

**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) Case No. 23-301-EL-SSO
Edison Company for Authority to)
Establish a Standard Service Offer)
Pursuant to R.C. 4928.143 in the Form of)
an Electric Security Plan.)

**MOTION FOR LIMITED STAY OF FIRSTENERGY'S DISTRIBUTION RIDERS
BY
NORTHWEST OHIO AGGREGATION COALITION
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP
AND
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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New information has come to light that may directly impact the charges and accounting practices of at least one component of FirstEnergy’s fifth electric security plan, FirstEnergy’s distribution investment rider (Delivery Capital Recovery or Rider DCR). Recently, former PUCO Chair Randazzo was criminally indicted on eleven counts related to bribery and embezzlement, including an alleged conspiracy scheme and scheme to defraud customers dating back to 2010.¹ The scheme to defraud customers appears to have been related to “settlement payments” received in conjunction with FirstEnergy’s ESP proceeding pending before the Public Utilities Commission of Ohio (“PUCO”) in 2010, which created FirstEnergy’s Rider DCR through a settlement that was filed as FirstEnergy’s ESP plan and application.² In light of this new information and the impact

¹ *United States of America v. Samuel Randazzo*, Case No. 1:23-cr-114, Indictment (Nov. 29, 2023).

² *Id.* at 16-19 (Nov. 29, 2023); *see also In the Matter of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R. C. 4928.143 in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Application and Stipulation at 13 (March 23, 2010).

that the criminal proceeding could have regarding the accounting of Rider DCR and the legitimacy of the costs charged to customers, it is imperative that the PUCO protect customers by granting a stay of the implementation of Rider DCR under ESP V and the consideration of any modifications to the current Rider DCR.

While the PUCO has stayed some investigations into the House Bill 6 (H.B. 6) scandal at the request of federal prosecutors,³ it has refused to stay other FirstEnergy pending proceedings. As such, the PUCO is effectively preventing consumers from getting much-needed answers about how much FirstEnergy charged (and is continuing to charge) consumers for expenses underlying criminal activities admitted to by FirstEnergy Corp. and now alleged to have occurred by Randazzo.

The federal prosecutor's request fulfils an important public policy of holding wrongdoers accountable and thereby protects consumers. But the PUCO's current stay and rulings in the ESP V hearing excluding any evidence regarding inappropriate costs included in and collected from customers through Rider DCR result in an asymmetry in favor of FirstEnergy. The stay became a shield for FirstEnergy from discovery and questioning that is relevant to the pending case. This is contrary to the protection of consumers at the heart of the federal case. The PUCO can honor the federal request and also ensure that consumers' rights to a fair process are protected.

³ *In the Matter of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry (Aug. 24, 2023); *In the Matter of the Review of the Distribution Modernization Rider of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 17-2474-EL-RDR, Entry (Aug. 24, 2023); *In the Matter of the Review of the Political and Charitable Spending by Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 20-1502-EL-UNC, Entry (Aug. 24, 2023); *In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 20-1629-EL-RDR Entry (Aug. 24, 2023).

We and the public still do not know how much of the public corruption was at the expense of FirstEnergy's utility consumers. But we do know through various audit proceedings that some charges passed through Rider DCR were related to lobbying expenses and expenses for Randazzo's affiliated company (Sustainability Funding Alliance). We also now know that at least some customers have been directly impacted by the criminal activities of FirstEnergy and Randazzo during the ESP process and the time period when Rider DCR was established. Although our ability to investigate FirstEnergy's and Randazzo's corruption is stayed, FirstEnergy has been allowed to proceed with its new ESP proceeding, seeking to increase the amount it recovers from customers under Rider DCR and other provisions. Our ability to investigate the true impact on customers and Rider DCR charges is stayed, but FirstEnergy's ability to seek more rate increases is not stayed.

Staying consideration of the Rider DCR proposed in FirstEnergy's ESP V would be just and reasonable under the circumstances. FirstEnergy would not be prejudiced by this limited stay as any Rider DCR increases could still be considered in its upcoming rate case proceeding.

