**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| --- | --- | --- |
| In the Matter of the Application of Campbell Soup Supply Company L.L.C. for the Approval of a Reasonable Arrangement for its Napoleon, Ohio Plant. | )  )  )  ) | Case No. 21-1047-EL-AEC |

**POST-HEARING BRIEF**

**BY**

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**TABLE OF CONTENTS**

**PAGE**

[I. INTRODUCTION 1](#_Toc95404100)

[II. THE PROPOSED SETTLEMENT SHOULD BE REJECTED BY THE   
PUCO BECAUSE IT DOES NOT MEET THE THREE-PRONG TEST 4](#_Toc95404101)

[A. The PUCO should reject the Settlement because it lacks both   
diversity of those who signed it and serious bargaining among parties. 4](#_Toc95404102)

[B. The PUCO should reject the Applicant/PUCO Staff Settlement   
because it does not benefit consumers or the public interest. 6](#_Toc95404103)

[C. The PUCO should reject the Settlement because it violates   
regulatory principles and practices. 10](#_Toc95404104)

[D. If the PUCO approves the Settlement, which it should not, the   
PUCO should modify it as recommended by OCC Witness Haugh. 14](#_Toc95404105)

[III. CONCLUSION 15](#_Toc95404106)

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# I. INTRODUCTION

Campbell Supply (“Applicant”) and the Staff of the Public Utilities Commission of Ohio (“PUCO”) have proposed a “Settlement”[[1]](#footnote-2) for the PUCO’s approval. Their Settlement simply adopts the Applicant’s proposed application, exactly as filed.[[2]](#footnote-3) In essence, the signatories are misusing the PUCO’s settlement standards to obtain the litigation advantage afforded by those standards, without any real compromise.

Their proposed Settlement would exempt the Applicant from paying transmission charges to Toledo Edison (“FirstEnergy”). The exemption would occur through a pilot program designed to waive large-business payment of the so-called Non-Market-Based (NMB) Services Rider. Under the pilot program the Applicant will obtain transmission service from Energy Harbor, the Applicant’s generation supplier (and a former FirstEnergy affiliate).

A primary reason the above arrangements are of interest to the Applicant is to pay less for electric transmission. A primary reason the Ohio Consumers’ Counsel is interested in the arrangements is that FirstEnergy will expect someone to make it whole for the loss of revenues from the Applicant. Indeed, FirstEnergy will expect residential consumers to make it whole by paying more for electricity.

The Applicant miscalculated the economics of a solar power purchase agreement and now wants to use the unique arrangement to make up for it.[[3]](#footnote-4) By allowing the Applicant to participate in the pilot program, costs the Applicant will be avoiding are shifted to other non-participating customers (including residential consumers) who pay the Non-Market Based Rider charge.[[4]](#footnote-5) Additionally, there is no evidence that the Applicant’s participation in the pilot program will promote economic development or increase employment.[[5]](#footnote-6)

The Settlement proposed by Staff and the Applicant should not be approved. It fails the PUCO’s three-part test for settlements.

First, the Settlement lacks diversity of interests as no consumer advocate signed it. The PUCO should consider the Settlement’s lack of diversity of interests here, which is a standard the PUCO sometimes uses. In addition, the Settlement lacks serious bargaining as it adopts the Application exactly as it was filed. Essentially, the settlement standards are being misused to give the stipulators a litigation advantage, not to assist the PUCO with a compromise.

Second, the Settlement does not benefit customers or the public interest. The Settlement offers very little benefit to consumers. Instead, consumers are being asked to make up for transmission savings that the Applicant wrongly assumed it would receive under a power purchase agreement but didn’t.[[6]](#footnote-7) Also the settlement shifts payment responsibility from the Applicant to non-participants in the settlement, including residential consumers. By joining the Rider NMB opt-out pilot program, the Applicant’s own transmission payments will be reduced.[[7]](#footnote-8) But FirstEnergy’s non-market based transmission costs will persist and other customers will pay to make FirstEnergy whole.[[8]](#footnote-9)

Third, the Settlement violates important and well-established regulatory principles. The PUCO’s Orders in FirstEnergy’s ESP IV case (where the PUCO initially approved [[9]](#footnote-10) the Rider NMB opt-out program for large industrial customers) came with specific conditions. 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.”[[10]](#footnote-11) That has not been done.

