

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Non-)	
Market-Based Services Rider Contained)	
in the Tariffs of Ohio Edison Company,)	Case No. 21-1225-EL-RDR
The Cleveland Electric Illuminating)	
Company and The Toledo Edison)	
Company.)	

**CONSUMER PROTECTION COMMENTS
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

This case is about the FirstEnergy Ohio utilities (“FirstEnergy”) updating the rates charged to consumers under the Non-Market-Based charge mechanism (“NMB” or charge). The rates that FirstEnergy seeks approval of are for charging to consumers beginning March 1, 2022.

The NMB is charged to residential consumers and certain commercial and industrial consumers, that do not opt out of the charge by participating in a pilot program. The pilot program was approved by the PUCO four years ago in FirstEnergy’s last electric security proceeding (Case No. 14-1297-EL-SSO). When the pilot program was first proposed, FirstEnergy asserted that the pilot nature of the program would allow it to “study the administrative burdens and costs of allowing customers the option to have their marketer providers pay the NMB charges, as well as whether such a program would result in benefits to both the participating and non-participating customers.”¹

¹ *In re Application 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 (March 31, 2016).

The proposed tariff rates in this case cannot be evaluated without a comprehensive review and analysis of the cost shifting between consumer classes. To protect consumers from overpaying for NMB charges, the PUCO should require its Staff to conduct a comprehensive review the pilot program and report to the PUCO the extent of “cost shifting” to other non-participating consumers (including residential consumers) that has resulted from the pilot program over the past five years as the PUCO previously ordered.

The review is especially needed now when we are five years into the program and other consumer are wanting to join the burgeoning program that currently has approximately 70 participants. The PUCO Staff’s annual review is aimed at “...consistency with the Commission’s Opinion and Order in previous NMB cases.”² PUCO Staff has filed a Staff Review and Recommendations in five separate cases reviewing the NMB but none of those reports provided any analysis of cost shifting or overall savings.³ The PUCO should also require that this review and its results (including dollar impacts) be docketed and available to the general public for transparency and consumer protection.

² *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 Recommendation at 2 (February 16, 2021).

³ *See* Case No. 16-2043-EL-RDR, Staff Report (February 7, 2017); Case No. 17-2378-EL-RDR, Staff Report (February 9, 2018); Case No. 18-1818-EL-RDR, Staff Report (February 21, 2019); Case No. 19-2120-EL-RDR, Staff Report (February 20, 2020); Case No. 20-1768-EL-RDR, Staff Report (February 16, 2021); Case No. 21-695-L-RDR, Staff Report (August 11, 2021).

II. BACKGROUND

In FirstEnergy's most recent electric security plan ("ESP") case, the PUCO approved an NMB opt out pilot program.⁴ Under the pilot, certain large nonresidential customers (limited to Material Science Corporation, Nucor Steel Marion, Inc., and members of Industrial Energy Users-Ohio and Ohio Energy Group⁵) are exempted from paying for NMB charges and instead obtain transmission service on their own.⁶ This program has grown from 40 to an estimated 75 customers over the five years of this program.⁷

According to FirstEnergy, the purpose of the pilot program was for FirstEnergy "to study the administrative burden and costs of allowing customers the option to have their energy marketer pay NMB charges, as well as whether such a program would result in benefits to both participating and non-participating customers."⁸ 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 the NMB *without imposing significant costs on other customers.*"⁹

⁴ See *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 (March 31, 2016).

⁵ *Id.* at 19.

⁶ *Id.* at 18-19 (the purpose of NMB pilot is "to explore whether certain customers could benefit from opting out of the Companies' Rider NMB and obtaining all transmission and ancillary services through the Open Access Transmission Tariff and other PJM governing documents ... or whether the administrative burden to the Companies, and the cost and risk to the customer, would render this option impractical").

⁷ *In re 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's Review and Recommendations at page 2.

⁸ *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 (March 31, 2016).

⁹ *Id.* at 94 (emphasis added).

Because the NMB Pilot is a pilot program, it is intended to be studied and used as a learning experience for regulatory policymaking. Accordingly, the PUCO directed FirstEnergy and the PUCO Staff “to continuously review the actual results of the NMB pilot program and periodically report their findings to the Commission.”¹⁰ The PUCO further ordered 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 the NMB results in an overall cost savings to customers.”¹¹

Ultimately, the PUCO has determined the ordered review of the 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.”¹² 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.¹³ Thus, the PUCO retained the right “to modify the provisions of Rider NMB based upon the results of the review by Staff.”¹⁴

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 (March 31, 2016).

