**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 Approval of Phase Two of Their Distribution Grid Modernization Plan. | )  )  )  )  )  ) | Case No. 22-704-EL-UNC |

**MOTION FOR STAY**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

William J. Michael (0070921)

Counsel of Record

Donald J. Kral (0042091)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone [Michael]: (614) 466-1291

Telephone: [Kral]: (614) 466-9571

[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)

[donald.kral@occ.ohio.gov](mailto:donald.kral@occ.ohio.gov)

January 22, 2024 (willing to accept service by e-mail)

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New information has come to light that may directly impact the charges to consumers for FirstEnergy’s distribution grid modernization plan. Recently, former PUCO Chair Randazzo was criminally indicted on eleven counts related to bribery and embezzlement, including an alleged conspiracy scheme and scheme to defraud customers dating back to 2010.[[1]](#footnote-2) The FirstEnergy/Randazzo scheme impacted FirstEnergy’s grid modernization plan.

In light of this new information and the impact that the criminal proceeding could have on grid modernization charges to consumers and the legitimacy of those costs under FirstEnergy’s Advanced Metering Infrastructure Rider (“Rider AMI”), it is imperative that the PUCO protect consumers by staying this case until after FirstEnergy’s next distribution rate case and after the House Bill 6 (“H.B. 6”) investigation cases are resolved and former Chair Randazzo’s indictment runs its course.

The FirstEnergy/Randazzo fraud impacted FirstEnergy’s grid modernization plan as follows:

1. 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 [ESP IV] settlement package involving FirstEnergy Corp.’s Ohio electric distribution subsidiaries.”[[2]](#footnote-3)
2. This ESP IV settlement allowed FirstEnergy to file a grid modernization business plan and (subject to approval of the business plan) to collect the costs through FirstEnergy’s advanced metering infrastructure rider (“Rider AMI”).[[3]](#footnote-4)
3. FirstEnergy admitted to bribing Mr. Randazzo with a $4.3 million payment and, with FirstEnergy’s support, Mr. Randazzo became the PUCO’s Chair where he was to “perform[] official action for the benefit of [FirstEnergy], as requested and as opportunities arose.”[[4]](#footnote-5)
4. Mr. Randazzo’s “official actions” for the benefit of FirstEnergy included approval of FirstEnergy’s grid modernization business plan, and subsequent approval of charges to consumers for up to $516 million in grid modernization in a July 17, 2019 Opinion and Order (“Grid Mod I”).[[5]](#footnote-6)
5. FirstEnergy’s application in the present case seeks approval of a “Grid Mod II” plan which relies on and directly results from the Grid Mod I deployment approved under Mr. Randazzo.[[6]](#footnote-7)

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. That statute governs FirstEnergy’s obligation to disclose “side agreements” during the electric security plan proceedings.[[7]](#footnote-8) The PUCO investigation may reveal side agreements between former Chair Randazzo and FirstEnergy that are the subject of the indictment. Also, as part of this investigation, the auditor was required to identify capital additions recovered by FirstEnergy through Rider AMI in order to exclude those amounts from Rider DCR.[[8]](#footnote-9) The commonality between the H.B. 6 investigation case and FirstEnergy’s Grid Modernization plan is abundantly clear, as outlined above.

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.

We and the public still do not know how much of the public corruption was at the expense of FirstEnergy’s utility consumers. But FirstEnergy’s improper charges and improper accounting practices related to the H.B. 6 scandal will likely spill over into Grid Mod II and FirstEnergy’s Rider AMI charges to customers.

Staying consideration and approval of this case and staying any consideration of modifications or increases to Rider AMI would be just and reasonable under the circumstances. FirstEnergy would not be prejudiced by this limited stay as any AMI funding could still be considered in its upcoming rate case proceeding as part of setting rate base and operating expenses. Accordingly, OCC moves for a stay of consideration and approval of this case, and a stay of any consideration of modifications or increases to Rider AMI.

This motion is made under O.A.C. 4901-1-12(A). The PUCO should find good cause for the stay based on the six-factor test the PUCO has used to justify its stay of the pending FirstEnergy H.B. 6 investigations.