Given that we are in year five of the program, the PUCO should have reviewed this pilot program and made the results of its review public.[[11]](#footnote-12) The expected reviews of the pilot program should be completed, made public and opened for public comment before more applications are considered. Moreover, it is bad public policy for the PUCO to use a reasonable arrangement subsidized by other consumers to financially insulate the Applicant from the consequences of its entering into a long-term purchase power agreement.

None of the three prongs are met. The PUCO should reject the Settlement.

# II. THE PROPOSED SETTLEMENT SHOULD BE REJECTED BY THE PUCO BECAUSE IT DOES NOT MEET THE THREE-PRONG TEST

## A. The PUCO should reject the Settlement because it lacks both diversity of those who signed it and serious bargaining among parties.

The Settlement was signed by the Applicant and the PUCO Staff only. The Applicant, a large industrial user, represents its own financial interests. And the PUCO Staff should balance the interests of all parties but does not represent any particular interest, other than its own interest as part of the PUCO.[[12]](#footnote-13) The only other party to this case is OCC. OCC represents the interests of residential consumers who have a real and substantial interest in this proceeding and will likely pay more if the Applicant is allowed to join the Rider NMB pilot program.

The Settlement does not benefit consumers and is not in the public interest because it’s a misuse of the PUCO’s settlement standards. Essentially, the Settlement was adopted not to compromise but to gain a litigation advantage from the Settlement standards that favor stipulators.

In considering the first prong of the PUCO’s three-part test for settlements, the PUCO has at times considered the diversity of the signatory parties. Diversity is not required. And no single party can veto a settlement. But “the diversity of the signatory parties may be a consideration in determining whether a settlement is a product of serious bargaining among capable, knowledgeable parties under the first prong of the Commission’s test.”[[13]](#footnote-14)

Unfortunately, the PUCO’s past application of the diversity principle has been one-sided. In cases where many parties sign a settlement, the PUCO has touted the diversity of the signatory parties as supporting approval of the settlement. For example, in Dayton Power and Light’s recent electric security plan case, the PUCO approved a settlement. The PUCO noted that “it is helpful if the signatory parties do represent a variety of interests” and cited the interests of various parties that signed the settlement as supporting approval of the settlement.[[14]](#footnote-15)

In another recent case involving AEP, the PUCO again noted that diversity is not required but it then highlighted the diversity of parties as favoring approval of the settlement.[[15]](#footnote-16) But when very few parties sign a settlement (sometimes, as in this case, as few as two), the PUCO has shrugged off the lack of diversity as irrelevant.[[16]](#footnote-17) If diversity matters—and the PUCO has said that it does—then it must be applied both ways and consistently.

OCC is not suggesting that any party should have the sole authority to veto a settlement. The point is that when a settlement lacks diversity, the PUCO should take a close look at potential prejudice to the interests of the parties opposing the settlement.

Under the first prong of the PUCO’s settlement standard the settling parties must show that “serious bargaining” occurred. Serious bargaining did not occur, as the application was accepted in its entirety.[[17]](#footnote-18)

There are numerous reasons, as explained below, that the Settlement should be rejected on its merits. But when determining how much weight to give the Settlement, the PUCO should give it very little. The settlement fails the first prong due to lack of diversity and lack of serious bargaining.

## B. The PUCO should reject the Applicant/PUCO Staff Settlement because it does not benefit consumers or the public interest.

The second prong of the PUCO’s settlement test is whether the Settlement, as a package, benefits consumers and the public interest. The Settlement does not meet this prong. In this case the Settlement uniquely benefits only the Applicant and is a detriment to all other consumers. The Settlement offers very little (if any) benefits to other consumers. To the contrary, the Settlement shifts responsibility for Applicant’s payments to FirstEnergy to other customers.

