

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Ohio Edison Company, the)
Cleveland Electric Illuminating)
Company, and the Toledo Edison) Case No. 23-301-EL-SSO
Company for Authority to Establish)
a Standard Service Offer Pursuant to)
R.C. 4928.143 in the Form of an)
Electric Security Plan.)

DIRECT TESTIMONY OF JUSTIN BIEBER

On Behalf of The Kroger Co.

October 23, 2023

1 **DIRECT TESTIMONY OF JUSTIN BIEBER**

2
3 **I. INTRODUCTION**

4 **Q1. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

5 A1. My name is Justin Bieber. My business address is 111 E Broadway, Suite 1200, Salt Lake
6 City, Utah, 84111.

7
8 **Q2. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

9 A2. I am a Principal at Energy Strategies, LLC. Energy Strategies is a private consulting firm
10 specializing in economic and policy analysis applicable to energy production,
11 transportation, and consumption.

12
13 **Q3. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

14 A3. My testimony is being sponsored by The Kroger Co. ("Kroger"). Kroger is one of the
15 largest grocers in the United States. Kroger has more than 30 facilities served by Ohio
16 Edison Company (OE), the Cleveland Electric Illuminating Company (CEI), and the
17 Toledo Edison Company (TE) (collectively, "FirstEnergy" or "Companies") in the
18 Companies' service territories that collectively consume approximately 86 million kWh
19 per year. Kroger procures its energy and capacity from competitive retail electric service
20 providers.

21
22 **Q4. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AND**
23 **QUALIFICATIONS.**

24 A4. My academic background is in business and engineering. I earned a Bachelor of Science
25 in Mechanical Engineering from Duke University in 2006 and a Master of Business

1 Administration from the University of Southern California in 2012. I am also a registered
2 Professional Civil Engineer in the state of California.

3
4 I joined Energy Strategies in 2017, where I provide regulatory and technical support on a
5 variety of energy issues, including regulatory services, transmission and renewable
6 development, and financial and economic analyses. During the time that I have worked at
7 Energy Strategies, I have filed and supported the development of testimony before various
8 state utility regulatory commissions.

9
10 Prior to joining Energy Strategies, I held positions at Pacific Gas and Electric Company as
11 Manager of Transmission Project Development, ISO Relations and FERC Policy Principal,
12 and Supervisor of Electric Generator Interconnections. During my career at Pacific Gas
13 and Electric Company, I supported multiple facets of utility operations, and led efforts in
14 policy, regulatory, and strategic initiatives, including supporting the development of
15 testimony before and submittal of comments to the Federal Energy Regulatory
16 Commission (“FERC”), California ISO, and the California Public Utility Commission.

1 **Q5. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?**

2 A5. Yes, I personally have testified before the Commission regarding the Ohio Power
3 Company's (AEP Ohio) Long-Term Forecast Report.¹ In addition, I have filed testimony
4 in AEP Ohio's most recent Electric Service Plan proceeding.²

5
6 **Q6. HAVE YOU FILED TESTIMONY PREVIOUSLY BEFORE ANY OTHER STATE**
7 **UTILITY REGULATORY COMMISSIONS?**

8 A6. Yes. I have testified in regulatory proceedings on the subjects of utility rates and regulatory
9 policy before state utility regulators in Colorado, Indiana, Kentucky, Michigan, Montana,
10 Nevada, New Mexico, North Carolina, Oregon, Texas, Utah, Virginia, Washington, and
11 Wisconsin.

12
13 **II. OVERVIEW AND CONCLUSIONS**

14 **Q7. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

15 A7. My testimony addresses FirstEnergy's application for its fifth electric security plan ("ESP
16 V"). ESP V is proposed as an eight-year rate plan for the three service territories of the
17 three operating companies (OE, CEI, and TE) of FirstEnergy. Specifically, I address
18 FirstEnergy's Delivery Capital Recovery Rider ("Rider DCR") and the new Vegetation
19 Management Cost Recovery Rider ("Rider VMC").

20

¹ *In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters*, Case Nos. 18-501-EL-FOR, et al., Direct Testimony of Justin Bieber (Jan. 2, 2019).

² *In the Matter of the Application of The Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143*, Ohio Rev. Code, in the Form of an Electric Security Plan, Case Nos. 23-23-EL-SSO, et al., Direct Testimony of Justin Bieber (June 9, 2023).

