**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Review of the Non-Market-Based Services Rider Contained in the Tariffs of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company. | )  )  )  )  )  ) | Case No. 24-22-EL-RDR |

**CONSUMER PROTECTION COMMENTS**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# INTRODUCTION

FirstEnergy[[1]](#footnote-2) wants to substantially increase the transmission rates it charges residential consumers under its Non-Market-Based (“NMB”) Rider. The rider, which certain non-residential consumers can opt out of paying, is shifting costs to residential consumers who can’t avoid the charge. The rider opt-out came from FirstEnergy’s 2016 electric security plan where the PUCO found evidence of undisclosed side deals between FirstEnergy and the former PUCO Chair.[[2]](#footnote-3) The PUCO has put a hold on its side deal investigation,[[3]](#footnote-4) yet opt-out is in full swing. With the indictment of the former PUCO Chair on both state and federal charges,[[4]](#footnote-5) the alleged side dealing between FirstEnergy and the former PUCO Chair squarely calls into question whether the opt out should end. It should.

# RECOMMENDATIONS

In its application, FirstEnergy seeks to substantially increase the rates charged to consumers under Rider NMB. FirstEnergy seeks to charge consumers new rates for transmission-related costs through the NMB Rider beginning April 1, 2024. FirstEnergy’s proposed NMB charges increase charges for Toledo Edison consumers by 22% (from $20 per month to $24.64 per month), Ohio Edison consumers by 20% (from $19 per month to $22.49 per month), and Cleveland Electric Illuminating consumers by 12% (from $23 per month to $24.42 per month). In total, Toledo Edison consumers will be paying $65 million, Ohio Edison consumers $221 million, and Cleveland Electric Illuminating $140 million for FirstEnergy’s proposal.[[5]](#footnote-6) FirstEnergy supports its proposal based on demand forecasts.[[6]](#footnote-7)

Under the pilot program the PUCO approved under FirstEnergy’s last electric security plan, certain eligible business customers avoid paying the Rider NMB charges for transmission. Regardless of its dubious origin, the PUCO should end the seven-year pilot because of the cost shifting that is occurring. In this regard the PUCO-approved auditor in Case No. 22-391-EL-RDR determined that FirstEnergy’s pilot program shifts *over a million dollars* per year to residential consumers who have *no choice* but to pay Rider NMB rates.[[7]](#footnote-8) That is unfair, unjust and unreasonable. Rider NMB should end.

When the Rider NMB pilot program was approved as part of FirstEnergy’s fourth electric security plan in 2016, the PUCO ordered its Staff to conduct a review of the program to determine if the program imposes unreasonable charges on residential consumers.[[8]](#footnote-9) After nearly seven years with no review and other delays, the initial audit of FirstEnergy’s Rider NMB pilot program was finally completed. As OCC feared and warned of,[[9]](#footnote-10) the opt out of Rider NMB caused cost shifting to residential consumers.

The Audit Report confirmed cost shifting burdens to consumers who do not participate in the Rider NMB pilot program. The Auditor found that “[t]he existence of the Pilot reveals the shortcomings of Rider NMB in allocating certain PJM costs to non-participating customers based on the principle of cost causation.”[[10]](#footnote-11) The Auditor identified cost shifts as occurring due to the structure of Rider NMB. According to the Auditor, “[s]ome, but not all, of the avoided transmission costs for the Pilot Program . . . are shifted to the Companies’ non-participating customers under Rider NMB. The remainder of the transmission cost shift is borne by other loads in the ATSI zone that are not customers of the Companies.”

The Auditor further concluded that “signals from the Pilot are too small and inconsistent to induce the [] long-term impact” by deferring or eliminating transmission expansion needs in order to reduce transmission revenue requirements.[[11]](#footnote-12) The Auditor also concluded that the pilot program is “unlikely to provide direct reliability benefits” and that the pilot program “does not resolve the typical causes of grid stress.”[[12]](#footnote-13)

OCC supports the Auditor’s recommendation to eliminate Rider NMB for all customers and to assign transmission charges to retail suppliers.[[13]](#footnote-14) The PUCO should protect consumers who cannot participate in the Rider NMB pilot program from inappropriate cost shifting.