The PUCO has ruled that customer participation in the Rider NMB pilot program must be “appropriate” and “in the public interest.”[[18]](#footnote-19) The PUCO directed customers wanting to participate to “work with Staff and the Companies to determine if the customers’ participation is appropriate.” After that, such customer “may then file an application with the Commission under R.C. 4905.31 for permission to participate in the Rider NMB pilot program.”[[19]](#footnote-20) At that point, the PUCO would “determine if such participation is in the public interest.”[[20]](#footnote-21)

This so-called unique arrangement is not in the public interest because it asks too much of other consumers. It asks that consumers subsidize the Applicant’s transmission costs. In doing so, the subsidy will help insulate the Applicant’s business decision to execute a solar power purchase agreement where the Applicant miscalculated the transmission cost savings it would receive.[[21]](#footnote-22) In this regard, the Applicant’s Witness Mr. Monnin testified that its solar project is “not providing the expected benefits” and in fact is “cost unfavorable.”[[22]](#footnote-23)

The Applicant’s sole rationale for the unique arrangement (i.e., participating in the NMB Rider pilot program) is that it has paid more than its fair share of transmission costs in the past, related to its solar project.[[23]](#footnote-24) The Applicant testified it committed to a 20-year power purchase agreement for a third-party owned 9.8-megawatt solar plant in 2011, specifically to lower its electricity costs.[[24]](#footnote-25)

The Applicant further testified that it assumed it would be getting a full credit on its transmission cost, but “that was not the case.”[[25]](#footnote-26) (At that time Rider NMB was a tariffed charge for all Toledo Edison customers and there was no opt out.)[[26]](#footnote-27) The Applicant didn’t get transmission savings that it was expecting with the project (due to Toledo Edison’s tariffs). But the Applicant’s mistake in evaluating the financial benefits of a power purchase agreement is not justification to make other consumers subsidize the Applicant’s transmission costs.

Applicant’s decision was based on its own erroneous assumptions that its transmission costs would be credited under the project.[[27]](#footnote-28) But based on facts known at the time, it was not reasonable to presume that all of the Applicant’s transmission costs would be offset. At the time the power purchase contract was entered into (2011), Toledo Edison had the approved Rider NMB in place.[[28]](#footnote-29) There was no way to opt out of the charge.[[29]](#footnote-30)

Another reason why the Settlement fails the second prong of the PUCO’s settlement standard is the cost shifting that it will create. As OCC witness Haugh testified, “costs will be shifted once the Applicant enters the opt-out pilot program…there will be a shortfall of revenue for FirstEnergy and this shortfall will need to be collected from other customers.”[[30]](#footnote-31)

On cross-examination Applicant’s witness Seryak admitted that transmission rates charged to other customers would increase if Applicant’s unique arrangement were approved.[[31]](#footnote-32) The witness further testified that charges of approximately $280,000/per year may be shifted for other customers to pay.[[32]](#footnote-33) The impact could become much larger, but we don’t know because a thorough evaluation of this pilot program has not been performed (as was directed by the PUCO).[[33]](#footnote-34) It is not a benefit to residential consumers to pay FirstEnergy to make up for a revenue shortfall as a result of the Settlement.[[34]](#footnote-35)

Also, the Applicant’s witness testified on cross-examination that it is not committing to a specific level of capital investment in Ohio.[[35]](#footnote-36) And it is not guaranteeing a specific employee level[[36]](#footnote-37) as a result of approval of the unique arrangement presented in the Settlement. The benefits that the Applicant touts as being provided from the unique arrangement will be available whether the PUCO approves the Settlement or not.[[37]](#footnote-38)

This unique arrangement and Settlement do not benefit consumers and are not in the public interest. It is unreasonable to ask other customers to financially insulate the Applicant from the consequences of entering into a long-term purchase power agreement that produced less savings than anticipated. It is not in the public interest to shift these pilot program costs onto other non-participants, including residential consumers.

