

**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 ) Case No. 21-1047-EL-AEC  
the Approval of a Reasonable Arrangement )  
for its Napoleon, Ohio Plant. )

**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**

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1    **I.        OVERVIEW**

2

3    ***Q1.    PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.***

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

8

9    ***Q2.    HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS CASE?***

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

1    **II.     PURPOSE OF TESTIMONY**

2

3    ***Q3.    WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY IN***  
4    ***THIS PROCEEDING?***

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

10

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

16

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

19    **A4.**    The Settlement does not meet the PUCO’s three-pronged test. A core problem  
20           with the Settlement is that giving a customer this favorable treatment of a lower  
21           charge will result in FirstEnergy charging other customers more (including  
22           residential consumers) to make up the difference. Our consumer concern is not  
23           unique to the Applicant in this case. Indeed, OCC did not sign the FirstEnergy

1 electric security plan settlement in Case No. 14-1297-EL-SSO that created this  
2 pilot program and our concern. However, if the Settlement were modified to adopt  
3 the recommendations contained in this testimony and my filed Direct Testimony,  
4 then the Settlement could meet the PUCO's three-pronged test.

5  
6 ***Q5. WHAT IS THE PUCO'S STANDARD OF REVIEW FOR EVALUATING***  
7 ***PROPOSED SETTLEMENTS?***

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

- 10 1. Is the settlement a product of serious bargaining among  
11 capable, knowledgeable parties?
- 12 2. Does the settlement, as a package, benefit customers and the public  
13 interest?<sup>1</sup>
- 14 3. Does the settlement package violate any important  
15 regulatory principle or practice?

16

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

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<sup>1</sup> *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).

1   ***Q6.   DOES THE SETTLEMENT MEET THE FIRST PRONG OF THE***  
2   ***STANDARD?***

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

7  
8       Second, there was not serious bargaining among the parties. There were initial  
9       settlement discussions between the Applicant, OCC, and the PUCO Staff  
10      regarding this Application where parties made recommendations, no consensus  
11      was reached, and parties proceeded to file testimony for a litigated case. But then,  
12      three days after testimony was filed, OCC received an email at 10:24 am stating a  
13      settlement was reached between the Applicant and PUCO Staff. And OCC was  
14      given until 1:00 pm that day to state if it would join the Settlement which  
15      accepted the Application without modifications. That was how and when OCC  
16      learned of the settlement proposal that merely accepted all terms in the  
17      Application.

18  
19      There really was no need for such a Settlement that added nothing beyond the  
20      Application, given that the PUCO Staff could have simply taken the position at  
21      hearing that it supported the Application without changes. But, under the PUCO's  
22      settlement system, the creation of the Settlement gives the Applicant and the

1 PUCO Staff an (unfair) advantage in how the PUCO will evaluate the issues. This  
2 settlement process issue is not unique to this Applicant or this case.

3

4 ***Q7. DOES THE SETTLEMENT, AS A PACKAGE, BENEFIT CONSUMERS***  
5 ***AND THE PUBLIC INTEREST?***

6 ***A7.*** No. The Settlement simply adopts the Applicant's proposal contained in its  
7 Application, exactly as it was filed. The only added benefit of the Settlement  
8 accrues to the PUCO Staff and the Applicant in the advantage they gain in the  
9 case process by coming under the PUCO's standards that favor the parties that  
10 settle. As I explained in my initial testimony, there are consumer concerns the  
11 PUCO is supposed to address (but the Settlement has failed to address) about  
12 shifting of costs to residential consumers under the pilot program. As noted, it is  
13 not a benefit to residential customers to pay FirstEnergy to make up for revenue  
14 foregone as a result of the Settlement. Again, shifting of costs to residential  
15 consumers is not unique to the Applicant though it now involves the Applicant.  
16  
17 Furthermore, with any pilot program, an evaluation of the results should be  
18 conducted to learn the benefits and shortcomings to consumers prior to expanding  
19 the program to other parties. In the Opinion and Order approving the opt-out pilot  
20 program the PUCO described the pilot program as "the opportunity to determine  
21 if industrial customers can obtain substantial savings by obtaining certain  
22 transmission services outside of Rider NMB without imposing significant costs on

*Supplemental Testimony of Michael P. Haugh  
On Behalf of the Office of the Ohio Consumers' Counsel  
PUCO Case No. 21-1047-EL-AEC*

1       other customers.”<sup>2</sup> Upon approving the Rider NMB opt-out pilot program, the  
2       PUCO stated “that Rider NMB pilot program is a pilot program which bears  
3       further study to determine if the actual results of the pilot program, rather than the  
4       projected results, are in the public interest.”<sup>3</sup> It went on to say the PUCO Staff  
5       should review the results of the program and “periodically report findings to the  
6       PUCO.”<sup>4</sup> As I stated in my direct testimony, neither the PUCO Staff nor any of  
7       the FirstEnergy Utilities publicly filed a report on the results of the past five years  
8       of the Rider NMB opt-out pilot program. The PUCO Staff should publicly file a  
9       report (including dollar impact and cost to other consumers) on the FirstEnergy  
10      Rider NMB opt-out pilot program before there is any consideration of expanding  
11      the existing program.

12  
13      As noted, OCC opposed the FirstEnergy Settlement where the program was  
14      created to benefit certain customers. So we are addressing the concerns with a  
15      program that we did not seek. And our concerns now include this Application but  
16      are not limited to this Application. Interestingly, the PUCO recently announced  
17      (by Entry dated December 15, 2021 in Case 20-1629) that it will investigate  
18      whether FirstEnergy “violated R.C. 4928.145 by failing to disclose the amended

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<sup>2</sup> *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).