While cost shifting is a good reason to end Rider NMB and the opt out program for business customers, there is more reason to put an end to it all. The rider opt out came from FirstEnergy’s 2016 electric security plan where the PUCO found evidence that “there is information in the docket and in the public domain which may demonstrate a potential violation of the Companies’ obligation to disclose a ‘side agreement’ during the *ESP IV Case*” and that “(t)he Commission is aware that records of communications and other documents from the Companies provide additional corroboration that there was a side agreement between the Companies and parties to this proceeding.” [[14]](#footnote-15) The PUCO has put a hold on its side deal investigation[[15]](#footnote-16) yet opt-out is in full swing. With the indictment of the former PUCO Chair on both state and federal charges,[[16]](#footnote-17) the alleged side dealing between FirstEnergy and the former PUCO Chair squarely calls into question whether the opt out should end. It should.

The rates that residential consumers pay under FirstEnergy’s Rider NMB are a product of the Rider NMB pilot program, which allows certain non-residential consumers to opt out of paying Rider NMB rates. We know now, through the work of the PUCO-approved auditor, that allowing non-residential consumers to opt out of Rider NMB has shifted costs to residential consumers. The cost shifting to residential consumers should stop. The PUCO should end Rider NMB and the pilot program. Instead, the transmission charges should be assigned to retail suppliers.

# CONCLUSION

The PUCO should protect consumers from unjust and unreasonable charges through FirstEnergy’s NMB rates. Consistent with OCC’s recommendations, the PUCO should end Rider NMB and the pilot program and stop the increased costs that residential consumers pay under NMB. This solution would solve the cost shifting to residential consumers and would be a just result especially given the origin of the opt out and its ties to potential side dealing between the former PUCO Chair and FirstEnergy.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Consumer Protection Comments was served on the persons stated below via electronic transmission, this 26th day of February 2024.

*/s/ William J. Michael*

William J. Michael

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. “FirstEnergy” collectively refers to Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company. [↑](#footnote-ref-2)
2. *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 (Dec. 15, 2021) at 5 (stating that “the Commission is aware the records of communications and other documents from the Companies provide additional corroboration that there was a side agreement between the Companies and parties to this proceeding”). [↑](#footnote-ref-3)
3. PUCO Entries in Case No. 20-1629-EL-RDR, dated Aug. 24, 2022; March 8, 2023 and Aug. 23, 2023 (each Entry staying Case No. 20-1629-EL-RDR for a period of six months). [↑](#footnote-ref-4)
4. 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-5)
5. *See* Application at Exhibit D. [↑](#footnote-ref-6)
6. *See id.* at Exhibit A. [↑](#footnote-ref-7)
7. Audit Report at 20. [↑](#footnote-ref-8)
8. *See In re Ohio Edison Co., the Cleveland Elec. Illum. Co., and the Toledo Edison Co.*, Case No. 14-1297-EL-SSO (“ESP IV Case”), Fifth Entry on Rehearing (Oct. 12, 2016), at ¶ 310. [↑](#footnote-ref-9)
9. Audit Report at 3. [↑](#footnote-ref-10)
10. Audit Report at 3. [↑](#footnote-ref-11)
11. Audit Report at 36. [↑](#footnote-ref-12)
12. *Id.* at 39. [↑](#footnote-ref-13)
13. *Id.* at 4. [↑](#footnote-ref-14)
14. Case No. 20-1629-EL-RDR, Entry (Dec. 15, 2021) at 3, 5. [↑](#footnote-ref-15)
15. Case No. 20-1629-EL-RDR, PUCO Entries dated Aug. 24, 2022; March 8, 2023 and Aug. 23, 2023, each extending the stay for six months. [↑](#footnote-ref-16)
16. United States 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-17)