Accordingly, Movants move for a limited stay of FirstEnergy's ESP V Application as it pertains solely to one distribution rider, Rider DCR. This motion will not interfere with the evidentiary hearing underway. Movants are not asking for a stay of the entire FirstEnergy ESP V proceeding pending. Under Movant's motion the PUCO would consider all other aspects of FirstEnergy's ESP V. FirstEnergy's need for additional distribution revenues through Rider DCR would be addressed in its upcoming rate case proceeding. Importantly, the record of FirstEnergy's distribution rate case

would remain open to allow for evidence produced under the four FirstEnergy investigations to be added and addressed by all parties. To avoid duplication of efforts, and in the vein of promoting judicial economy, briefing on Rider DCR in FirstEnergy's ESP V would also be stayed.

This motion is made under O.A.C. 4901-1-12(A). The PUCO should find good cause for the limited stay based on the six-factor test the PUCO has used to justify its stay of the pending FirstEnergy H.B. 6 investigations.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The PUCO has four investigations,⁴ initiated largely at OCC’s request, relating to the FirstEnergy H.B. 6 scandals. United States District Judge Algenon Marbley described the scandals as FirstEnergy’s “*unparalleled corruption* of Ohio’s democratic process.”⁵ The PUCO recently approved the U.S. Attorney’s third request to stay these investigations into the FirstEnergy H.B. 6 scandal for another six-month period – resulting in a stay of 18 months with no end in sight. Movants respect the role of the U.S. Attorney and seeks to honor the request of the U.S. Attorney to stay discovery in the four FirstEnergy investigations. But the PUCO’s current one-sided approach to the stays is detrimental to Ohio’s consumers.⁶

⁴ Case No. 17-974-EL-UNC, 20-1502-EL-UNC, 17-2474-EL-RDR and 20-1629-EL-RDR.

⁵ *Emp. Retirement Sys. of City of St. Louis v. Jones*, Case No. 2:20-cv-4813, Order of Final Settlement Approval at 17 (Aug. 23, 2022) (Emphasis added).

⁶ See “U.S. Attorney investigating FirstEnergy/HB 6 scandal needs to let ratepayer probes proceed,” Cleveland Plain Dealer (Oct. 22, 2023), <https://www.cleveland.com/opinion/2023/10/us-attorney-investigating-firstenergryhb-6-scandal-needs-to-let-ratepayer-probes-proceed-ashley-brown.html>; “PUCO needs to do its duty by ratepayers and the U.S. attorney needs to get out of the way,” Cleveland Plain Dealer (Oct. 27, 2023), <https://www.cleveland.com/opinion/2023/10/puco-needs-to-do-its-duty-by-ratepayers-and-the-us-attorney-needs-to-get-out-of-the-way-editorial.html>.

Before increasing Rider DCR under its proposed electric security plan, consumers have a right to know how deep the corruption runs, including potentially into this rider that was created in FirstEnergy’s 2010 ESP, which appears to be the subject of the recent indictment and the criminal activities of former PUCO Chair Randazzo. That corruption potentially involves FirstEnergy and Rider DCR and its relationship with Randazzo. The new indictment and allegation of criminal behavior have now been tied to a scheme to defraud customers, which may be related to “settlement payments” received in conjunction with FirstEnergy’s ESP proceeding pending before the PUCO in 2010. The 2010 ESP and settlement created FirstEnergy’s Rider DCR.⁷ Therefore, not only has FirstEnergy Corp. entered into a Deferred Prosecution Agreement with the Government under which it admitted that it “paid \$4.3 million dollars to [Randazzo] through his consulting company in return for [Randazzo] performing official action in his capacity as PUCO Chairman to further FirstEnergy Corp.’s interests relating to passage of nuclear legislation and *other specific FirstEnergy Corp. legislative and regulatory priorities, as requested and as opportunities arose,*”⁸ there is now evidence that the corruption runs deeper and may be the basis of inappropriate charges to customers through Rider DCR. In light of this new information and the potential connection to Rider DCR, it is imperative for the regulator to investigate the “settlement payments” and get to the bottom of this corruption and the amounts charged to customers prior to increasing those charges passed on to customers through Rider DCR. The PUCO should protect customers

⁷ *Id.* at 16-19 (Nov. 29, 2023); see also *In the Matter of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R. C. 4928.143 in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Application and Stipulation at 13 (March 23, 2010).

⁸ *United States of America v. FirstEnergy Corp.*, Case No. 1:21-cr-86, Deferred Prosecution Agreement at 17 (July 20, 2021) (emphasis added).

and determine whether harm has been perpetrated on them by FirstEnergy and Randazzo through their criminal activities.