<sup>3</sup> *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).

<sup>4</sup> *Id.*



1 agreement during the proceedings in the ESP IV case.” Coincidentally, the opt-  
2 out pilot program at issue here was one of the terms in the Settlement the PUCO  
3 now has under investigation.  
4

5 ***Q8. DO YOU AGREE WITH APPLICANT’S WITNESS SERYAK THAT THERE***  
6 ***WILL NOT BE ANY DELTA REVENUE?***

7 ***A8.*** No. Mr. Seryak states there will not be any delta revenue as a result of the unique  
8 arrangement.”<sup>5</sup> This may be an issue of semantics because costs will be shifted  
9 once the Applicant enters the opt-out pilot program. In other words there will be a  
10 shortfall of revenue for FirstEnergy and this shortfall will need to be collected  
11 from other consumers. Note that the Ohio Manufacturers’ Association Energy  
12 Group Application for Rehearing in case 14-1297 (p. 64) states, among other  
13 things, that “Under the expanded NMB pilot program, which includes up to five  
14 additional Rate GT customers, remaining ratepayers may face higher charges.”  
15

16 ***Q9. WILL THERE BE ANY COST SHIFTING AS A RESULT OF THE***  
17 ***APPLICANT JOINING THE RIDER NMB OPT-OUT PROGRAM?***

18 ***A9.*** Yes. The Applicant’s own witness, John Seryak, essentially stated that there will  
19 be shifting of the revenue responsibility as a result of the Applicant joining the  
20 Rider NMB opt-out pilot program. In defending the Application, Mr. Seryak

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<sup>5</sup> Seryak Testimony at page 4.

1       claims that the Applicant has been overpaying for its transmission service and  
2       “subsidizing other customers’ transmission costs.”<sup>6</sup>

3  
4       If the Applicant stops paying Rider NMB, it will definitely lead to a shifting of  
5       transmission costs from one consumer to others. Mr. Seryak states that ATSI and  
6       FirstEnergy are only passing through their transmission costs, and he also states  
7       that by switching to the Rider NMB opt-out program, the Applicant will pay less  
8       for its transmission service.<sup>7</sup> He goes on to state the Applicant has already taken  
9       steps to reduce its transmission costs that should have reduced their overall  
10      transmission costs.<sup>8</sup> In its Application the Applicant is not offering to add in any  
11      additional steps to reduce its transmission costs. If the Applicant is not proposing  
12      to reduce transmission costs, that means the overall transmission costs charged to  
13      FirstEnergy by PJM will not be reduced. If it is true that by joining the Rider  
14      NMB opt-out pilot program the Applicant’s individual transmission costs will be  
15      reduced and that FirstEnergy’s overall transmission cost will not be reduced,  
16      there will in fact be a shifting of costs to other consumers unless FirstEnergy  
17      absorbs the delta revenue. That would seem to be a highly unlikely outcome that  
18      FirstEnergy would absorb the delta revenue and not charge other customers for  
19      the foregone revenue.

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<sup>6</sup> *Testimony of John Seryak on Behalf of the Campbell Soup Supply Company LLC*, PUCO Case No. 21-1047-EL-AEC at page 9.

<sup>7</sup> *Id* at 8.

<sup>8</sup> *Id* at 9-11.

1    ***Q10. DOES THE SETTLEMENT PACKAGE VIOLATE ANY IMPORTANT***  
2            ***REGULATORY PRINCIPLE OR PRACTICE?***

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

- 7                   1.       Whether there is an aggregate savings in transmission costs for all  
8                            of the Companies' customers.
- 9                   2.       Whether and how much in transmission costs are being shifted to  
10                           customers not participating in the pilot program.
- 11                  3.       Whether the benefits of the pilot program outweigh any costs.
- 12                  4.       Whether Rider NMB results in an overall cost savings to  
13                           customers.<sup>9</sup>

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

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<sup>9</sup> *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).

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

2    ***A11.*** The PUCO Staff should be (again) directed to follow the PUCO's rulings in Case  
3       No. 14-1297-EL-SSO for review of the pilot program. The PUCO Staff should  
4       publicly file a report on the impact (including dollar impact on other consumers)  
5       of the FirstEnergy Rider NMB opt-out pilot program.

6  
7       The process of this case should await the PUCO's follow up on its expectations  
8       for a review in creating the pilot program. All of the program participants, and  
9       this Applicant, should be subject to the outcome of the intended PUCO review of  
10      the opt-out pilot program, after an opportunity for public participation. That  
11      outcome could include the PUCO modifying or termination the Rider NMB opt-  
12      out pilot program as noted by the PUCO in the Order approving the pilot  
13      program.

14  
15      There is another way to resolve this Application. The PUCO could grant the  
16      Application and require that any potential delta revenue (or other shifted charges)  
17      created by this reasonable arrangement be paid to FirstEnergy by other customers  
18      in the Applicant's own customer class (and not paid by residential consumers).  
19      That approach would avoid shifting charges to residential and other consumer  
20      classes.

1   **III.   CONCLUSION**

2

3   ***Q12.   DOES THIS CONCLUDE YOUR TESTIMONY?***

4   ***A12.***   Yes, however I reserve the right to incorporate new information that may  
5           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:

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Counsel electronically filed by Ms. Deb J. Bingham on behalf of Botschner-O'Brien,  
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