***OCC EXHIBIT NO. \_\_\_\_\_\_***

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| 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 |

**Supplemental TESTIMONY**

**OF**

**MICHAEL P. HAUGH**

**REGARDING THE PUCO STAFF-APPLICANT SETTLEMENT**

**On Behalf of**

**Office of the Ohio Consumers’ Counsel**

*65 East State Street, Suite 700*

*Columbus, Ohio 43215*

**December 22, 2021**

**TABLE OF CONTENTS**

**PAGE**

[I. OVERVIEW 1](#_Toc91084153)

[II. PURPOSE OF TESTIMONY 2](#_Toc91084154)

[III. Conclusion 11](#_Toc91084155)

# I. OVERVIEW

Q1. PLEASE STATE YOUR NAME, title, AND BUSINESS ADDRESS.

***A1.*** My name is Michael P. Haugh. I am the Director of Analytical Services for Markets and Competitive Services at the Office of the Ohio Consumers’ Counsel (“OCC”). My business address at OCC is 65 East State Street, Suite 700, Columbus, Ohio 43215.

***Q2. have you previously submitted testimony in this case?***

***A2.*** Yes, on December 6, 2021, I submitted Direct Testimony. There, I recommended the Public Utilities Commission of Ohio (“PUCO”) deny the application of Campbell Soup Supply Company L.L.C. (“Campbell” or “Applicant”) for a unique arrangement given, among other things, the lack of analysis of the pilot program by the PUCO. I recommended to the PUCO that it should not expand the FirstEnergy Non-Market Based Services Rider (“Rider NMB”) opt-out pilot program to allow more participants, prior to the PUCO Staff conducting the full review that is supposed to occur regarding the pilot program.

# II. PURPOSE OF TESTIMONY

***Q3. What is the purpose of your supplemental testimony in this proceeding?***

***A3.*** The purpose of my Supplemental Testimony is to express opinions regarding the Settlement between the PUCO Staff and the Applicant. On December 9, 2021, the Applicant filed a Joint Stipulation and Recommendation (“Settlement”) which accepted the Application as filed, with no modifications. The Applicant and the PUCO Staff are the only signatory parties to the Settlement.

This Supplemental Testimony contains my recommendations regarding the Settlement and whether it passes the three-pronged test of the PUCO for evaluating the reasonableness of a proposed settlement. In addressing the PUCO’s settlement standards, I am not suggesting that the settlement standards themselves are fair. The PUCO’s settlement standards should be reformed.

***Q4. PLEASE SUMMARIZE YOUR OPINIONS REGARDING THE SETTLEMENT.***

***A4.*** The Settlement does not meet the PUCO’s three-pronged test. A core problem with the Settlement is that giving a customer this favorable treatment of a lower charge will result in FirstEnergy charging other customers more (including residential consumers) to make up the difference. Our consumer concern is not unique to the Applicant in this case. Indeed, OCC did not sign the FirstEnergy electric security plan settlement in Case No. 14-1297-EL-SSO that created this pilot program and our concern. However, if the Settlement were modified to adopt the recommendations contained in this testimony and my filed Direct Testimony, then the Settlement could meet the PUCO's three-pronged test.

***Q5. WHAT IS THE PUCO’S STANDARD OF REVIEW FOR EVALUATING PROPOSED SETTLEMENTS?***

***A5***. The PUCO uses these criteria for evaluating the reasonableness of a proposed settlement:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit customers and the public interest?[[1]](#footnote-3)
3. Does the settlement package violate any important regulatory principle or practice?

In assessing the first prong, the PUCO also has considered at times if there is diversity of interests among the stipulating parties.

***Q6. Does the settlement meet the first prong of the standard?***

***A6.*** No. The Settlement failed it in several areas. First, the Settlement lacks diversity. That means customers (including residential consumers) who could have transmission costs shifted to them as a result of the Applicant’s participation in the Rider NMB opt-out pilot program are not Settlement signatories.

Second, there was not serious bargaining among the parties. There were initial settlement discussions between the Applicant, OCC, and the PUCO Staff regarding this Application where parties made recommendations, no consensus was reached, and parties proceeded to file testimony for a litigated case. But then, three days after testimony was filed, OCC received an email at 10:24 am stating a settlement was reached between the Applicant and PUCO Staff. And OCC was given until 1:00 pm that day to state if it would join the Settlement which accepted the Application without modifications. That was how and when OCC learned of the settlement proposal that merely accepted all terms in the Application.

