**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan. | )  )  )  )  )  )  ) | Case No. 23-301-EL-SSO |

**JOINT REPLY TO OHIO ENERGY GROUP’S MEMORANDUM CONTRA MOTION FOR LIMITED STAY OF RIDER DCR IN ESP V DISTRIBUTION RIDERS**

**BY**

**NORTHWEST OHIO AGGREGATION COALITION**

**OFFICE OF THE OHIO CONSUMERS' COUNSEL**

**AND**

**OHIO MANUFACTURERS’ ASSOCIATION ENERGY GROUP**

# I. INTRODUCTION

The Ohio Energy Group’s (“OEG”) Memorandum Contra is without merit. The Public Utilities Commission of Ohio (“PUCO”) therefore should grant the Motion for Limited Stay filed by the Office of the Ohio Consumers’ Council, Ohio Manufacturers’ Association Energy Group and the Northwest Ohio Aggregation Coalition (“Joint Movants”).

OEG initially states that the relief requested by Joint Movants’ Motion is unclear. In response, Joint Movants note that their Motion clearly asked that “the PUCO should stay the consideration of Rider DCR as requested in this case [*i.e*., ESP V] until FirstEnergy’s distribution rate case and after the [House Bill 6 (“H.B. 6”)] investigations are concluded.”[[1]](#footnote-2)

OEG next argues that staying Rider DCR would cause it to expire on May 31, 2024 when ESP IV ends and “[t]his would cause the Companies to incur an unsustainable annual revenue reduction of approximately $390 million from May 31, 2024 until new base rates go into effect approximately one year later.”[[2]](#footnote-3) Joint Movants agree that the PUCO could end Rider DCR on May 31, 2024, but disagree that such an outcome is “unsustainable.” FirstEnergy could attempt to mitigate the impacts of losing Rider DCR by filing its next rate case earlier than May 2024. But the PUCO could also just stay the consideration of Rider DCR under the new ESP V and could continue it as is until the PUCO completes its review of the litigated issues in this case and after the H.B. 6 investigations conclude, and the PUCO has determined how much of Rider DCR was improperly charged to and collected from customers.

Finally, OEG argues that the PUCO has no legal basis for granting the Motion for Limited Stay requested by Joint Movants. This argument is feckless. It would be well within the PUCO’s authority to stay consideration of Rider DCR until after the base rate case and/or the H.B. 6 investigations are concluded. In fact, this would be consistent with the PUCO’s stay orders of the H.B. 6 audits and investigations themselves.

In the settlement of ESP IV, the Signatory Parties[[3]](#footnote-4) agreed to a continuation of Rider DCR during the term of ESP IV. Portions of FirstEnergy’s ESP IV are presently under investigation, through Case No. 20-1629-EL-RDR, where the PUCO expanded the audit scope to include an investigation of whether FirstEnergy violated R.C. 4928.145, which governs FirstEnergy’s obligation to disclose “side agreements” during the ESP IV case.[[4]](#footnote-5)

The ongoing criminal investigation may likely reveal side agreements between former Chair Randazzo and FirstEnergy that are the subject of the indictment. Indeed, in the Deferred Prosecution Agreement, FirstEnergy admitted that “[a] 2013 consulting agreement was subsequently amended in 2015. The 2015 amendment coincided with and *was made in exchange for* [Mr. Randazzo’s] industrial group withdrawing its opposition to a 2014 PUCO Electric Security Plan settlement package involving FirstEnergy Corp.’s Ohio electric distribution subsidiaries.”[[5]](#footnote-6)

The commonality is obvious between the H.B. 6 investigation and audit case involving Rider DCR and FirstEnergy’s request to re-approve Rider DCR in the present ESP V case – if Rider DCR had not been re-approved in the ESP IV case, then there would be no Rider DCR to re-approve in the present case.

