

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric) Case No. 21-484-EL-ATA
Illuminating Company, and The Toledo)
Edison Company for Approval of Tariff)
Amendments.)

**COMMENTS
OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

I. INTRODUCTION

The decoupling provision of Am. Sub. House Bill 6 (H.B. 6) enabled Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy) to become “recession-proof” at the expense of Ohio consumers and fully recover investments and operating costs at 2018 level regardless of sales.¹ Since the time the Public Utilities Commission of Ohio (Commission) approved FirstEnergy’s application to implement a H.B. 6 decoupling mechanism known as the Conservation Support Rider (Rider CSR),² H.B. 6 has become infamous for being at the heart of Ohio’s largest public corruption scandal.³

¹ See FirstEnergy Corp. (FE) Q3 2019 Earnings Call Transcript (November 4, 2019).

² *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Decoupling Mechanism*, Case Nos. 19-2080-EL-ATA, Finding and Order at ¶ 34 (January 15, 2020).

³ The United States Attorney for the Southern District of Ohio characterized the H.B. 6 scandal as “likely the largest bribery, money laundering scheme ever perpetrated against the people of the state of Ohio”. WSYX ABC 6, *U.S. Attorney Update on Arrest of Ohio House Speaker Larry Householder and Four Associates*, YOUTUBE (Streamed live on July 21, 2020) (statement starting at 00:48), <https://www.youtube.com/watch?v=mYTY9GUnHMM>.

After the fall out of H.B. 6 and a civil suit filed by Attorney General Yost, the State of Ohio filed for injunctive relief to enjoin collection of Rider CSR.⁴ As a result of an announced settlement,⁵ on February 1, 2021, FirstEnergy filed an application to set Rider CSR to zero, effective within five business days following Commission approval, on a bills rendered basis.⁶

The Commission approved FirstEnergy's application to set Rider CSR to zero, subject to final review by the Commission, on February 2, 2021.⁷ At that time, FirstEnergy did not propose to refund any monies previously collected under Rider CSR, and the Commission did not direct FirstEnergy to do so. On March 4, 2021, the Office of the Ohio Consumers' Counsel (OCC) filed an application for rehearing, requesting that the Commission direct FirstEnergy to return approximately \$30 million that FirstEnergy had already collected from customers under Rider CSR.⁸ The Commission subsequently granted the application for rehearing for the limited purpose of providing itself additional time.⁹

On March 30, 2021, Governor Mike DeWine signed Am. Sub. House Bill 128 (H.B. 128) into law, which becomes effective June 30, 2021. H.B. 128, in part, prohibits any decoupling mechanism enacted under H.B. 6 from remaining in effect and bars the assessment or collection of any amount, charge, mechanism, or rider related to the decoupling provision of H.B. 6. In addition, H.B. 128 requires any charges previously collected through H.B. 6 decoupling

⁴ See *State of Ohio ex rel. Dave Yost v. FirstEnergy Corp., et al.*, Franklin County C.P. Case No. 20-CV-6281, Motion for Preliminary Injunction (Jan. 13, 2021).

⁵ See *AG Yost Steps in to Save Ohioans Nearly \$2 Billion as FirstEnergy Agrees to Not Adjust Rates for Profit*, OHIOATTORNEYGENERAL.GOV, [https://www.ohioattorneygeneral.gov/Media/News-Releases/February-2021/AG-Yost-Steps-in-to-Save-Ohioans-Nearly-\\$2-Billion](https://www.ohioattorneygeneral.gov/Media/News-Releases/February-2021/AG-Yost-Steps-in-to-Save-Ohioans-Nearly-$2-Billion) (February, 1, 2021).

⁶ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Tariff Amendments*, Case No. 21-101-EL-ATA, Application (February 1, 2021).

⁷ Finding and Order (February 2, 2021).

⁸ Application for Rehearing (March 4, 2021).

⁹ Entry on Rehearing at ¶ 24 (March 24, 2021).

mechanisms to be promptly refunded to customers and allocated to the customers classes in the same proportion as originally collected.

Due to the impending effective date of H.B. 128, which will require refunds, on April 22, 2021, FirstEnergy filed an Application with the Commission to modify Rider CSR.¹⁰ Specifically, FirstEnergy proposed modifying Rider CSR to return to customers the full amount of charges collected through Rider CSR, plus interest, over a 12-month period beginning June 1, 2021.¹¹ FirstEnergy then proposed that refunds be allocated to the customer classes in the same proportion as Rider CSR charges were originally collected.¹²

On May 6, 2021, the Ohio Manufacturers' Association Energy Group (OMAEG) intervened in the above-captioned proceeding.¹³ Thereafter, on May 17, 2021, the Commission directed stakeholders to file comments and reply comments by June 7, 2021 and June 17, 2021, respectively.¹⁴ In accordance with the Commission's directive, OMAEG hereby files comments on FirstEnergy's Application to refund H.B. 6 decoupling charges to customers.