1 **Q8. WHAT ARE YOUR PRIMARY CONCLUSIONS AND RECOMMENDATIONS?**

2 A8. I offer the following conclusions and recommendations:

- 3 • I recommend that the Commission reject FirstEnergy's proposed Rider DCR. The
4 proposed Rider DCR constitutes single-issue ratemaking that does not address a
5 compelling public interest or meet the generally accepted criteria for this type of
6 regulatory ratemaking treatment. FirstEnergy's Rider DCR proposal would
7 provide expanded cost recovery under this rider without consideration of whether
8 the Companies would experience offsetting decreases in expenses or increases in
9 revenues. This would reduce the inherent incentive for the Companies to reduce
10 costs beyond what is necessary to be deemed prudent in a rider reconciliation
11 proceeding. Further, investing in and modernizing the distribution system is a
12 fundamental responsibility for a utility company. In carrying out this responsibility,
13 utilities are entitled to an opportunity to recover their prudently incurred costs.
14 FirstEnergy should not rely on ever-expanding cost recovery mechanisms to
15 recover costs associated with distribution infrastructure investments. These costs
16 should primarily be considered in the context of the Companies' overall distribution
17 revenues and expenses in a distribution base rate case. Notably, the Companies will
18 file a base distribution rate case in May 2024.³
- 19 • Similar to the Companies' Rider DCR proposal, the Rider VMC proposal amounts
20 to single-issue ratemaking and also should be denied. I recommend that
21 FirstEnergy's reasonable and prudent vegetation management costs should be
22 recovered through base rates. However, to the extent that the Commission does

³ FirstEnergy Application at 8 (April 5, 2023).

1 approve the Companies' proposal for the new Rider VMC, then it should limit the
2 allowed recovery through the rider to the minimum amount necessary.
3

4 **III. DELIVERY CAPITAL RECOVERY RIDER**

5 **Q9. PLEASE EXPLAIN FIRSTENERGY'S CURRENT RIDER DCR.**

6 A9. According to FirstEnergy witness Brandon McMillan, the Rider DCR provides the
7 Companies with the opportunity to earn a return of and on plant-in-service associated with
8 distribution, transmission, and general and intangible plant. Rider DCR also is a
9 mechanism that facilitates the recovery of property taxes, Commercial Activity Tax, and
10 income taxes associated with these capital additions.⁴ The cost of the incremental
11 investments in distribution plant that would be recovered through Rider DCR are not
12 currently recovered through base rates or other rider mechanisms.⁵
13

14 **Q10. WHAT MODIFICATIONS IS FIRSTENERGY PROPOSING TO THE EXISTING** 15 **RIDER DCR IN THIS PROCEEDING?**

16 A10. FirstEnergy witness McMillen explains that the Companies have proposed to continue
17 Rider DCR in its current form over the term of ESP V, with modifications to the annual
18 revenue caps and to incorporate the impact of future base rate cases. Specifically,
19 FirstEnergy is proposing that the annual aggregate Rider DCR revenue caps will increase,
20 with the amount of the increase based on FirstEnergy's System Average Interruption
21 Frequency Index ("SAIFI") and Customer Average Interruption Duration Index ("CAIDI")

⁴ Direct Testimony of Brandon C. McMillen at 3 (April 5, 2023).

⁵ *Id.*

1 reliability performance results from the prior year. As such, under FirstEnergy's proposal,
2 the cap on Rider DCR would increase by \$15 to \$21 million annually, depending on
3 whether FirstEnergy meets those annual reliability standards.⁶
4

5 **Q11. WHAT JUSTIFICATION DOES FIRSTENERGY PROVIDE TO SUPPORT ITS**
6 **RECOMMENDED MODIFICATIONS TO THE RIDER DCR?**
7

8 A11. FirstEnergy witness Brandon McMillen claims that the annual aggregate Rider DCR
9 revenue cap increases are based on the Companies' actual revenue requirements. He
10 explains that the Companies' aggregate revenue requirement based on rate base values on
11 average increased by \$21 million per year over the five-year period from November 2017
12 to November 2022.⁷ According to FirstEnergy witness Amanda Richardson, the
13 Companies expect to invest in their distribution systems during the term of ESP V at levels
14 comparable to historic investments,⁸ which FirstEnergy witness Brandon McMillen claims
15 further supports the new proposed revenue cap increases.⁹
16

⁶ *Id.* at 4.

⁷ *Id.* at 5.

⁸ Direct Testimony of Amanda Richardson at 13 (April 5, 2023).

⁹ Direct Testimony of Brandon C. McMillen at 5 (April 5, 2023).

1 **Q12. YOU STATED ABOVE THAT THE PROPOSED RIDER DCR IS AN EXAMPLE**
2 **OF SINGLE-ISSUE RATEMAKING. WHAT IS SINGLE-ISSUE RATEMAKING?**

3 A12. Single-issue ratemaking occurs when utility rates are adjusted in response to a change in a
4 single cost or revenue item considered in isolation. It ignores the multitude of other factors
5 that otherwise influence rates, some of which could, if properly considered, move rates in
6 the opposite direction from the single-issue change.