Further, the Settlement does not benefit consumers and is not in the public interest because it’s a misuse of the PUCO’s settlement standards. Essentially, the Settlement was adopted not to compromise but to gain a litigation advantage from the Settlement standards that favor stipulators. *Also, given the misuse of standards, the Settlement is not entitled to be considered as a package.*

## C. The PUCO should reject the Settlement because it violates regulatory principles and practices.

The third prong of the PUCO’s settlement standard is whether the settlement package violates any important regulatory principle or practice. It is not good regulatory practice to ask other customers to pay the Applicant’s transmission costs as a means to financially insulate the Applicant from the consequences of miscalculating the financial benefits of a power purchase agreement.[[38]](#footnote-39)

In addition, this Settlement violates regulatory principles and practices because neither Staff nor FirstEnergy have complied with the PUCO’s directive to review the results of the program. Staff and FirstEnergy were supposed to “periodically report findings to the PUCO” under the guidelines established in the Order.[[39]](#footnote-40)

The purpose of the Rider NMB pilot program was for FirstEnergy “to study the administrative burden and costs of allowing big business customers the option to have their CRES providers pay Rider NMB charges. And the purpose was to study “whether such a program would result in benefits to both participating and non-participating customers.”[[40]](#footnote-41) The PUCO similarly described the pilot 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.*”[[41]](#footnote-42)

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.”[[42]](#footnote-43) Such reviewing and reporting would be consistent with proper regulatory practices. The lack of reviewing and reporting violated regulatory principles and practices.

The PUCO ruled that such review “should include, at a minimum: whether there is an aggregate savings in transmission costs for all of the Companies’ customers, *whether and how much in transmission costs are being shifted to customers not participating in the pilot program*, whether the benefits of the pilot program outweigh any costs, and whether Rider NMB results in an overall cost savings to customers.”[[43]](#footnote-44)

The PUCO-ordered review of the Rider NMB Pilot “is necessary for the Commission to determine whether Rider NMB should be continued with the ability for customers to opt out, whether Rider NMB should be continued without the ability for customers to opt out, and whether Rider NMB should be terminated.”[[44]](#footnote-45) At the time of the PUCO’s approval, any potential benefits or harms to consumers from the pilot had yet to be shown because they were based only on projections and not actual results.[[45]](#footnote-46) Thus, the PUCO retained the right “to modify the provisions of Rider NMB based upon the results of the review by Staff.”[[46]](#footnote-47)

The pilot program has been in effect for more than five years, having been approved in ESP IV in March 2016. As described above, the purpose of the pilot program was for the PUCO Staff to evaluate the results of the program and “report” to the PUCO. But it is not clear that the PUCO Staff has (ever) in fact performed this kind of evaluation.

It is true that in various rider proceedings in the last five years, the PUCO Staff has filed reports mentioning the Rider NMB Pilot Program.[[47]](#footnote-48) But based on OCC’s review, *none of these reports provide the PUCO’s expected information* about (i) whether there is an aggregate savings in transmission costs for all customers, (ii) whether and how much transmission costs are being shifted to non-participating customers (which would include residential consumers, who cannot participate), (iii) whether the benefits of the pilot program outweigh any costs, and (iv) whether Rider NMB results in an overall cost savings to customers. The six Staff Reports filed on the NMB rider pilot program address data, but not the criteria. For example, the latest Staff Report, filed in Case No. 20-1768, identifies that “75 customers are expected to be participating in the Pilot as of March 1, 2021.” [[48]](#footnote-49) That’s up from approximately 40 customers “expected to be participating in the Pilot as of March 1, 2017” according to the first Staff Report issued on Rider NMB.[[49]](#footnote-50) Each of these two-page Reports briefly describe the number of customers and function of the rider. Additional analyses on the PUCO’s enumerated criteria are not provided.

The Settlement thus violates important regulatory principles and practices. The PUCO’s Order has not been properly implemented for consumer protection. Before the PUCO considers approving this Settlement, it should first follow through with its 2016 directive that the pilot be thoroughly examined by its Staff using the guidelines stated in the Order and reported to the PUCO.