The PUCO should also assure that FirstEnergy consumers are only being charged just and reasonable rates through Rider DCR and ESP V. The PUCO should address whether consumers *will be harmed* by re-approving, continuing, and/or increasing Rider DCR, which FirstEnergy appears to have used to further its criminal activities and H.B. 6 scheme. FirstEnergy has the burden of proof to establish that the ESP V rates are just and reasonable rates going forward. Part of that burden relates to showing how its riders they now seek to extend are appropriate and necessary.

Consumers must be allowed to investigate the reasonableness of Rider DCR and present testimony on such reasonableness. However, now, in the FirstEnergy ESP V evidentiary hearing, the PUCO has broadened its stay to outright prohibit the introduction of any relevant evidence and cross-examination related to H.B. 6 matters that appear to extend to the distribution riders, including Rider DCR, proposed in FirstEnergy's ESP V.⁹

For example, the Attorney Examiners denied OCC's Motion for Subpoena of FirstEnergy's Vice President, Controller and Chief Accounting Officer Jason Lisowski.¹⁰ Mr. Lisowski was expected to explain the FERC Audit Report findings. In addition, Mr. Lisowski would have explained a Consent Decree that FirstEnergy entered into with FERC where FirstEnergy agreed to a \$3.8 million fine for concealing information from FERC during its audit—information that is thought to relate to collection of lobbying

⁹ Transcript Unavailable.

¹⁰ Transcript Unavailable.

expenses through Rider DCR. The Attorney Examiners also refused to admit the FERC consent decrees in Docket No. IN23-2-000, which showed FirstEnergy's concealment of information to FERC regarding FirstEnergy's lobbying expenses.¹¹ And the Attorney Examiners excluded the August 3, 2021 Audit Report in Case No. 20-1629-EL-RDR, which established that FirstEnergy used Rider DCR to collect improper costs from consumers.¹²

Why these issues matter is because FirstEnergy seeks re-approval, continuation, and increases to Rider DCR in this case. The excluded evidence would shed light on whether FirstEnergy may have used Rider DCR to achieve improper ends and addressed whether the continuation of Rider DCR through ESP V would be unjust and unreasonable. The information sought to be introduced at hearing might have explained how using baseline data from these distribution riders is inappropriate to use to set the future distribution rider rates. But the Attorney Examiners' evidentiary rulings prevent consumers from exploring these issues on the record.

Given that the H.B. 6 investigations are stayed, preventing all discovery into these matters, it is only fair that the related portions (i.e., Rider DCR) of FirstEnergy's electric security plan be stayed. The PUCO has broad powers to ensure fairness and has done so in past cases.¹³ Staying the implementation and consideration of Rider DCR in the ESP V case would create a fairness of balance and symmetry in the PUCO's regulation –

¹¹ Transcript Unavailable.

¹² Transcript Unavailable.

¹³ See e.g. *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, Fifth Entry on Rehearing (Oct. 12, 2016), at ¶¶ 38, 39 (permitting the PUCO Staff to propose an alternative proposal for a distribution modernization rider).

something that is especially needed when it comes to FirstEnergy's two million consumers. Going forward with considering and continuing Rider DCR in the ESP V proceeding is also inefficient and prejudicial to consumers. As the PUCO acknowledged, the public has an interest in the efficient use of government resources.¹⁴

II. ARGUMENT

A. **FirstEnergy's fifth electric security plan seeks increased charges from consumers for Rider DCR, which is related to the four FirstEnergy investigations that have been stayed.**

Under FirstEnergy's ESP V it seeks to increase charges to consumers by \$1.4 billion. Hearings are ongoing as of the writing of this motion. The commonality between the investigation cases and ESP V case is the distribution charges FirstEnergy seeks to collect from consumers during its electric security plan via Rider DCR. In its ESP V, FirstEnergy has asked to extend and increase these riders for eight years. With the new information released, it is even more difficult to conclude that FirstEnergy's ESP V is "completely unrelated to H.B.6."¹⁵

In Case No. 20-1629-EL-RDR, involving Rider DCR, the PUCO found cost misallocations related to FirstEnergy's role in the H.B. 6 scandal. And the cost allocation issues are also a fundamental element of the other three FirstEnergy's investigations.

¹⁴ *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at ¶ 79 (Aug. 24, 2022).

¹⁵ *See, e.g., In the Matter of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at ¶ 19 (Oct. 18, 2023).

