

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Political)
and Charitable Spending by Ohio Edison)
Company, The Cleveland Electric) Case No. 20-1502-EL-UNC
Illuminating Company, and The Toledo)
Edison Company)

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY’S RESPONSE TO SHOW
CAUSE ENTRY**

Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, the “Companies”) respond to the Commission’s recent directive to answer the question of whether the costs of any political or charitable spending in support of Am. Sub. H.B. 6, or the subsequent referendum effort (collectively, “H.B. 6 costs”), were included, directly or indirectly, in any rates or charges paid by ratepayers in Ohio. *See* Sept. 15, 2020 Entry at ¶ 5. The short and simple answer is “no.” As discussed below, it is not possible for the Companies’ base rates to include H.B. 6 costs. Also, the Companies’ ratepayers have not paid any other riders or charges that include H.B. 6 costs.

A. H.B. 6 Costs Are Not in Base Rates.

It is simply not possible for the Companies’ base distribution rates to include any H.B. 6 costs because the statutory process used by the Commission to set the Companies’ base rates for providing electric service to customers excludes any costs to the Companies outside of their test year. Any rate analysis must begin with R.C. 4909.15(A), which “charges the commission with setting ‘just and reasonable rates’ and provides a mandatory ratemaking formula that requires the commission to make a series of determinations when fixing rates.” *In re Application of Duke Energy Ohio, Inc.*, 150 Ohio St.3d 437, 2017-Ohio-5536, 82 N.E.3d 1148, ¶ 16. The R.C. 4909.15

ratemaking formula requires the Commission to set rates at levels which allow a public utility to recover annual revenues reflecting the costs of rendering service during an annual test period, plus a fair and reasonable rate of return on invested capital. *See* R.C. 4909.15(A)(1)-(4), (B).

The Companies' current base rates were set in Case No. 07-551-EL-AIR, *et al.*, based on a test year of twelve months ended February 2008. This test year clearly predated any of the H.B. 6 costs. *See* Affidavit of Santino L. Fanelli ("Fanelli Aff."), attached hereto as Exhibit A, ¶¶ 4, 5. *See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices, and for Tariff Approvals*, Case No. 07-551-EL-AIR, *et al.*, Opinion and Order at p. 3 (Jan. 21, 2009). Further, the base rates set using that test year are frozen through May 31, 2024 as a result of the Companies' electric security plan ("ESP") proceedings. *See 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. Because the test year predated any H.B. 6 costs, those costs cannot possibly be included in the Companies' base rates.

Moreover, the Commission has long held that political expenses and charitable contributions are not a proper operating expense to include in utility rates to the extent they are not a cost of rendering public utility service. *See Cleveland Elec. Illuminating Co. v. Pub. Util. Comm.*, 69 Ohio St.2d 258, 431 N.E.2d 683 (1982), syllabus; *City of Cleveland v. Pub. Util. Comm.*, 63 Ohio St.2d 62, 73, 406 N.E.2d 1370 (1980); *In the Matter of the Application of Cincinnati Bell Telephone Company for Authority to Increase and Adjust its Rates and Charges and to Change Regulations and Practices Affecting the Same*, Case No. 84-1272-TP-AIR, *et al.*, 1985 WL

1172159, Opinion and Order (Oct. 29, 1985) (excluding lobbying expenses and charitable contributions from allowable operating expense). Accordingly, even if the Companies had incurred H.B. 6 costs during their test year, they would not have been included in the calculation of the Companies' base rates.

B. H.B. 6 Costs Are Not in Any Other of the Companies' Riders or Other Charges.

In addition to base rates, the Companies have riders or other charges in their approved tariffs. Any costs of political or charitable spending in support of Am. Sub. H.B. 6, or the subsequent referendum effort, would not have been recorded in accounts that are used to calculate the Companies' riders and charges. Therefore, the Companies' ratepayers have not paid riders or charges that include H.B. 6 costs. Fanelli Aff. ¶¶ 4, 6.

C. Conclusion

The Companies respectfully request that the Commission dismiss this proceeding.

Respectfully Submitted,

/s/ James F. Lang

Brian J. Knipe (0090299)
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
(330) 384-5795
bknipe@firstenergycorp.com

James F. Lang (0059668)
Kari D. Hehmeyer (0096284)
CALFEE, HALTER & GRISWOLD LLP
The Calfee Building
1405 East Sixth Street
Cleveland, Ohio 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com
khehmeyer@calfee.com

*Attorneys for Ohio Edison Company, The
Cleveland Electric Illuminating Company, and
The Toledo Edison Company*

CERTIFICATE OF SERVICE

I certify that the foregoing Response was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 30th day of September, 2020. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ James F. Lang

One of the Attorneys for Ohio Edison
Company, The Cleveland Electric
Illuminating Company, and The Toledo
Edison Company

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)
Political and Charitable Spending by Ohio)
Edison Company, The Cleveland Electric) Case No. 20-1502-EL-UNC
Illuminating Company, and The Toledo)
Edison Company)

AFFIDAVIT OF SANTINO L. FANELLI

STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)


SANTINO L. FANELLI, having first been duly sworn in accordance with law, deposes and states as follows:

1. I have personal knowledge of all facts set forth herein and am competent to testify thereto.
2. I am, and at all times relevant hereto have been, employed by FirstEnergy Service Company as Director of the Rates and Regulatory Affairs Department. I am responsible for managing the regulatory activities of Ohio Edison Company (“OE”), The Cleveland Electric Illuminating Company (“CEI”), and The Toledo Edison Company (“TE”) (collectively, the “Companies”), which includes the rates and charges paid by the Companies’ retail customers in Ohio.
3. I have reviewed the September 15, 2020 Entry in Case No. 20-1502-EL-UNC, which references the costs of political or charitable spending in support of Am. Sub. H.B. 6 (“H.B. 6”), and the referendum campaign that followed. I will refer to these costs as H.B. 6 costs.
4. The Companies have not included, directly or indirectly, any H.B. 6 costs in any rates or charges paid by ratepayers in Ohio.

5. The Companies' current base rates were set in Case No. 07-551-EL-AIR, *et al.*, based on a test year that predated any of the H.B. 6 costs. So the Companies' ratepayers have not paid base rates that include H.B. 6 costs.

6. In addition to base rates, the Companies have riders and charges in their approved tariffs. Any costs of political or charitable spending in support of Am. Sub. H.B. 6, or the subsequent referendum effort, would not have been recorded in accounts that are used to calculate the Companies' riders and charges. Therefore, the Companies' ratepayers have not paid riders or charges that include H.B. 6 costs.

FURTHER AFFIANT SAYETH NAUGHT.

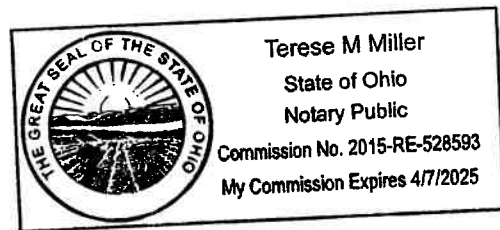


SANTINO L. FANELLI

SWORN TO BEFORE ME, and subscribed in my presence, this 30th day of September, 2020.



NOTARY PUBLIC



This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 20-1502-EL-UNC

Summary: Response to Show Cause Entry electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company