7
8 Setting rates based on a single cost or revenue item runs contrary to the basic principles of
9 traditional utility regulation. When regulatory commissions determine the appropriateness
10 of a rate or charge that a utility seeks to impose on its customers, the standard practice is
11 to review and consider all relevant factors, rather than just a single factor. To consider
12 some costs in isolation might cause a commission to allow a utility to increase rates to
13 recover higher costs in one area without recognizing counterbalancing savings in another
14 area. Alternatively, a single revenue item considered in isolation might cause a decrease in
15 rates without recognizing counterbalancing cost increases in other areas. For these reasons,
16 single-issue ratemaking, absent a compelling public interest, is generally not sound
17 regulatory practice.

18
19 **Q13. ARE THERE CERTAIN PRINCIPLES THAT SHOULD BE EVALUATED TO**
20 **DETERMINE WHETHER THE ADOPTION OF A SINGLE-ISSUE COST**
21 **TRACKING RIDER IS WARRANTED?**

22 A13. Yes, there are some generally accepted criteria that can be used to determine the
23 appropriateness of cost tracking and rider mechanisms. Generally, an appropriate single-
24 issue cost tracker should meet *all* of these criteria:

- 25 1) The anticipated costs or revenues are subject to significant volatility from year to
26 year;

- 1 2) The anticipated costs or revenues are not reasonably controllable by management;
2 and
- 3 3) The anticipated costs or revenues are substantial enough to have a material impact
4 on the utility's revenue requirement and financial health between rate cases.

5

6 **Q14. WHAT IS YOUR ASSESSMENT OF FIRSTENERGY'S RIDER DCR**
7 **PROPOSAL?**

8 A14. FirstEnergy's Rider DCR proposal constitutes single-issue ratemaking and should be
9 denied. I recommend that FirstEnergy's reasonable and prudent distribution infrastructure
10 investment costs should be recovered through base rates. Notably, FirstEnergy will file a
11 base distribution rate case in May 2024 which will provide a near term opportunity to
12 reasonably adjust its distribution rates.¹⁰ FirstEnergy's current base distribution rates have
13 not been updated since its 2007 distribution base rate case.¹¹

14 Further, FirstEnergy's proposal does not meet the generally accepted criteria for
15 cost trackers because the costs are not subject to significant volatility from year to year and
16 are reasonably controllable by management. Allowing these costs to be recovered through
17 Rider DCR diminishes the incentive for FirstEnergy to reduce costs below the level that is
18 necessary to be deemed prudent in a rider reconciliation proceeding. Investing in and
19 modernizing the distribution system is a fundamental responsibility for a utility company.
20 In carrying out this responsibility, utilities are entitled to an opportunity to recover their
21 prudently incurred costs. These costs should primarily be considered in the context of the
22 Companies' overall distribution revenues and expenses in a distribution base rate case.

¹⁰ FirstEnergy Application at 8 (April 5, 2023).

¹¹ *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.

1
2 **Q15. ARE YOU PROPOSING TO LIMIT THE COMPANIES' ABILITY TO INVEST IN**
3 **INFRASTRUCTURE IN THE FUTURE THAT IS REQUIRED IN ORDER TO**
4 **MAINTAIN A RELIABLE DISTRIBUTION SYSTEM?**

5 A15. No. To be clear, I am not proposing that FirstEnergy be prevented from recovering
6 prudently incurred costs of distribution infrastructure investments through a future base
7 rate case. Specifically, I am recommending that prudently incurred distribution costs
8 should be recovered through base distribution rates, not the proposed expansion of the
9 Rider DCR cost recovery mechanism.

10
11 **IV. VEGETATION MANAGEMENT COST RECOVERY RIDER**

12 **Q16. PLEASE EXPLAIN FIRSTENERGY'S PROPOSED RIDER VMC?**

13 A16. FirstEnergy proposes to establish a new Rider VMC to recover incremental vegetation
14 management operation and maintenance expenses that exceed baseline levels recovered in
15 base distribution rates.¹²

16
17 **Q17. WHAT IS THE CURRENT BASELINE LEVEL OF VEGETATION**
18 **MANAGEMENT EXPENSE INCLUDED IN BASE DISTRIBUTION RATES?**

19 A17. Based on the Companies' records, the test year of the most recent base distribution rate
20 case included approximately \$30 million of vegetation management O&M expense.¹³

21

¹² McMillen Testimony, at 20.

