**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application for Establishment of a Reasonable Arrangement between Ohio Edison Company and Chestnut Commerce Center LLC. | ))))) | Case No. 24-388-EL-AEC |

**COMMENTS FOR CONSUMER PROTECTION**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# I. INTRODUCTION

Chestnut Commerce Center, LLC (“Chestnut”) is seeking PUCO approval of a reasonable arrangement[[1]](#footnote-3) to, among other things, facilitate a data processing center for cryptocurrency mining operations. Chestnut seeks the reasonable arrangement so it can participate in FirstEnergy’s[[2]](#footnote-4) transmission opt-out pilot program (“Rider NMB opt-out pilot program”). The PUCO just rejected a similar proposal for a reasonable arrangement by another “energy-intensive” cryptocurrency mining operation.[[3]](#footnote-5) The PUCO should reject Chestnut’s proposal as well.

FirstEnergy’s Rider NMB opt-out pilot program allows some non-residential consumers to avoid paying transmission charges under Rider NMB. However, residential utility consumers cannot participate in the Rider NMB opt-out pilot program. Residential consumers must pay the transmission charges assessed to them under Rider NMB. And residential utility consumers must pay more. A recent audit shows that FirstEnergy’s Rider NMB opt-out pilot program shifts *over a million dollars* per year to residential consumers who have *no choice* but to pay Rider NMB rates.[[4]](#footnote-6)

Now is not the time to expand the pilot program given the unfolding events in the H.B. 6 scandal. The PUCO should consider the ramifications of allowing Chestnut to take advantage of a program allegedly borne out of an undisclosed side deal with the former PUCO Chair, a program which may prove to be void or voidable. And the PUCO should also seriously consider the grossly disproportionate material grid load generated by Chestnut[[5]](#footnote-7) versus the economic benefit (35 existing jobs)[[6]](#footnote-8) and potential future transmission billing options available to Chestnut.[[7]](#footnote-9) Chestnut’s application should be denied.

# II. RIDER NMB OPT-OUT PILOT PROGRAM BACKGROUND

The Rider NMB opt-out program came from FirstEnergy’s 2016 electric security plan. It was a benefit for industrial consumers that was written into a non-unanimous settlement of FirstEnergy’s fourth electric security plan.[[8]](#footnote-10) Under the Rider NMB opt-out pilot program, certain industrial consumers did not have to pay for transmission charges under Rider NMB and instead could obtain transmission service on their own.[[9]](#footnote-11)

At the time, the PUCO described the Rider NMB opt-out pilot program as providing an “opportunity to determine if industrial customers can obtain substantial savings by obtaining certain transmission services outside of Rider NMB *without imposing significant costs on other customers*.”[[10]](#footnote-12) Because the Rider NMB opt-out pilot program was supposed to be a *pilot program*, it was intended to be studied and used as a learning experience for regulatory policymaking. Accordingly, the PUCO directed FirstEnergy and the PUCO Staff “to continuously review the actual results of the Rider NMB pilot program and periodically report their findings to the Commission.”[[11]](#footnote-13)

After a nearly seven-year delay, the PUCO appointed Exeter Associates, Inc. to conduct an independent audit of the Rider NMB opt-out pilot program.[[12]](#footnote-14) Exeter noted that the Rider NMB opt-out pilot program unfairly shifted more than $1 million a year in transmission costs to residential consumers. Over the six-year period under review, Exeter found $7.8 million of costs were unfairly shifted from the pilot program participants to the other non-participating consumers paying Rider NMB.[[13]](#footnote-15) As a result, Exeter recommended ending Rider NMB for all consumers.[[14]](#footnote-16)

Curiously, the FirstEnergy pilot program was singled out in the state’s indictment of former PUCO Chair Randazzo as part of an alleged undisclosed side agreement between FirstEnergy and the former PUCO Chair.[[15]](#footnote-17) FirstEnergy also recently disclosed that it is under investigation on state criminal charges.[[16]](#footnote-18) The PUCO investigation into the side agreement has recently resumed.[[17]](#footnote-19)

But the reasonable arrangement sought by Chestnut would capitalize on the pilot program, which at this point, given the audit and the state indictment, and ongoing state criminal investigation, seems wrong. The indictment of the former PUCO Chair on both state and federal charges[[18]](#footnote-20) and the alleged undisclosed side deal between FirstEnergy and the former PUCO Chair and the ongoing state criminal investigation of FirstEnergy squarely calls into question whether the opt-out pilot program should continue.