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ William J. Michael*

William J. Michael (0070921)

Counsel of Record

Donald J. Kral (0042091)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone [Michael]: (614) 466-1291

Telephone: [Kral]: (614) 466-9571

[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)

[donald.kral@occ.ohio.gov](mailto:donald.kral@occ.ohio.gov)

(willing to accept service by e-mail)

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**MEMORANDUM IN SUPPORT**

# I. INTRODUCTION

The PUCO has four investigations and audits,[[10]](#footnote-11) initiated largely at OCC’s request, relating to the FirstEnergy H.B. 6 scandal. United States District Judge Algenon Marbley described the scandal as FirstEnergy’s “*unparalleled corruption* of Ohio’s democratic process.”[[11]](#footnote-12) The PUCO recently approved the U.S. Attorney’s third request to stay these investigations and audits into the FirstEnergy H.B. 6 scandal for another six-month period – resulting in a total stay of 18 months. OCC respects the role of the U.S. Attorney and seeks to honor the request of the U.S. Attorney to stay discovery in the four FirstEnergy investigations. But the PUCO’s a one-sided approach to the stays is detrimental to Ohio’s consumers.[[12]](#footnote-13)

Before modifying or increasing Rider AMI charges to consumers through the approval of this case, consumers have a right to know how deep the corruption runs. That corruption potentially involves FirstEnergy and its grid modernization plan and its relationship with former PUCO Chair Randazzo.

Recall that FirstEnergy Corp. entered into a Deferred Prosecution Agreement with the Government under which it admitted that it “paid $4.3 million dollars to [Randazzo] through his consulting company in return for [Randazzo] performing official action in his capacity as PUCO Chairman to further FirstEnergy Corp.’s interests relating to passage of nuclear legislation and *other specific FirstEnergy Corp. legislative and regulatory priorities, as requested and as opportunities arose.”*[[13]](#footnote-14) Additionally, as stated in the recent indictment, after his appointment as PUCO Chairman, “Randazzo performed official action for the benefit of Company A, as requested and as opportunities arose . . . as part of his corrupt agreement” with FirstEnergy and other co-conspirators, which appears to have included the approval of the $516 million Grid Mod I case.[[14]](#footnote-15)

As a result of FirstEnergy’s Grid Mod I case,[[15]](#footnote-16) FirstEnergy is charging consumers $516 million related to its Grid Mod I program which was set in motion through a settlement in FirstEnergy’s ESP IV.[[16]](#footnote-17) In FirstEnergy’s ESP IV, as part of the settlement, FirstEnergy agreed that, if the PUCO approved its plan, it would collect charges from consumers through a single-issue ratemaking charge, specifically Rider AMI.[[17]](#footnote-18) Portions of FirstEnergy’s ESP IV are presently under investigation, through Case No. 20-1629-EL-RDR, and this investigation includes identifying capital additions recovered through Rider AMI so that those amounts are excluded from Rider DCR.[[18]](#footnote-19) Recently, 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.[[19]](#footnote-20)

Mere months after former Chair Randazzo was installed as the PUCO chairman, Mr. Randazzo approved a specific $516 million grid modernization charge to consumers when resolving four cases—one of which was a tax savings case—that arose in three different years, concerned two completely different subjects, and, without good cause, were unjustly and unreasonably consolidated into one proceeding.[[20]](#footnote-21) Consumers who have been ordered to pay for Grid Mod I expenditures[[21]](#footnote-22) deserve to know whether Randazzo undertook “official action in his capacity as PUCO Chairman to further FirstEnergy Corp.’s interests” “as requested and as opportunities arose”[[22]](#footnote-23) when he secured approval for the Grid Modernization business plan and the $516 million charges to be recovered from customers through Rider AMI.

In FirstEnergy’s Grid Mod II, FirstEnergy is seeking approval to charge consumers for an additional $626 million for grid modernization investments even though it has not demonstrated the benefits it promised from Grid Mod I.[[23]](#footnote-24) FirstEnergy’s Grid Mod II case is premised on its Grid Modernization business plan, which was initially filed in accordance with FirstEnergy’s ESP IV, and was approved by former Chairman Randazzo mere months after he was installed at the PUCO in order to “perform[] official action in his capacity as PUCO Chairman to further FirstEnergy Corp.’s interests relating to . . . regulatory priorities, as requested and as opportunities arose.”[[24]](#footnote-25) Grid Mod II (and Grid Mod I) cannot and should not be separated from the HB 6 investigations.

The new indictment and allegation of criminal behavior have now been tied to a scheme to defraud consumers. FirstEnergy Corp. entered into a Deferred Prosecution Agreement with the Government under which it admitted that it “paid $4.3 million dollars to [Randazzo] through his consulting company in return for [Randazzo] performing official action in his capacity as PUCO Chairman to further FirstEnergy Corp.’s interests relating to passage of nuclear legislation and *other specific FirstEnergy Corp. legislative and regulatory priorities, as requested and as opportunities arose.”*[[25]](#footnote-26)Andthere appears to be evidence that the corruption runs deeper and may be the basis of inappropriate charges to consumers for FirstEnergy’s Grid Modernization program.

In light of this new information and the potential connection to FirstEnergy’s Grid Modernization program, it is imperative for the regulator to investigate the payments and get to the bottom of this corruption and the amounts charged to consumers before increasing those charges passed on to consumers for Grid Modernization investments. The PUCO should protect consumers and determine whether they were harmed by the actions of FirstEnergy and former Chair Randazzo.