¹³ *Id.*

1 **Q18. DOES FIRSTENERGY PROPOSE A CAP ON THE TOTAL VEGETATION**
2 **MANAGEMENT EXPENSE TO BE RECOVERED DURING ESP V?**

3 A18. FirstEnergy proposes to cap the total vegetation management O&M expense recovered
4 over the 8-year term of ESP V at \$759.8 million.¹⁴ This equates to approximately \$95.0
5 million per year, which is about 316% of the current baseline level.

7 **Q19. WHAT IS YOUR ASSESSMENT OF FIRSTENERGY'S RIDER VMC**
8 **PROPOSAL?**

9 A19. Similar to the Companies' Rider DCR proposal, the Rider VMC proposal amounts to
10 single-issue ratemaking and should be denied. I recommend that FirstEnergy's reasonable
11 and prudent vegetation management costs should be recovered through base distribution
12 rates. FirstEnergy's proposal does not meet the generally accepted criteria for cost trackers
13 because the costs are not subject to significant volatility from year to year and are
14 reasonably controllable by management. Further, allowing these costs to be recovered
15 through a *new* cost tracking mechanism diminishes the incentive for FirstEnergy to reduce
16 costs below the level that is necessary to be deemed prudent in a rider reconciliation
17 proceeding. Maintaining reliability is a fundamental responsibility for a utility company.
18 In carrying out this responsibility, utilities are entitled to an opportunity to recover their
19 prudently incurred costs. These costs should primarily be considered in the context of the
20 Companies' overall distribution revenues and expenses in a distribution base rate case.

21
22 To the extent that the Commission does approve the Companies' proposal to create the new
23 Rider VMC, it should limit the allowed recovery through the rider to the minimum amount

¹⁴ *Id.* at 21.

1 necessary to maintain reliability. The Rider VMC should not allow FirstEnergy to
2 continuously increase vegetation management spending without achieving operational
3 efficiencies and striving to minimize costs for customers.

4
5 **Q20. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

6 A20. Yes, it does. However, I reserve the right to incorporate new information that may
7 subsequently become available through outstanding discovery or otherwise.

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 is also being served via electronic mail on October 23, 2023, upon the parties listed below.

/s/ Angela Paul Whitfield
Angela Paul Whitfield (0068774)

Email:

bknipe@firstenergycorp.com
cwatchorn@firstenergycorp.com
talexander@beneschlaw.com
mkeaney@beneschlaw.com
khehmeyer@beneschlaw.com
dromig@nationwideenergypartners.com
whitt@whitt-sturtevant.com
meissnerjoseph@yahoo.com
trent@hubaydougherty.com
glpetrucci@vorys.com
mjsettineri@vorys.com
aasanyal@vorys.com
cpirik@dickinsonwright.com
todonnell@dickinsonwright.com
kshimp@dickinsonwright.com
emcconnell@elpc.org
Stacie.Cathcart@igs.com
Michael.nugent@igs.com
Evan.betterton@igs.com
bojko@carpenterlipps.com
easley@carpenterlipps.com
Brian.gibbs@nationwideenergypartners.com
dstinson@brickergraydon.com
gkrassen@nopec.org
trhayslaw@gmail.com
Leslie.kovacik@toledo.oh.gov
jlang@calfee.com

john.finnigan@occ.ohio.gov
connor.semples@occ.ohio.gov
mkurtz@BKLawfirm.com
jkylercohn@BKLawfirm.com
dproano@bakerlaw.com
ahaque@bakerlaw.com
eprouy@bakerlaw.com
pwillison@bakerlaw.com
knordstrom@theOEC.org
ctavenor@theOEC.org
dparram@brickergraydon.com
rmains@brickergraydon.com
nboob@keglerbrown.com
rdove@keglerbrown.com
little@litohio.com
hogan@litohio.com
jdunn@oneenergylc.com
ktreadway@oneenergylc.com
mpritchard@mcneelaw.com
awalke@mcneelaw.com
Thomas.Lindgren@OhioAGO.gov
Amy.BotschnerOBrien@OhioAGO.gov
Rhannon.Howard@OhioAGO.gov
eowoyt@vorys.com
todd.schafer@outlook.com
jpetroff@lawforlabor.com
cgrundmann@spilmanlaw.com

mbarbara@calfee.com
jrb@smxblaw.com
mkl@smxblaw.com

dwilliamson@spilmanlaw.com
slee@spilmanlaw.com

Attorney Examiners:

Megan.Addison@puco.ohio.gov
Jacqueline.St.John@puco.ohio.gov

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Summary: Testimony FirstEnergy ESP V (23-301-EL-SSO) - Direct Testimony of Justin Bieber electronically filed by Mrs. Angela Whitfield on behalf of The Kroger Co..