Critical to residential consumers is the PUCO’s expectation for a detailed analysis of “whether and how much in transmission costs are being shifted to non-participating customers.”[[50]](#footnote-51) The review required by the PUCO five years ago is needed to determine if it is just and reasonable to expand the pilot program or even continue it. As identified by the PUCO, an important component of the review is to assess any cost-shifting to other consumers (which results in others having to subsidize Rider NMB Pilot Program participants). *The expected reviews of the pilot program should be completed, made public and opened for public comment before more applications are considered.*

Further, the Settlement violates regulatory principles and practices because it’s a misuse of the PUCO’s settlement standards. Essentially, the Settlement was adopted not to compromise but to gain a litigation advantage from the settlement standards that favor stipulators. *Also, given the misuse of standards, the Settlement is not entitled to be considered as a package.*

## D. If the PUCO approves the Settlement, which it should not, the PUCO should modify it as recommended by OCC Witness Haugh.

If the PUCO chooses to approve the Settlement (which it should not do), it should require a consumer protection. That consumer protection should be regarding any so-called delta revenue (or other shifted charges) created by this unique arrangement. *Accordingly, the PUCO should order that any such delta revenue or other charges be paid to FirstEnergy by customers in the Applicant’s own customer class –* *and not paid by smaller business and residential customers who cannot opt out of paying Rider NMB.*[[51]](#footnote-52) That approach would avoid the unreasonable shifting of charges to the residential and other consumer classes.

# III. CONCLUSION

The Settlement does not pass the PUCO’s three-part test for evaluating settlements. The Settlement lacks diversity of interest (by virtue of no consumer advocate signing it) and was not the product of serious bargaining (as it simply adopted the application). The Settlement does not benefit customers and it disserves the public interest (because of the cost shifting that occurs due to the Applicant’s participation in the pilot program). And the Settlement is a misuse of the PUCO’s settlement standards for the Stipulators to obtain the litigation advantage afforded by those standards, without any real compromise.

Under the Settlement, residential and smaller business consumers are being asked to subsidize the Applicant’s transmission costs as a means to financially insulate the Applicant from the consequences of its business decision.[[52]](#footnote-53) And the Settlement violates regulatory principles because the program evaluations that the PUCO ordered have not been done. *The expected PUCO reviews of the pilot program should be completed, made public and opened for public comment before more applications are considered.*

For these reasons, the PUCO should protect consumers by rejecting or modifying the Settlement, consistent with OCC’s consumer-protection recommendations.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Post Hearing Brief was served on the persons stated below via electronic transmission, this 10th day of February 2022.