The PUCO should also ensure that FirstEnergy consumers are only being charged just and reasonable rates through Rider AMI. The PUCO should address whether consumers *will be harmed* by re-approving, modifying, and/or increasing Rider AMI, which FirstEnergy may have used to further its criminal activities and H.B. 6 scheme. FirstEnergy has the burden of proof to establish that grid modernization charges are just and reasonable rates going forward. Part of that burden relates to showing how its riders they now seek to extend are appropriate and necessary for the 2 million customers they serve.

Given that the H.B. 6 investigations are stayed, it is only fair that the related cases (*i.e*., Grid Mod II) also be stayed. The PUCO has broad powers to ensure fairness and has done so in past cases.[[26]](#footnote-27) Staying the consideration, approval, and implementation of Grid Mod II in this case would create a fairness of balance and symmetry in the PUCO’s regulation – something that is especially needed when it comes to FirstEnergy’s two million consumers. Going forward with considering and continuing FirstEnergy’s Grid Modernization business plan in this proceeding is also inefficient and prejudicial to consumers. As the PUCO acknowledged, the public has an interest in the efficient use of government resources.[[27]](#footnote-28)

# II. ARGUMENT

## A. FirstEnergy seeks increased charges from consumers to pay for Grid Mod II, which is related to the four FirstEnergy investigations that have been stayed.

FirstEnergy seeks to charge consumers $750 million[[28]](#footnote-29) more for grid modernization in addition to the $460 million charged for the infamous distribution modernization rider, and the $600 million authorized for the first phase of grid modernization. Over the first four years of FirstEnergy’s Grid Mod II proposal, it projects charging consumers more than $400 million.[[29]](#footnote-30)

The commonality between the investigation cases and FirstEnergy’s Grid Modernization is the fact that FirstEnergy’s Grid Mod II case is premised on its Grid Modernization business plan, which was filed as a result of FirstEnergy’s ESP IV settlement. Additionally former Chair Randazzo approved the Grid Modernization business plan and recovery of $516 million of grid modernization charges to consumers through Rider AMI mere months after he was installed at the PUCO.[[30]](#footnote-31) As explained above, portions of ESP IV are now under investigation. With the new information released regarding former Chair Randazzo’s indictment, it is even more difficult to conclude (as the PUCO did in another context) that FirstEnergy’s Grid Mod I, which is the foundation for its proposed Grid Mod II is “completely unrelated to H.B.6.”[[31]](#footnote-32)

In Case No. 20-1629-EL-RDR, investigating Rider DCR, the investigation into Rider DCR requires the auditor to identify capital costs recovered through Rider AMI.[[32]](#footnote-33) Moreover, the PUCO found cost misallocations related to FirstEnergy’s role in the H.B. 6 scandal, and the cost allocation issues are a fundamental element of the other three FirstEnergy investigations.

For example, the PUCO is investigating the extent to which FirstEnergy improperly collected H.B. 6 costs from consumers in Case No. 20-1502-EL-UNC.[[33]](#footnote-34) The PUCO could decide that H.B. 6 costs include costs that have been capitalized and charged to consumers through numerous riders, including Rider AMI.

Those transactions appear to be the basis of Count 6 of the criminal complaint against former Chair Randazzo.[[34]](#footnote-35) More specifically, on the federal indictment recently handed down, the Sustainability Funding Alliance appears to be a tool former Chair Randazzo used to further his alleged scheme, among other things, “to commit offenses against the United States, namely: to travel in interstate commerce and use and cause the use of a facility in interstate commerce with intent to promote, manage, establish and carry on and facilitate the promotion, management, establishment, and carrying on of bribery in violation of R.C.§2921.02, in violation of 18 U.S.C. §1952; to devise and intend to devise a scheme and artifice to defraud and deprive the citizens of the State of Ohio and PUCO of the honest services of a public official through bribery, in violation of 18 U.S.C. §§ 1343 and 1346.”[[35]](#footnote-36)

And the Federal Energy Regulatory Commission conducted a wide-ranging audit of FirstEnergy that evaluated FirstEnergy’s compliance with: (1) cross-subsidization restrictions on affiliate transactions; (2) service company accounting, recordkeeping and reporting requirements, accounting and reporting requirements for affiliate transactions; and (3) preservation of records requirements. FERC issued seven findings of noncompliance and 38 recommendations that required FirstEnergy and its subsidiaries to take corrective action.[[36]](#footnote-37)

FirstEnergy’s franchised public utilities “improperly accounted for maintenance expenses incurred to remove vegetation” when they “inappropriately capitalized the cost to electric plant in service.”[[37]](#footnote-38) This caused the companies to overstate electric plant in service, accumulated depreciation, ADIT, depreciation expenses, and other account balances, and understate operating expenses incurred.” [[38]](#footnote-39) The improper vegetation management accounting occurred both prior to and during the audit period spanning January 1, 2015 to September 30, 2021.