Rider DCR was re-approved in ESP IV in accordance with a provision of FirstEnergy’s ESP IV settlement that former Chair Randazzo on behalf of his client—referred to as “Industry Group 1” in the indictment—agreed not to oppose seemingly in exchange for more favorable treatment as part of the ESP IV settlement. With

FirstEnergy’s support, Mr. Randazzo became the PUCO’s Chair in order to “perform[] official action for the benefit of [FirstEnergy], as requested and as opportunities arose.”[[6]](#footnote-7)

These “official actions” apparently included eliminating FirstEnergy’s requirement to file a new base rate case in 2024 at the end of ESP IV.[[7]](#footnote-8) Rider DCR allowed FirstEnergy to collect its capital expenses without needing to file a rate case. On the other hand, eliminating the 2024 rate case helped FirstEnergy by allowing it to avoid

reducing its rates due to reduced operating costs in other areas of its business – referred to in the indictment as “the Ohio hole.”[[8]](#footnote-9)

This new information and the criminal proceeding could impact Rider DCR charges to consumers. Based on the questionable legitimacy of those costs, it is imperative that the PUCO protect consumers by granting a stay of the consideration of Rider DCR as part of ESP V until after FirstEnergy’s next distribution rate case and/or after the H.B. 6 audit cases are resolved and former Chair Randazzo’s indictment runs its course.

While the PUCO has stayed some investigations into the H.B. 6 scandal at the request of federal prosecutors,[[9]](#footnote-10) it has not stayed other FirstEnergy pending proceedings. As such, the PUCO is effectively preventing consumers from getting much-needed answers about how much FirstEnergy charged (and is continuing to charge) consumers for expenses underlying criminal activities admitted to by FirstEnergy Corp. and now alleged to have involved former Chair Randazzo.

To date, the PUCO’s stays have been a one-way street where the only parties harmed are consumers. The PUCO should change course by staying FirstEnergy’s Rider DCR. The new indictment shows how Rider DCR is inextricably intertwined with FirstEnergy’s criminal H.B. 6 scheme. It’s time for the PUCO to “follow the facts wherever they may lead” by adopting an even-handed approach to its use of administrative stay orders and holding FirstEnergy accountable for its criminal actions.

# II. CONCLUSION

The PUCO should reject OEG’s arguments and grant Joint Movants’ Motion for Limited Stay.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Joint Reply to Ohio Energy Group’s Memorandum Contra Motion for Limited Stay of Rider DCR in ESP V Distribution Riders was served on the persons stated below via electronic transmission, this 26th day of December 2023.

*/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. Motion for Limited Stay at 14. [↑](#footnote-ref-2)
2. OEG Memorandum Contra at 3. [↑](#footnote-ref-3)
3. While not a Signatory Party, Randazzo, on behalf of Industrial Energy Users-Ohio, filed a letter with the PUCO on May 28, 2015 stating that IEU-Ohio “shall not oppose either the settlement package described in the Stipulation or the Commission’s approval of such settlement package.” This was mere hours after FirstEnergy filed a supplemental stipulation naming IEU-Ohio as one of the few groups eligible to participate in a pilot program offering more favorable transmission billing. [↑](#footnote-ref-4)
4. *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 (December 15, 2021). [↑](#footnote-ref-5)
5. *United States of America v. FirstEnergy Corp.,* Case No. 1:21-cr-86, Deferred Prosecution Agreement at 34 (July 22, 2021) (emphasis added). [↑](#footnote-ref-6)
6. *United States of America v. Samuel Randazzo*, Case No. 1:23-cr-114, Indictment at 6 (November 29, 2023). [↑](#footnote-ref-7)
7. *Id.* at 11-12. [↑](#footnote-ref-8)
8. *Id.* [↑](#footnote-ref-9)
9. *In the Matter of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry (August 24, 2023); *In the Matter of the Review of the Distribution Modernization Rider of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company,* Case No. 17-2474-EL-RDR, Entry (August 24, 2023); *In the Matter of the Review of the Political and Charitable Spending by Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company,* Case No. 20-1502-EL-UNC, Entry (August 24, 2023); *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 (August 24, 2023). [↑](#footnote-ref-10)