidiaries will temporarily cease and that collection of charges from customers was no longer necessary.

Additionally, OAQDA explained that no further nuclear generation credits will be issued to Energy Harbor while the injunction is in effect. Oddly, the OAQDA failed to mention the injunction associated with payments from the Clean Air Fund to renewable generation resources, which were also scheduled to be collected from customers. Nonetheless, the PUCO properly vacated its entire order. With the vacation of the PUCO order, the PUCO likely believes that OMAEG's appeal and the stay issued by the Supreme Court of Ohio last week is moot. The PUCO merely recognized the stay issued by the Court in a footnote.

The order is a win for customers.

Duke

OMAEG Opposes Duke's Request for Rehearing of PUCO EE Wind-Down Order (Case Nos. 16-576-EL-POR, et al.)

Summary: On Dec. 28, 2020, OMAEG opposed Duke's request that the PUCO reconsider its decisions related to the wind-down of the mandated energy efficiency (EE) programs. Specifically, OMAEG advocated that the PUCO should uphold its decision that Duke and other electric distribution utilities are prohibited from collecting lost distribution revenues and shared savings after the termination of the mandatory EE programs on Dec. 31, 2020 since HB 6 required the EE riders to terminate on Dec. 31, 2020 and only allows for a true-up after that date for reconciliation purposes solely for EE compliance costs. OMAEG explained that lost distribution revenues and shared savings are not a cost of compliance

and therefore Duke has no basis to collect these monies now that the EE programs have terminated per HB 6.

FirstEnergy

PUCO Orders FirstEnergy to File New Rate Case by May 31, 2024 (Case No. 19-361-EL-RDR)

Summary: As you may recall, the Supreme Court of Ohio in 2019 ordered the PUCO to remove the Distribution Modernization Rider (DMR) from the FirstEnergy Utilities' Fourth Electric Security Plan (ESP IV). The PUCO removed the DMR from ESP IV as instructed, but simultaneously and unlawfully eliminated the requirement that the FirstEnergy Utilities file a rate case at the conclusion of ESP IV. In a previous ESP IV order, the PUCO had directed the Utilities to file a new distribution rate case at the conclusion of ESP IV because, at the time, it had been 17 years since the last rate case.

On Dec. 30, 2020, the PUCO denied a request from the Environmental Law & Policy Center (ELPC) to vacate the PUCO's order and conduct new proceedings in the DMR Extension Case. The PUCO determined that because ELPC did not request rehearing, it could not demonstrate any prejudice from the PUCO's decision. However, the PUCO, upon its own initiative, reinstated the requirement that the FirstEnergy Utilities must file a new rate case by the conclusion of ESP IV on May 31, 2024. The PUCO stated that its decision was based on state policy to ensure the availability of reasonably priced, safe, and non-discriminatory electric service. Commissioner Conway emphasized his support for this decision and stated that periodic rate cases are beneficial to customers because misalignment can occur between costs and rates. It is noteworthy that OMAEG previously did seek rehearing this part of the PUCO's prior decision and that rehearing was denied.

The reversal is a win for customers. It will have the effect of terminating the HB 6 decoupling mechanism when new rates go into effect per the rate case.

PUCO Orders New DMR Audit (Case No. 17-2474-EL-RDR)

Summary: In response to a request from the Office of the Ohio Consumers' Counsel (OCC), the PUCO opened a new audit of the FirstEnergy Utilities' distribution modernization rider (DMR) to determine if any of the DMR charges already collected – which the Court stated could not be refunded to customers even though the rider was deemed unlawful – were used to improperly fund HB 6 efforts. The PUCO found good

cause to grant OCC's request "given the unique circumstances at this time" and "in the interests of both transparency and state policy."

The PUCO clarified that the audit will include an examination of the period leading up to the enactment of HB 6 and the subsequent referendum effort to ensure funds collected from customers through the DMR were only used for purposes established in the FirstEnergy Utilities' ESP I. The PUCO seems to be saying that if they deem any of the funds collected via the DMR charge were used toward HB 6 efforts, they may be refunded to customers.

The initiation of an audit is a win for customers.

New Consumer Group Files HB 6 Complaint Against FirstEnergy (Case No. 20-1756-EL-CSS)

Summary: The Citizens' Utility Board of Ohio, a consumer non-profit, filed an HB 6-related complaint against the FirstEnergy Utilities with the PUCO. The complaint alleges that: (1) the utilities' decoupling mechanism is unjust and unreasonable; (2) the utilities' corporate separation plan violates Ohio's laws and regulations; and (3) increases to customers' rates resulting from HB 6 or proceedings over which former PUCO Chairman Randazzo presided are unlawful.

The utilities have until Jan. 11, 2021 to respond to the complaint.