FERC also found that the service company “improperly accounted for and improperly reported lobbying expenses, donations and other costs that lacked proper supporting documentation or were misclassified.” And FERC found that the service company allocated and charged the improperly accounted for lobbying, donation, and supported costs to FirstEnergy and its subsidiaries.”[[39]](#footnote-40) Some of these costs were improperly recorded as general and administrative costs; some were improperly recorded as the cost of electric plant in service. Internal lobbyists’ expenses were also improperly accounted for, and the FirstEnergy Service Company charged the improperly accounted for costs to FirstEnergy and its subsidiaries.[[40]](#footnote-41)

All of the foregoing could be related to Rider AMI, which was initially approved to recover costs related to FirstEnergy’s smart grid initiative in the same case that created Rider DCR (Case No. 10-388-EL-SSO) and Grid Modernization costs as part of ESP IV, and which was approved by former Chair Randazzo himself to be used to recover $516 million from customers for Grid Mod I costs. The PUCO should investigate and allow the parties to investigate exactly how all of the above findings impact Rider AMI before approving, modifying, and/or increasing charges collected from consumers under Rider AMI for Grid Mod II.

## **B. Staying FirstEnergy’s Grid Mod II (funded through Rider AMI) would be just and reasonable and consistent with the PUCO’s six-part stay standard.**

It would be unfair for the PUCO to consider FirstEnergy’s application for Grid Mod II (funded through Rider AMI) under the present circumstances and consider increasing those charges to consumers. The fair approach would be to stay this case until FirstEnergy’s distribution rate case and the H.B. 6 investigations are concluded. This would be consistent with the PUCO’s Stay Entry in the H.B. 6 investigation cases.

When the PUCO issued its initial Stay Entry in the H.B. 6 cases, the PUCO relied on *F.T.C. v. E.M.A. Nationwide, Inc*.[[41]](#footnote-42) and related cases, which use a balancing test to decide whether a civil case should be stayed due to a related criminal proceeding.[[42]](#footnote-43) Consistent with its orders assessing the U.S. Attorney’s request for a stay in those cases, the PUCO should apply the six-part balancing test here. When this test is properly applied to the present case, it is clear that the consideration and potential approval of FirstEnergy’s Grid Mod II application should be stayed until FirstEnergy’s next distribution rate case and after the H.B. 6 cases are resolved and former Chair Randazzo’s indictment runs its course. The following analysis shows how this balancing test should be applied to this case.

### 1. There are overlapping issues that exist making a stay reasonable.

The first factor in the PUCO’s balancing test is whether there is any overlap of the issues between the criminal case and the PUCO case.[[43]](#footnote-44) The PUCO concluded that this factor weighed in favor of a stay in the H.B. 6 investigation cases due to “the similarities between the legal issues and subject matter such as the charges, fact issues, witnesses, and evidence.”[[44]](#footnote-45) This factor also weighs in favor of a stay here due to the similarities of the legal issues and subject matter.

In FirstEnergy’s ESP IV, as part of the settlement, FirstEnergy agreed that, if the PUCO approved its grid modernization business plan, it would collect charges from consumers through a single-issue ratemaking charge—Rider AMI.[[45]](#footnote-46) The PUCO, under the direction of former Chair Randazzo, later approved a $516 million grid modernization charge to consumers when it resolved four seemingly unrelated, yet inexplicably consolidated, cases, one of which was a tax savings case.[[46]](#footnote-47) Portions of FirstEnergy’s ESP IV are presently under investigation, through Case No. 20-1629-EL-RDR, where the PUCO instructed the auditor to identify capital expenditures recovered through Rider AMI so that they could be excluded from Rider DCR.[[47]](#footnote-48) Recently, 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.”[[48]](#footnote-49)

In Case No. 20-1629-EL-RDR, the Auditor found cost misallocations related to H.B. 6, which could be related to Rider AMI.[[49]](#footnote-50) These cost allocation issues also permeate the corporate separation investigation[[50]](#footnote-51) and the political and charitable spending[[51]](#footnote-52) investigation. While we still do not know for certain whether any improper rulings impacted the approval of FirstEnergy’s Grid Mod program (including collection from consumers of costs through Rider AMI), we *do* know that the program was approved by former Chair Randazzo mere months after he was installed at the PUCO for the purpose of “performing official action in his capacity as PUCO Chairman to further FirstEnergy Corp.’s interests relating to . . . regulatory priorities, as requested and as opportunities arose.”[[52]](#footnote-53) The PUCO could find based on the evidence developed in the investigation cases that H.B. 6 costs include costs that have been capitalized and charged to consumers through numerous riders, including Rider AMI.