*/s/ Maureen R. Willis*

Maureen Willis

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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. Joint Ex. 1 (Joint Stipulation and Recommendation) (Dec. 9, 2021). [↑](#footnote-ref-2)
2. *See* OCC Ex. 2 (Supplemental Testimony of Michael P. Haugh, Dec. 22, 2021) at 5; Tr. at 156, 215. [↑](#footnote-ref-3)
3. Campbell Supply Ex. 1 (Application) at 4-5; Campbell Supply Ex. 2 (Monnin) at 4-5; *See*, Tr. at 41-43, 76, 87-92 (cross examination of Mr. Monnin) (…we’re paying more for solar versus what we are getting credit for the offsetting purchase costs. So unfortunately, that capacity savings is not giving us enough offset to what we are paying additional with solar, where the reasonable rate agreement would actually give us more transmission benefit that we are not receiving today.” (Monnin at 42). [↑](#footnote-ref-4)
4. OCC Ex. 2 (Haugh) at 7. [↑](#footnote-ref-5)
5. Tr. at 60; 56-57 (cross examination of Mr. Monnin). [↑](#footnote-ref-6)
6. Campbell Supply Ex. 2 (Monnin) at 4-5; *See*, Tr. at 41-43, 76, 87-92 (cross examination of Mr. Monnin). [↑](#footnote-ref-7)
7. Campbell Supply Ex. 2 (Monnin) at 6. [↑](#footnote-ref-8)
8. OCC Ex. 2 (Haugh) at 8; Tr. at 261 (cross examination of Mr. Haugh). [↑](#footnote-ref-9)
9. *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 74 (Mar. 31, 2016). [↑](#footnote-ref-10)
10. *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-11)
11. OCC Ex. 1 (Direct Testimony of Michael P. Haugh) at 3-6; OCC Ex. 2. (Haugh Supplemental) at 6, 9-10; Tr. at 239-240 (cross examination of Mr. Haugh). [↑](#footnote-ref-12)
12. Tr. at 263-264 (redirect examination of Mr. Haugh). [↑](#footnote-ref-13)
13. *In re Application of Ohio Edison Co., the Cleveland Elec. Illuminating Co., & the Toledo Edison Co. for Approval of their Energy Efficiency & Peak Demand Reduction Program Portfolio Plans*, Case No. 16-743-EL-POR, Opinion & Order ¶ 61 (Nov. 21, 2017). [↑](#footnote-ref-14)
14. Case No. 16-395-EL-SSO, Opinion & Order ¶ 21 (Oct. 20, 2017) (emphasis in original). [↑](#footnote-ref-15)
15. Case No. 09-872-EL-FAC, Order on Global Settlement Stipulation ¶ 107 (Feb. 23, 2017). [↑](#footnote-ref-16)
16. *See, e.g., In re Application of Duke Energy Ohio, Inc. for an Adjustment to Rider AMRP Rates to Recover Costs Incurred in 2017*, Case No. 17-2318-GA-RDR, Opinion & Order (Apr. 25, 2018) (approving settlement signed by only the utility and the PUCO Staff); *In re Application of Suburban Natural Gas Co. for an Increase in Gas Distribution Rates*, Case No. 18-1205-GA-AIR, Opinion & Order ¶¶ 87-91 (Sept. 26, 2019) (approving settlement signed by only the utility and the PUCO Staff and opposed by consumer representatives OCC and Ohio Partners for Affordable Energy). [↑](#footnote-ref-17)
17. Tr. at 156 (cross examination of Mr. Seryak); Tr. at 215 (cross examination of Mr. Haugh). [↑](#footnote-ref-18)
18. *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 ¶ ¶ 309, 310 (Oct. 12, 2016). [↑](#footnote-ref-19)
19. *Id.* [↑](#footnote-ref-20)
20. *Id.* [↑](#footnote-ref-21)
21. Campbell Supply Ex. 2 (Direct Testimony of Mr. Doug Monnin) at 4-5; *See* also, Tr. at 41-43, 76, 90-92 (cross examination of Mr. Monnin). [↑](#footnote-ref-22)
22. Campbell Supply Ex. 2 (Direct Testimony of Mr. Doug Monnin) at 4-5 (“this overpayment of transmission costs has contributed to the on-site solar generation project not providing the expected benefits, and in fact, being cost unfavorable.”). [↑](#footnote-ref-23)
23. Campbell Supply Ex. 2 (Monnin) at 5; Tr. at 42-43. [↑](#footnote-ref-24)
24. Campbell Supply Ex. 2 (Monnin) at 4-5; Campbell Supply Ex. 3A (Direct Testimony of Mr. John Seryak, Public Version) at 9-10; Campbell Supply Ex. 2 (Monnin) at 4-5; Tr. at 39-42 (cross examination of Mr. Monnin). [↑](#footnote-ref-25)
25. Campbell Supply Ex. 2 at 4-5, 14; Tr. at 41-43, 76, 85-92 (cross examination of Mr. Monnin) (“And I looked at the economics that we did for that array that we put in the operation in 2012 and our assumptions were we were going to get a full cost offset on purchased electricity for every kilowatt-hour of solar we purchased and that was not the case.”)(Tr. at 42). [↑](#footnote-ref-26)