# III. CHESTNUT’S REASONABLE ARRANGMENT APPLICATION

Located in northeastern Ohio, Chestnut leases 180,000 square feet of space to six tenants that employ a total of only 35 people. The tenants use the space for, among other things, storage facilities, data processing, and mining cryptocurrencies such as Bitcoin.[[19]](#footnote-21) Chestnut’s energy devouring tenants have consumed more than 700,000 kWh in each of the past three months, primarily to support data processing and cryptocurrency mining operations.[[20]](#footnote-22) Chestnut currently operates at over 2,000 kVA of demand and has plans to increase demand at its facility to support additional cryptocurrency mining operations.[[21]](#footnote-23) Chestnut claims that there will be no delta revenues to be paid by other customers if the PUCO approves its application.[[22]](#footnote-24)

Chestnut explains that Cryptocurrency mining is the process by which new digital “coins,” such as Bitcoin, are entered into circulation.[[23]](#footnote-25) Mining is also the process by which ownership of existing coins is recorded, and the process by which transactions are validated.[[24]](#footnote-26) Cryptocurrency mining is performed using numerous and very sophisticated computers that solve extremely complex computational math problems requiring significant energy usage.[[25]](#footnote-27)

# IV. RECOMMENDATION

The PUCO should deny Chestnut’s Reasonable Arrangement Application. While there may be no delta revenues to be paid by other customers, approval of Chestnut’s application will result in more transmission charges being unfairly shifted to FirstEnergy residential consumers. And given the state’s recent revelation that the pilot program was allegedly part of the side dealing between FirstEnergy and former Chair Randazzo, it would seem wrong to allow Chestnut to take advantage of a program that may prove to be void or voidable.

In another recent reasonable arrangement case involving a cryptocurrency mining business, the PUCO rejected the proposed reasonable arrangement for the following reasons:

The Commission finds that Glorious Sky did not meet its burden to demonstrate that its application for a reasonable arrangement satisfies all requirements of Ohio Adm.Code 4901:1-38-05. Specifically, Glorious Sky did not demonstrate that the proposed arrangement would be in the public interest, as required by Ohio Adm.Code 4901:1-38-05(B)(1). The Commission emphasizes that Glorious Sky’s operations would create a significant incremental load increase to the grid and NMB Pilot of up to 18 MW. The Commission does not find there to be sufficient substantial contribution to economic development or other public interest benefits in Glorious Sky’s proposal to warrant approval.[[26]](#footnote-28)

The PUCO also recently rejected a reasonable arrangement between Viking Data Center LLC (“Viking”) and FirstEnergy.[[27]](#footnote-29) Viking operates a data center which provides blockchain service – the same technology used for cryptocurrency mining.[[28]](#footnote-30) Blockchain service providers and cryptocurrency miners are similar in that both use prodigious amounts of electricity but neither one produces many high quality, well-paying jobs.

The PUCO should follow its decisions in *Glorious Sky* and *Viking* by denying Chestnut’s application. Chestnut’s electricity usage is also disproportionate to any economic benefit justifying a special rate arrangement. Chestnut also may have the opportunity to take advantage of other billing options that would make a reasonable arrangement unnecessary.

At the very least, the PUCO should not rule on Chestnut’s application until a final order has been issued in related cases (Case Nos. 23-301-EL-SSO, 22-391-EL-RDR and 20-1629-El-RDR). In Case No. 23-301-EL-SSO, the PUCO will be ruling on whether Rider NMB and the Rider NMB opt-out pilot program will continue and whether other transmission billing options will be established rendering Chestnut’s reasonable arrangement unnecessary. In Case No. 22-391-EL-RDR, the PUCO is examining Exeter’s audit finding on the pilot program. In Case No. 20-1629-EL-RDR, the PUCO will be ruling on whether FirstEnergy violated Ohio law through its undisclosed side dealing with the former PUCO Chair which, among other things, may have facilitated the establishment of Rider NMB.

# V. CONCLUSION

The PUCO should protect consumers from unjust and unreasonable charges that result from cost-shifting in FirstEnergy’s Rider NMB opt-out pilot program. Chestnut’s reasonable arrangement will only add to the unfair cost-shifting already occurring under the pilot. Also, the PUCO should not approve a reasonable arrangement such as Chestnut’s where its electricity usage is disproportionate to any economic benefit. Chestnut’s reasonable arrangement should be rejected as unjust and unreasonable.

If the PUCO declines to outright reject Chestnut’s application, it should at a minimum hold it in abeyance until after it issues final orders in related cases: Case Nos. 23-301-EL-SSO, 22-391-EL-RDR and 20-1629-EL-RDR.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of the foregoing Comments for Consumer Protection was served on the persons stated below via electronic transmission, this 6th day of May 2024.