As part of the stay, the PUCO would defer ruling on FirstEnergy’s Grid Mod II application and address the distribution revenue requirements as part of FirstEnergy’s upcoming base rate case to be filed in May 2024. The PUCO Staff testimony already suggests that Rider AMI be reset in a future base rate case.[[53]](#footnote-54)

### 2. The status of the criminal proceeding weighs in favor of this case.

The second factor is the status of the criminal proceeding.[[54]](#footnote-55) The PUCO concluded that the U.S. Attorney’s ongoing investigation into the H.B. 6 scandal is sufficient to satisfy this second factor.[[55]](#footnote-56) Now, we have learned of a new criminal proceeding that may relate to Grid Mod II and Rider AMI. Therefore, this factor also weighs in favor of a stay of this case. Most recently, former Chair Randazzo was indicted on eleven counts, including bribery and violation of federal and state laws pertaining to his involvement with FirstEnergy. That indictment needs to proceed to its logical end before picking back up on Grid Mod II and Rider AMI, which may have played a part in the alleged corrupt bribery scheme. In fact, the case for a stay here is even stronger because the U.S. Attorney’s recent indictment of former Chair Randazzo[[56]](#footnote-57) is an open criminal case.

### 3. The interests of the PUCO (and the courts) weigh in favor of staying this case.

Other factors address whether the stay is in the interests of the courts and the PUCO.[[57]](#footnote-58) The PUCO concluded that these factors weighed in favor of staying the H.B. 6 cases to avoid the risk of interfering with the federal criminal investigation.[[58]](#footnote-59) A complete and fair adjudication of Rider AMI and FirstEnergy’s Grid Modernization business plan could involve FirstEnergy’s payments to former Chair Randazzo. These payments could be included in the costs that consumers paid and will pay under Rider AMI. If so, then this would also run the risk of interfering with the federal criminal investigations. This is because of the cost misallocation issues, which are common to both proceedings, and common witnesses/subjects of the investigation to both proceedings. Again, with the indictment of former Chair Randazzo, there is an even stronger reason to stay the PUCO’s consideration of Rider AMI-funded Grid Mod II. This factor therefore also weighs in favor of staying this case. As noted above, the case for a stay is even stronger here due to the pending criminal case against former Chair Randazzo.

### 4. The public interest weighs in favor of staying this case.

The PUCO should also consider whether the stay is in the public interest.[[59]](#footnote-60) In the H.B. 6 cases, the PUCO viewed the public interest as broader than merely the interests of Ohio consumers and concluded that this factor weighted in favor of a stay. The PUCO stated: “the public interest in effective criminal prosecution generally outweighs any existing civil interests.”[[60]](#footnote-61) Applying this same broad view of the public interest, this factor weighs in favor of staying this case. In the PUCO’s investigations of FirstEnergy and FirstEnergy’s proposed Grid Mod II, the continued litigation of these cases while the criminal investigations are in progress could interfere with the criminal investigation.

### 5. The private interests of those impacted by the stay weigh in favor of staying this case.

The PUCO also considers balancing the private interests of those impacted by a stay.[[61]](#footnote-62) The PUCO concluded that these factors are “largely neutral” when evaluated separately in terms of the Department of Justice’s interest in the criminal investigation vs. consumers’ interests in fair rates.[[62]](#footnote-63) Unlike the H.B. 6 cases these factors are closely aligned and weigh heavily in favor of imposing a stay of this case.

The private interests in the stay are essentially the interests of FirstEnergy’s two million consumers. Those are public interests as well.

The public’s interest in fair and reasonable utility charges (which would be furthered under a stay) greatly outweighs the interest in implementing increased charges on consumers under Rider AMI.

When all six factors of the PUCO’s balancing test are considered, the case for a stay is strong. In the interests of justice, the PUCO should grant the Motion and stay this case.

# iii. CONCLUSION

To protect consumers, the PUCO should stay this case until the H.B. 6 investigations are concluded.

With the handing down of the recent indictment of former Chair Randazzo, the need to stay the approval, modification, and/or increases to FirstEnergy’s Rider AMI for Grid Mod II seems fair, just and reasonable to Ohioans. Before paying hundreds of millions of dollars more through Rider AMI to FirstEnergy for a new plan, consumers have a right to know how deep the corruption runs, including potentially into FirstEnergy’s Grid Mod I, which is the foundation for Grid Mod II. That corruption potentially involves FirstEnergy and its relationship with former Chair Randazzo, who has been indicted by a federal grand jury for allegedly accepting millions of dollars in bribes from FirstEnergy to act in its favor.[[63]](#footnote-64)

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ William J. Michael*

William J. Michael (0070921)