¹¹ *Id.* (emphasis added).

¹² *Id.*

¹³ *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.”).

¹⁴ *Id.*

III. COMMENTS

The PUCO should enforce its 2016 Order to first have the PUCO Staff review the pilot program and publicly report to its findings including the extent of “cost shifting” to other customers that has resulted from the pilot program. This review and its results (including dollar impacts) should be docketed and available to the general public, for transparency and consumer protection.

As the PUCO explained when it approved the NMB Pilot Program, the “nature of any pilot program is to keep the number of participants manageable in order to make some determination of the efficacy of the program being tested.”¹⁵ This is consistent with representations made by signatory parties in the ESP IV case that “a pilot program is, by its very nature, limited in participation in order to better evaluate the results.”¹⁶

The pilot program has been in effect for more than five years. However, 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 regarding:

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.¹⁷

PUCO Staff has filed a Staff Review and Recommendations in five separate cases considering the charges to customers under the NMB. None of those reviews provided

¹⁵ *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 112 (March 31, 2016).

¹⁶ *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 (March 31, 2016).

¹⁷ *Id.* (emphasis added).

any analysis of cost shifting or overall savings. At best the reports mention the growing number of participants in the opt-out program but there is nothing regarding the information sought by the PUCO in the Order approving this pilot program. This program has increased from approximately 40¹⁸ in 2016 to 75 in the most recent Staff Review in 2021.¹⁹

None of the Staff Reports provide the PUCO's required 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 the NMB results in an overall cost savings to customers.²⁰ Instead, the reports generally provide a basic overview of the NMB Pilot Program and the number of customers participating.

Before the PUCO considers expansion of the NMB Pilot Program (or any other applications to join, it should first follow through with its 2016 Order that the pilot be thoroughly examined by its Staff and reported to the PUCO. The PUCO Staff should perform the analysis and provide the result in this case prior to any additional customers being added to the pilot program.

¹⁸ *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 Recommendation at page 2.

¹⁹ *In re 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's Review and Recommendations at page 2.

²⁰ See Case No. 16-2043-EL-RDR, Staff Report (February 7, 2017); Case No. 17-2378-EL-RDR, Staff Report (February 9, 2018); Case No. 18-1818-EL-RDR, Staff Report (February 21, 2019); Case No. 19-2120-EL-RDR, Staff Report (February 20, 2020); Case No. 20-1768-EL-RDR, Staff Report (February 16, 2021); Case No. 21-695-EL-RDR, Staff Report (August 11, 2021).

One critical matter to residential consumers is a detailed analysis of “whether and how much transmission costs are being shifted to non-participating customers.”²¹ The review required by the PUCO is needed to determine if it is just and reasonable to expand the pilot program or even continue it. The program has been in place for five years it is past time to evaluate a pilot program.

And adding dozens of customers every year could be exacerbating any costs shifting that may be occurring. Customers are claiming large savings as a result of being able to join this pilot program and these savings turn into higher costs for non-participants including residential consumers.²² As identified by the PUCO, an important component of the review is to assess any cost-shifting to other consumers (which could result in others, having to subsidize the NMB Pilot Program participants).

IV. CONCLUSION

For the reasons described above, the PUCO should direct its Staff to complete the PUCO’s earlier announced assessment process of the NMB pilot program. The review and its results should be filed in the docket in PUCO Case No. 14-1297-EL-SSO. All of this fits the PUCO’s stated intention to determine what is in the “public interest” regarding the NMB exemption pilot program.

²¹ See *supra* note 8.

²² *In re the Matter of the Application of Campbell Soup Supply Company LLC for the Approval of a Reasonable Arrangement for its Napoleon, Ohio Plant*, Case No. 21-1047-EL-AEC, Testimony of John Seryak on Behalf of the Campbell Soup Company LLC at 3 (December 6, 2021).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Consumer Protection Comments was served on the persons stated below via electronic transmission, this 25th day of January 2022.

/s/ Angela D. O'Brien
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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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Summary: Comments Consumer Protection Comments by Office of the Ohio
Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of
O'Brien, Angela D.