 */s/ John Finnigan*

 John Finnigan

 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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1. *See* R.C. 4905.31 and O.A.C. 4901-38-05. [↑](#footnote-ref-3)
2. “FirstEnergy” collectively refers to Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company. [↑](#footnote-ref-4)
3. *In the Matter of the Application for Establishment of a Reasonable Arrangement for Glorious Sky LLC*, Case No. 24-143-EL-AEC, Finding and Order (May 1, 2024). [↑](#footnote-ref-5)
4. *See* *In the Matter of the Review of the Non-Market-Based Services Rider Pilot Program Established by Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company*, Case No. 22-391-EL-RDR, Exeter Associates, Inc., Review of the Non-Market Based Services Riders Established by Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (July 17, 2023) (“Audit Report”) at 20. [↑](#footnote-ref-6)
5. Application at 2. [↑](#footnote-ref-7)
6. *Id.* [↑](#footnote-ref-8)
7. *See* *In the Matter of the Application for Establishment of a Reasonable Arrangement for Glorious Sky LLC*, Case No. 24-143-EL-AEC, Staff Review and Recommendation (April 17, 2024). [↑](#footnote-ref-9)
8. *In re Application of [FirstEnergy] for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Elec. Sec. Plan*, Case No. 14-1297-EL-SSO, Opinion & Order at 18 (March 31, 2016). [↑](#footnote-ref-10)
9. *Id.* at 18-19 (the purpose of NMB opt-out pilot program is “to explore whether certain customers could benefit from opting out of the Companies’ Rider NMB and obtaining all transmission and ancillary services through the Open Access Transmission Tariff and other PJM governing documents . . . or whether the administrative burden to the Companies, and the cost and risk to the customer, would render this option impractical”). [↑](#footnote-ref-11)
10. *Id.* at 94 (emphasis added). [↑](#footnote-ref-12)
11. *In re Application of [FirstEnergy] for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Elec. Sec. Plan*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing ¶ 310 (Oct. 12, 2016). [↑](#footnote-ref-13)
12. *In the Matter of the Review of the Non-Market-Based Services Rider Pilot Program Established by Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company,* Case No. 22-391-EL-RDR, Entry (April 20, 2022). [↑](#footnote-ref-14)
13. Audit Report at 20. [↑](#footnote-ref-15)
14. *Id.* at 50. [↑](#footnote-ref-16)
15. State Indictment for Engaging in a Pattern of Corrupt Activity with specification at 5 “Although FirstEnergy did file a stipulated agreement with the PUCO in ESP-IV describing a settlement between IEU-Ohio and FirstEnergy for favorable rate terms as part of a “pilot project,” the stipulation made no mention of the cash payments for IEU-Ohio that Randazzo negotiated with FirstEnergy” (Feb. 12, 2024). [↑](#footnote-ref-17)
16. E. Howland, *FirstEnergy may ‘put a little money on the table’ to help end HB 6 bribery litigation: CEO*, Utility Dive (April 29, 2024). [↑](#footnote-ref-18)
17. *In the Matter of In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company*, Case No. 20-1629-EL-RDR, Entry (Feb. 26, 2024). [↑](#footnote-ref-19)
18. U.S. Attorney’s Office, Southern District of Ohio (Dec. 4, 2023), <https://www.justice.gov/usao-sdoh/pr/grand-jury-indicts-former-state-public-utilities-chairman-federal-bribery-embezzlement>; Attorney General of the State of Ohio (Feb. 12, 2024), <https://www.ohioattorneygeneral.gov/Media/News-Releases/February-2024/Former-PUCO-Chairman-Former-FirstEnergy-Executives>. [↑](#footnote-ref-20)
19. Application at 2. [↑](#footnote-ref-21)
20. *Id.* [↑](#footnote-ref-22)
21. *Id.* at 3. [↑](#footnote-ref-23)
22. *Id.* at 1. [↑](#footnote-ref-24)
23. *Id.* at 2*.* [↑](#footnote-ref-25)
24. *Id.* [↑](#footnote-ref-26)
25. *Id.* [↑](#footnote-ref-27)
26. *In the Matter of the Application for Establishment of a Reasonable Arrangement for Glorious Sky LLC*, Case No. 24-143-EL-AEC, Finding and Order at ¶ 11 (May 1, 2024). [↑](#footnote-ref-28)
27. *In the Matter of the Application for Establishment of a Unique Arrangement between Viking Data Center LLC and Ohio Edison Company,* Case No. 24-146-EL-AEC, Finding and Order (May 1, 2024). [↑](#footnote-ref-29)
28. *Id.* [↑](#footnote-ref-30)