There really was no need for such a Settlement that added nothing beyond the Application, given that the PUCO Staff could have simply taken the position at hearing that it supported the Application without changes. But, under the PUCO’s settlement system, the creation of the Settlement gives the Applicant and the PUCO Staff an (unfair) advantage in how the PUCO will evaluate the issues. This settlement process issue is not unique to this Applicant or this case.

***Q7. Does the settlement, as a package, benefit Consumers and the public interest?***

***A7.*** No. The Settlement simply adopts the Applicant’s proposal contained in its Application, exactly as it was filed. The only added benefit of the Settlement accrues to the PUCO Staff and the Applicant in the advantage they gain in the case process by coming under the PUCO’s standards that favor the parties that settle. As I explained in my initial testimony, there are consumer concerns the PUCO is supposed to address (but the Settlement has failed to address) about shifting of costs to residential consumers under the pilot program. As noted, it is not a benefit to residential customers to pay FirstEnergy to make up for revenue foregone as a result of the Settlement. Again, shifting of costs to residential consumers is not unique to the Applicant though it now involves the Applicant.

Furthermore, with any pilot program, an evaluation of the results should be conducted to learn the benefits and shortcomings to consumers prior to expanding the program to other parties. In the Opinion and Order approving the opt-out pilot program the PUCO described the pilot program as “the 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.”[[2]](#footnote-4) Upon approving the Rider NMB opt-out pilot program, the PUCO stated “that 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.”[[3]](#footnote-5) It went on to say the PUCO Staff should review the results of the program and “periodically report findings to the PUCO.”[[4]](#footnote-6) As I stated in my direct testimony, neither the PUCO Staff nor any of the FirstEnergy Utilities publicly filed a report on the results of the past five years of the Rider NMB opt-out pilot program. The PUCO Staff should publicly file a report (including dollar impact and cost to other consumers) on the FirstEnergy Rider NMB opt-out pilot program before there is any consideration of expanding the existing program.

As noted, OCC opposed the FirstEnergy Settlement where the program was created to benefit certain customers. So we are addressing the concerns with a program that we did not seek. And our concerns now include this Application but are not limited to this Application. Interestingly, the PUCO recently announced (by Entry dated December 15, 2021 in Case 20-1629) that it will investigate whether FirstEnergy “violated R.C. 4928.145 by failing to disclose the amended agreement during the proceedings in the ESP IV case.” Coincidentally, the opt-out pilot program at issue here was one of the terms in the Settlement the PUCO now has under investigation.

***Q8. DO you agree with Applicant’s witness SERYAK that there will not be any delta REVENUE?***

***A8***. No. Mr. Seryak states there will not be any delta revenue as a result of the unique arrangement.”[[5]](#footnote-7) This may be an issue of semantics because costs will be shifted once the Applicant enters the opt-out pilot program. In other words there will be a shortfall of revenue for FirstEnergy and this shortfall will need to be collected from other consumers. Note that the Ohio Manufacturers’ Association Energy Group Application for Rehearing in case 14-1297 (p. 64) states, among other things, that “Under the expanded NMB pilot program, which includes up to five additional Rate GT customers, remaining ratepayers may face higher charges.”

***Q9. Will there be any cost shifting as a result of THE APPLICANT joining the Rider NMB opt-out program?***

***A9***. Yes. The Applicant’s own witness, John Seryak, essentially stated that there will be shifting of the revenue responsibility as a result of the Applicant joining the Rider NMB opt-out pilot program. In defending the Application, Mr. Seryak claims that the Applicant has been overpaying for its transmission service and “subsidizing other customers’ transmission costs.”[[6]](#footnote-8)

If the Applicant stops paying Rider NMB, it will definitely lead to a shifting of transmission costs from one consumer to others. Mr. Seryak states that ATSI and FirstEnergy are only passing through their transmission costs, and he also states that by switching to the Rider NMB opt-out program, the Applicant will pay less for its transmission service.[[7]](#footnote-9) He goes on to state the Applicant has already taken steps to reduce its transmission costs that should have reduced their overall transmission costs.[[8]](#footnote-10) In its Application the Applicant is not offering to add in any additional steps to reduce its transmission costs. If the Applicant is not proposing to reduce transmission costs, that means the overall transmission costs charged to FirstEnergy by PJM will not be reduced. If it is true that by joining the Rider NMB opt-out pilot program the Applicant’s individual transmission costs **will** be reduced and that FirstEnergy’s overall transmission cost **will not** be reduced, there will in fact be a shifting of costs to other consumers unless FirstEnergy absorbs the delta revenue. That would seem to be a highly unlikely outcome that FirstEnergy would absorb the delta revenue and not charge other customers for the foregone revenue.