Counsel of Record

Donald J. Kral (0042091)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone [Michael]: (614) 466-1291

Telephone: [Kral]: (614) 466-9571

[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)

[donald.kral@occ.ohio.gov](mailto:donald.kral@occ.ohio.gov)

(willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion for Stay was served on the persons stated below via electronic transmission, this 22nd day of January 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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| [thomas.lindgren@ohioago.gov](mailto:thomas.lindgren@ohioago.gov)  [amy.botschnerobrien@ohioago.gov](mailto:amy.botschnerobrien@ohioago.gov)  rhiannon.howard@ohioago.gov  [emcconnell@elpc.org](mailto:emcconnell@elpc.org)  [bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  [stacie.cathcart@igs.com](mailto:stacie.cathcart@igs.com)  [michael.nugent@igs.com](mailto:michael.nugent@igs.com)  [dproano@bakerlaw.com](mailto:dproano@bakerlaw.com)  [ahaque@bakerlaw.com](mailto:ahaque@bakerlaw.com)  [eprouty@bakerlaw.com](mailto:eprouty@bakerlaw.com)  [tdougherty@theoec.org](mailto:tdougherty@theoec.org)  rdove@keglerbrown.com  [nbobb@keglerbrown.com](mailto:nbobb@keglerbrown.com)  [Paul@carpenterlipps.com](mailto:Paul@carpenterlipps.com)  pwillison@bakerlaw.com  Attorney Examiners:  [megan.addison@puco.ohio.gov](mailto:megan.addison@puco.ohio.gov)  [greg.price@puco.ohio.gov](mailto:greg.price@puco.ohio.gov)  [jacqueline.st.john@puco.ohio.gov](mailto:jacqueline.st.john@puco.ohio.gov) | [cwatchorn@firstenergycorp.com](mailto:cwatchorn@firstenergycorp.com)  [talexander@beneschlaw.com](mailto:talexander@beneschlaw.com)  [mkeaney@beneschlaw.com](mailto:mkeaney@beneschlaw.com)  [mkurtz@BKLlawfirm.com](mailto:mkurtz@BKLlawfirm.com)  [kboehm@BKLlawfirm.com](mailto:kboehm@BKLlawfirm.com)  [jkylercohn@BKLlawfirm.com](mailto:jkylercohn@BKLlawfirm.com)  [trhayslaw@gmail.com](mailto:trhayslaw@gmail.com)  [leslie.kovacik@toledo.oh.gov](mailto:leslie.kovacik@toledo.oh.gov)  [knordstrom@theOEC.org](mailto:knordstrom@theOEC.org)  [ctavenor@theOEC.org](mailto:ctavenor@theOEC.org)  [todd.schafer@outlook.com](mailto:todd.schafer@outlook.com)  [little@litohio.com](mailto:little@litohio.com)  [hogan@litohio.com](mailto:hogan@litohio.com)  [ktreadway@oneenergyllc.com](mailto:ktreadway@oneenergyllc.com)  jdunn@oneenergyllc.com  [mpritchard@mcneeslaw.com](mailto:mpritchard@mcneeslaw.com)  [awalke@mcneeslaw.com](mailto:awalke@mcneeslaw.com)  [cgrundmann@spilmanlaw.com](mailto:cgrundmann@spilmanlaw.com)  [dwilliamson@spilmanlaw.com](mailto:dwilliamson@spilmanlaw.com)  [slee@spilmanlaw.com](mailto:slee@spilmanlaw.com)  [dstinson@brickergraydon.com](mailto:dstinson@brickergraydon.com)  [gkrassen@nopec.org](mailto:gkrassen@nopec.org) |