As explained further below, it is critical that the Commission require nothing less than full transparency from FirstEnergy. Doing so will not only ensure that consumers receive the Rider CSR refunds that they are entitled to, but will also be a step towards restoring consumer trust in Ohio's legislative and regulatory processes.

¹⁰ See FirstEnergy's Application at Exhibit C-3 (April 22, 2021).

¹¹ See FirstEnergy's Application.

¹² *Id.*

¹³ OMAEG's Motion to Intervene (May 6, 2021).

¹⁴ Entry at ¶ 23 (May 17, 2021).

II. COMMENTS

A. The Commission Should Ensure that FirstEnergy's Application Accurately Reflects the Full Amount of Rider CSR Charges Collected from Each Customer Class.

In the above-captioned proceeding, FirstEnergy proposed refunding approximately \$26 million in Rider CSR charges to customers.¹⁵ The Commission should independently verify that \$26 million is indeed the amount of charges collected from customers through Rider CSR in 2020 and part of 2021. Furthermore, the Commission should verify that the allocation of FirstEnergy's proposed refunds accurately reflects the amounts that have been collected from each customer class through Rider CSR during the relevant periods. Ensuring the accuracy of the refund amount and allocation to refund to customers the full amount of revenues collected by FirstEnergy under H.B. 6's decoupling provision will help rectify some harm to Ohio consumers resulting from the H.B. 6 scandal.

B. FirstEnergy Should be Required to Make Public the "Company Records" Referenced in its Application.

For transparency and to assist the parties in evaluating the veracity of the records, the Commission should require FirstEnergy to file the "Company Records" referenced in its Application at Exhibit C-3 Attachment 1 to make them publicly available. Adopting this recommendation would be consistent with Steven Strah, FirstEnergy Corp.'s CEO, recent pledge "to take a holistic and transparent approach with a range of stakeholders across the spectrum of matters under review" and to "instill[] a culture of compliance."¹⁶ In addition, making the records

¹⁵ See FirstEnergy's Application, Exhibit C-3 Attachment 1 (sum of lines (1) and (13) for each of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company) (April 22, 2021).

¹⁶ FirstEnergy Corp's (FE) CEO Steven Strah on Q1 2021 Results- Earnings Call Transcript (April 23, 2021).

publicly available will conserve time and Commission resources by reducing the likelihood of a dispute over confidentiality claims and the amounts to be refunded to customers.

C. After Verifying the Proper Amount of Rider CSR Refunds and Allocation, the Commission Should Approve FirstEnergy's Application Consistent with H.B. 128.

Although H.B. 128 is not yet effective, the legislation will become effective in a few short weeks and require the prompt refunding of the full amount of Rider CSR charges, allocated to customer classes in the same proportion as collected. After addressing any concerns that may be raised in the comment process and thoroughly vetting FirstEnergy's Application, the Commission should approve the Application and return to customers the full amount of Rider CSR charges, plus interest, as proposed by FirstEnergy as soon as possible as required by H.B. 128 and its effective date.

III. CONCLUSION

For foregoing reasons, OMAEG respectfully requests that the Commission adopt the recommendations herein when issuing a decision on FirstEnergy's Application to refund H.B. 6 decoupling charges that were already collected from customers, plus interest.

Respectfully submitted,

/s/ Kimberly W. Bojko
Kimberly W. Bojko (0069402)
Thomas V. Donadio (0100027)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4100
Bojko@carpenterlipps.com
Donadio@carpenterlipps.com
(willing to accept service by email)

*Counsel for the Ohio Manufacturers' Association
Energy Group*

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on June 7, 2021 upon the parties listed below.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

bknipe@firstenergycorp.com
Werner.Margard@OhioAGO.gov
Thomas.Lindgren@OhioAGO.gov
angela.obrien@occ.ohio.gov
christopher.healey@occ.ohio.gov
rdove@keglerbrown.com

Attorney Examiners:

Megan.Addison@PUCO.Ohio.gov
Gregory.Price@PUCO.Ohio.gov
Jacqueline.st.john@PUCO.Ohio.gov

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/7/2021 5:05:33 PM

in

Case No(s). 21-0484-EL-ATA

Summary: Comments of The Ohio Manufacturers' Association Energy Group electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group