***Q10. Does the settlement package violate any important regulatory principle or practice?***

***A10.*** Yes. The PUCO Staff has not abided by a PUCO Order in the case approving the Rider NMB opt-out pilot program (PUCO Case No. 14-1297-EL-SSO). In that case the PUCO requested periodic updates from the PUCO Staff that include, at the minimum:

1. Whether there is an aggregate savings in transmission costs for all of the Companies' customers.
2. Whether and how much in transmission costs are being shifted to customers not participating in the pilot program.
3. Whether the benefits of the pilot program outweigh any costs.
4. Whether Rider NMB results in an overall cost savings to customers.[[9]](#footnote-11)

To my knowledge, there has not been a report by the PUCO Staff referencing the above Order of the PUCO. The Settlement lacks any requirement for the PUCO Staff to prepare such a report. The report(s) should be prepared now. If they are prepared, the reports should be publicly filed. This PUCO Order sets forth regulatory principles and practices (being involved with regulatory reports regarding the opt-out pilot program) that are not being followed but should be.

***Q11. WHAT ACTIONS BY THE PUCO DO YOU RECOMMEND?***

***a11****.* The PUCO Staff should be (again) directed to follow the PUCO’s rulings in Case No. 14-1297-EL-SSO for review of the pilot program. The PUCO Staff should publicly file a report on the impact (including dollar impact on other consumers) of the FirstEnergy Rider NMB opt-out pilot program.

The process of this case should await the PUCO’s follow up on its expectations for a review in creating the pilot program. All of the program participants, and this Applicant, should be subject to the outcome of the intended PUCO review of the opt-out pilot program, after an opportunity for public participation. That outcome could include the PUCO modifying or termination the Rider NMB opt-out pilot program as noted by the PUCO in the Order approving the pilot program.

There is another way to resolve this Application. The PUCO could grant the Application and require that any potential delta revenue (or other shifted charges) created by this reasonable arrangement be paid to FirstEnergy by other customers in the Applicant’s own customer class (and not paid by residential consumers). That approach would avoid shifting charges to residential and other consumer classes.

# III. Conclusion

Q12. Does this conclude your testimony?

***A12.*** Yes, however I reserve the right to incorporate new information that may subsequently become available.

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Supplemental* *Testimony of Michael P. Haugh, on Behalf of the Office of the Ohio Consumers’ Counsel* was served via electronic transmission upon the parties below this 22nd day of December 2021.

*/s/ Amy Botschner-O’Brien*

Amy Botschner-O’Brien

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

|  |  |
| --- | --- |
| [thomas.lindgren@ohioAGO.gov](mailto:thomas.lindgren@ohioAGO.gov)  Attorney Examiners:  [jacqueline.st.john@puco.ohio.gov](mailto:jacqueline.st.john@puco.ohio.gov)  [gregory.price@puco.ohio.gov](mailto:gregory.price@puco.ohio.gov) | [bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  [wygonski@carpenterlipps.com](mailto:wygonski@carpenterlipps.com)  [bknipe@firstenergycorp.com](mailto:bknipe@firstenergycorp.com) |

1. *Consumers’ Counsel v. Pub. Util. Comm.,* 64 Ohio St 3d 123, 125(1992), citing *Akron v*. *Pub. Util. Comm.,* 55 Ohio St.2d 155, 157 (1978). [↑](#footnote-ref-3)
2. *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 and Order at 94 (March 31, 2016). [↑](#footnote-ref-4)
3. *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-5)
4. *Id.* [↑](#footnote-ref-6)
5. Seryak Testimony at page 4. [↑](#footnote-ref-7)
6. *Testimony of John Seryak on Behalf of the Campbell Soup Supply Company LLC,* PUCO Case No. 21-1047-EL-AEC at page 9. [↑](#footnote-ref-8)
7. *Id* at 8. [↑](#footnote-ref-9)
8. *Id* at 9-11. [↑](#footnote-ref-10)
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, Fifth Entry on Rehearing ¶ 310 (Oct. 12, 2016). [↑](#footnote-ref-11)