1. *United States of America v. Samuel Randazzo*, Case No. 1:23-cr-114, Indictment (Nov. 29, 2023). [↑](#footnote-ref-2)
2. *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-3)
3. *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company for Authority to Provide a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Third Supplemental Stipulation at 9-10 (Dec. 1, 2015). [↑](#footnote-ref-4)
4. *United States of America v. FirstEnergy Corp*., Case No. 1:21-cr-86, Deferred Prosecution Agreement at 17 (July 22, 2021). [↑](#footnote-ref-5)
5. *In the Matter of the Filing by Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company of a Grid Modernization Business Plan,* Case Nos. 16-481-EL-UNC, et al., Opinion and Order at 73 (July 17, 2019). [↑](#footnote-ref-6)
6. Application at 1 (July 15, 2022). [↑](#footnote-ref-7)
7. *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). [↑](#footnote-ref-8)
8. *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, Request for Proposal No. RA20-CA-3 at 1 (Nov. 4, 2020). [↑](#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 (Aug. 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 (Aug. 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 (Aug. 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 (Aug. 24, 2023). [↑](#footnote-ref-10)
10. Case No. 17-974-EL-UNC, 20-1502-EL-UNC, 17-2474-EL-RDR and 20-1629-EL-RDR. [↑](#footnote-ref-11)
11. *Emp. Retirement Sys. of City of St. Louis v. Jones,* Case No. 2:20-cv-4813, Order of Final Settlement Approval at 17 (Aug. 23, 2022) (emphasis added). [↑](#footnote-ref-12)
12. *See* “U.S. Attorney investigating FirstEnergy/HB 6 scandal needs to let ratepayer probes proceed,” Cleveland Plain Dealer (Oct. 22, 2023), [https://www.cleveland.com/opinion/2023/10/us-attorney-investigating-firstenergyhb-6-scandal-needs-to-let-ratepayer-probes-proceed-ashley-brown.html](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cleveland.com%2Fopinion%2F2023%2F10%2Fus-attorney-investigating-firstenergyhb-6-scandal-needs-to-let-ratepayer-probes-proceed-ashley-brown.html&data=05%7C01%7CAngela.OBrien%40occ.ohio.gov%7C3e667091252f4e7b531208dbe796e06d%7C50f8fcc494d84f0784eb36ed57c7c8a2%7C0%7C0%7C638358407414547917%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=O8V095U3hxkoXx%2BjZQeJLz1%2FCVT7gH2YpSzuiZ0s64c%3D&reserved=0); “PUCO needs to do its duty by ratepayers and the U.S. attorney needs to get out of the way,” Cleveland Plain Dealer (Oct. 27, 2023), [https://www.cleveland.com/opinion/2023/10/puco-needs-to-do-its-duty-by-ratepayers-and-the-us-attorney-needs-to-get-out-of-the-way-editorial.html](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cleveland.com%2Fopinion%2F2023%2F10%2Fpuco-needs-to-do-its-duty-by-ratepayers-and-the-us-attorney-needs-to-get-out-of-the-way-editorial.html&data=05%7C01%7CAngela.OBrien%40occ.ohio.gov%7C3e667091252f4e7b531208dbe796e06d%7C50f8fcc494d84f0784eb36ed57c7c8a2%7C0%7C0%7C638358407414547917%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=G3XqwolnrV3HgNRopbb0HLkMJoNUgVIzeCNWstsm18g%3D&reserved=0). [↑](#footnote-ref-13)
13. *United States of America v. FirstEnergy Corp*., Case No. 1:21-cr-86, Deferred Prosecution Agreement at 17 (July 20, 2021) (emphasis added). [↑](#footnote-ref-14)
14. *United States of America v. Samuel Randazzo*, Case No. 1:23-cr-114, Indictment at 6 (Nov. 29, 2023). [↑](#footnote-ref-15)
15. *In the Matter of the Filing by Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company of a Grid Modernization Business Plan*, Case No. 16-481-EL-UNC. [↑](#footnote-ref-16)
16. *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Phase Two of Their Distribution Grid Modernization Plan,* Case No. 22-704-EL-UNC; *In the Matter of the Filing by Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company of a Grid Modernization Business Plan*, Case No. 16-481-EL-UNC. [↑](#footnote-ref-17)
17. *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company for Authority to Provide a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Third Supplemental Stipulation at 9-10 (Dec. 1, 2015). [↑](#footnote-ref-18)
18. *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, Request for Proposal No. RA20-CA-3 at 1 (Nov. 4, 2020). [↑](#footnote-ref-19)
19. *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). [↑](#footnote-ref-20)
20. *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company to Implement Matters Relating to the Tax Cuts and Jobs Act of 2017,* Case Nos. 18-1604-EL-UNC, et al., Opinion and Order (July 17, 2019). [↑](#footnote-ref-21)
21. *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Phase Two of Their Distribution Grid Modernization Plan,* Case No. 22-704-EL-UNC; *In the Matter of the Filing by Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company of a Grid Modernization Business Plan*, Case No. 16-481-EL-UNC, Entry (Nov. 16, 2023). [↑](#footnote-ref-22)