26. *In re Application of [FirstEnergy] for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO (Aug. 25, 2010); *see also* Tr. at 86. [↑](#footnote-ref-27)
27. *See*, Tr. at 42 (“[O]ur assumptions were we were going to get a full cost offset on purchased electricity for every kilowatt-hour of solar we purchased and that was not the case. It’s not the way we—did not meet our expectations; and, thus, we’ve been operating that field at a –at a cost versus what we thought would be a savings. So approximately 25 percent of our purchase rate is transmission, but we are not getting that credit through every kilowatt-hour solar that we purchase.”)(OCC cross examination of Mr. Monnin).; *see also* Tr. at 76 (“[W]e’re paying more for solar versus what we are getting credit for the offsetting purchase costs.”); *see also* Tr. at 91 (“the biggest miss we had in the economic models was assuming we will get a full transmission credit.”). [↑](#footnote-ref-28)
28. *In re Application of [FirstEnergy] for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO (Aug. 25, 2010). [↑](#footnote-ref-29)
29. Tr. at 86 (cross examination of Mr. Monnin). [↑](#footnote-ref-30)
30. OCC Ex. 2 (Haugh Supplemental Testimony) at 7. [↑](#footnote-ref-31)
31. Tr. at 141-143; 147 (cross examination of Mr. Seryak). [↑](#footnote-ref-32)
32. Tr. at 156-157 (cross examination of Mr. Seryak); 260-262 (cross examination of Mr. Haugh). [↑](#footnote-ref-33)
33. *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-34)
34. OCC Ex. 2 at 5. [↑](#footnote-ref-35)
35. Tr. at 60 (cross examination of Mr. Monnin) (“we are not committing to a specific level of capital investments.”). [↑](#footnote-ref-36)
36. Tr. at 56-57(cross examination of Mr. Monnin) (“We’re not guaranteeing a specific employee level”). [↑](#footnote-ref-37)
37. Tr. at 55-59; 132 (cross examination of Mr. Monnin). [↑](#footnote-ref-38)
38. *In re Ohio Power PPA Rider*, Case No. 14-1693-EL-RDR (Opinion and Order at 89) (Mar. 31, 2016) (the “OVEC Order”) (also stating, “AEP Ohio will bear the burden of proof in demonstrating that bidding behavior is prudent and in the best interest of retail ratepayers.”). *See also*, *In the Matter of the Investigation of Perry Nuclear Power Station,* 1988 Ohio PUC Lexis 1269. [↑](#footnote-ref-39)
39. *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-40)
40. *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 73 (Mar. 31, 2016). [↑](#footnote-ref-41)
41. *Id.* at 94 (emphasis added). [↑](#footnote-ref-42)
42. *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-43)
43. *Id.* (emphasis added). [↑](#footnote-ref-44)
44. *Id.* [↑](#footnote-ref-45)
45. *Id.* (“Rider NMB pilot program is a pilot program which bears further study to determine if the actual results of the pilot program, rather than the projected results, are in the public interest.”). [↑](#footnote-ref-46)
46. *Id.* [↑](#footnote-ref-47)
47. *See* Case No. 16-2043-EL-RDR, Staff Report (Feb. 7, 2017); Case No. 17-2378-EL-RDR, Staff Report (Feb. 9, 2018); Case No. 18-1818-EL-RDR, Staff Report (Feb. 21, 2019); Case No. 19-2120-EL-RDR, Staff Report (Feb. 20, 2020); Case No. 20-1768-EL-RDR, Staff Report (Feb. 16, 2021); Case No. 21-695-L-RDR, Staff Report (Aug. 11, 2021). *See*, Tr. at 257-258. [↑](#footnote-ref-48)
48. *In the Matter of the Review of the Non-Market Based Services Rider contained in the Tariffs of Ohio Edison, The Cleveland Electric Illuminating Company and The Toledo Edison Company*, Case No. 20-1768-EL-RDR, Staff Review and Recommendations (Feb. 16, 2021). [↑](#footnote-ref-49)
49. *In the Matter of the Review of the Non-Market Based Services Rider contained in the Tariffs of Ohio Edison, The Cleveland Electric Illuminating Company and The Toledo Edison Company*, Case No. 16-2043-EL-RDR, Staff Review and Recommendations (Feb. 7, 2017). [↑](#footnote-ref-50)
50. *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-51)
51. OCC Ex. 2 at 10. [↑](#footnote-ref-52)
52. *In re Ohio Power PPA Rider*, Case No. 14-1693-EL-RDR (Opinion and Order at 89) (Mar. 31, 2016) (the “OVEC Order”) (also stating, “AEP Ohio will bear the burden of proof in demonstrating that bidding behavior is prudent and in the best interest of retail ratepayers.”). *See also*, *In the Matter of the Investigation of Perry Nuclear Power Station,* 1988 Ohio PUC Lexis 1269. [↑](#footnote-ref-53)