22. *United States of America v. FirstEnergy Corp*., Case No. 1:21-cr-86, Deferred Prosecution Agreement at 18 (July 20, 2021) (emphasis added). [↑](#footnote-ref-23)
23. Application (July 15, 2022) at 66, ¶ 21 (“The Companies request authorization to recover in Rider AMI their actual Grid Mod II capital costs, up to $626.4 million, and incremental O&M expenses associated with Grid Mod II up to an aggregate of $144.1 million over the deployment period”). [↑](#footnote-ref-24)
24. *United States of America v. FirstEnergy Corp*., Case No. 1:21-cr-86, Deferred Prosecution Agreement at 18 (July 20, 2021) (emphasis added) [↑](#footnote-ref-25)
25. *United States of America v. FirstEnergy Corp*., Case No. 1:21-cr-86, Deferred Prosecution Agreement at 17 (July 20, 2021) (emphasis added). [↑](#footnote-ref-26)
26. *See, e.g., In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016), at ¶¶ 38, 39 (permitting the PUCO Staff to propose an alternative proposal for a distribution modernization rider). [↑](#footnote-ref-27)
27. *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter* *4901:1-37*, Case No. 17-974-EL-UNC, Entry at ¶ 79 (Aug. 24, 2022). [↑](#footnote-ref-28)
28. Application (July 15, 2022) at 66, ¶ 21 (“The Companies request authorization to recover in Rider AMI their actual Grid Mod II capital costs, up to $626.4 million, and incremental O&M expenses associated with Grid Mod II up to an aggregate of $144.1 million over the deployment period”). [↑](#footnote-ref-29)
29. FirstEnergy Witness McMillan Testimony, Ex. A. [↑](#footnote-ref-30)
30. *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company to Implement Matters Relating to the Tax Cuts and Jobs Act of 2017,* Case Nos. 18-1604-EL-UNC, et al., Opinion and Order (July 17, 2019). [↑](#footnote-ref-31)
31. *See, e.g.*, *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 at ¶ 19 (Oct. 18, 2023). [↑](#footnote-ref-32)
32. *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, Request for Proposal No. RA20-CA-3 at 1 (Nov. 4, 2020). [↑](#footnote-ref-33)
33. *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 at ¶ 1 (May 4, 2022). [↑](#footnote-ref-34)
34. *United States of America v. Samuel Randazzo*, Case No. 1:23-cr-114, Indictment at 16-19 (Nov. 29, 2023). [↑](#footnote-ref-35)
35. *Id*. at 4. [↑](#footnote-ref-36)
36. *In re*: *FirstEnergy Corp.*, Docket No. FA 19-1-000 at 4-13 (Feb. 4, 2022). [↑](#footnote-ref-37)
37. *In re*: *FirstEnergy Corp.*, Docket No. FA 19-1-000 at 38 (Feb. 4, 2022). [↑](#footnote-ref-38)
38. *Id.* [↑](#footnote-ref-39)
39. *Id.* at 46. [↑](#footnote-ref-40)
40. *Id.* at 52. [↑](#footnote-ref-41)
41. 767 F.3d 611 (6th Cir. 2014). [↑](#footnote-ref-42)
42. *See, e.g., 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 (Aug. 24, 2022). [↑](#footnote-ref-43)
43. *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 at ¶ 71 (Aug. 24, 2022). [↑](#footnote-ref-44)
44. *Id.* at ¶ 72. [↑](#footnote-ref-45)
45. *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company for Authority to Provide a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Third Supplemental Stipulation at 9-10 (Dec. 1, 2015). [↑](#footnote-ref-46)
46. *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company to Implement Matters Relating to the Tax Cuts and Jobs Act of 2017,* Case Nos. 18-1604-EL-UNC, et al., Opinion and Order (July 17, 2019). [↑](#footnote-ref-47)
47. *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, Request for Proposal No. RA20-CA-3 at 1 (Nov. 4, 2020). [↑](#footnote-ref-48)
48. *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). [↑](#footnote-ref-49)
49. *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, Audit Report, Expanded Scope (Aug. 3, 2021). [↑](#footnote-ref-50)
50. *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC. [↑](#footnote-ref-51)
51. *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. [↑](#footnote-ref-52)
52. *United States of America v. FirstEnergy Corp*., Case No. 1:21-cr-86, Deferred Prosecution Agreement at 18 (July 20, 2021) (emphasis added). [↑](#footnote-ref-53)
53. Direct Testimony of Devin Mackey at 3-4 (Dec. 4, 2023). [↑](#footnote-ref-54)
54. *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 at ¶ 71 (Aug. 24, 2022). [↑](#footnote-ref-55)
55. *Id*., Entry at ¶ 76 (Aug. 24, 2023). [↑](#footnote-ref-56)
56. *United States v. Randazzo,* Case No. 1:23-cr-00114, Indictment (Nov. 29, 2023). [↑](#footnote-ref-57)
57. *Id.* (Aug. 24, 2022). [↑](#footnote-ref-58)
58. *Id.* [↑](#footnote-ref-59)
59. *Id.* at ¶ 77. [↑](#footnote-ref-60)
60. *Id.* [↑](#footnote-ref-61)
61. *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 at 26 (Aug. 24, 2022). [↑](#footnote-ref-62)
62. *Id.* at ¶ 83. [↑](#footnote-ref-63)
63. *See* <https://apnews.com/article/ohio-bribery-investigation-householder-randazzo-puco-113274f88e7a53843e98a86f07d0844f>. [↑](#footnote-ref-64)