For example, the PUCO is investigating the extent to which FirstEnergy improperly collected H.B. 6 costs from consumers in Case No. 20-1502-EL-UNC.¹⁶ The PUCO could decide that H.B. 6 costs include costs that have been capitalized and charged to consumers through numerous riders, including Rider DCR. In fact, Blue Ridge Consulting, the PUCO-approved Auditor conducted an expanded audit of Rider DCR and concluded that there were a number of capital-recorded payments for vendors, including the former PUCO Chair Randazzo’s affiliated company (Sustainability Funding Alliance), which increased Rider DCR revenue requirements.¹⁷

Those transactions appear to be the basis of Count 6 of the criminal complaint against Randazzo.¹⁸ More specifically, on the federal indictment recently handed down, the Sustainability Funding Alliance appears to be a tool former Chair Randazzo used to further his alleged scheme, among other things, “to commit offenses against the United States, namely: to travel in interstate commerce and use and cause the use of a facility in interstate commerce with intent to promote, manage, establish and carry on and facilitate the promotion, management, establishment, and carrying on of bribery in violation of Ohio Revised Code §2921.02, in violation of 18 U.S.C. §1952; to devise and intend to devise a scheme and artifice to defraud and deprive the citizens of the State of Ohio and

¹⁶ *In the Matter of the Review of the Political and Charitable Spending by Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 20-1502-EL-UNC, Entry at ¶ 1 (May 4, 2022).

¹⁷ *In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 20-1629-EL-RDR, Blue Ridge Expanded Scope Audit at 19 (Aug. 3, 2021).

¹⁸ *United States of America v. Samuel Randazzo*, Case No. 1:23-cr-114, Indictment at 16-19 (Nov. 29, 2023).

PUCO of the honest services of a public official through bribery, in violation of 18 U.S.C. §§ 1343 and 1346.”¹⁹

And the Federal Energy Regulatory Commission conducted a wide-ranging audit of FirstEnergy that evaluated FirstEnergy’s compliance with: (1) cross-subsidization restrictions on affiliate transactions; (2) service company accounting, recordkeeping and reporting requirements, accounting and reporting requirements for affiliate transactions; and (3) preservation of records requirements. FERC issued seven findings of noncompliance and 38 recommendations that required FirstEnergy and its subsidiaries to take corrective action.²⁰

FirstEnergy’s franchised public utilities “improperly accounted for maintenance expenses incurred to remove vegetation” when they “inappropriately capitalized the cost to electric plant in service.”²¹ This caused the companies to overstate electric plant in service, accumulated depreciation, ADIT, depreciation expenses, and other account balances, and understate operating expenses incurred.”²² The improper vegetation management accounting occurred both prior to and during the audit period spanning January 1, 2015 to September 30, 2021.

FERC also found that the service company “improperly accounted for and improperly reported lobbying expenses, donations and other costs that lacked proper supporting documentation or were misclassified.” And FERC found that the service company allocated and charged the improperly accounted for lobbying, donation, and

¹⁹ *Id.* at 4.

²⁰ *In re: FirstEnergy Corp.*, Docket No. FA 19-1-000 at 4-13 (Feb. 4, 2022).

²¹ *In re: FirstEnergy Corp.*, Docket No. FA 19-1-000 at 38 (Feb. 4, 2022).

²² *Id.*

supported costs to FirstEnergy and its subsidiaries.”²³ Some of these costs were improperly recorded as general and administrative costs; some were improperly recorded as the cost of electric plant in service. Internal lobbyists expenses were also improperly accounted for, and the FirstEnergy Service Company charged the improperly accounted for costs to FirstEnergy and its subsidiaries.²⁴ All of which could be related to Rider DCR. The PUCO should investigate and allow the parties to investigate exactly how all of these findings impact Rider DCR prior to approving, continuing, and/or increasing charges collected from customers under Rider DCR.

B. A request for a limited stay pertaining to the consideration of FirstEnergy’s Rider DCR would be just and reasonable and consistent with the PUCO’s six-part stay standard.

It would be unfair for the PUCO to consider FirstEnergy’s Rider DCR charges under FirstEnergy’s ESP V under the present circumstances and consider increasing those charges to customers. The fair approach would be to stay consideration of FirstEnergy’s Rider DCR until FirstEnergy’s distribution rate case and the H.B. 6 investigations are concluded. This would be consistent with the PUCO’s Stay Entry in the H.B. 6 investigation cases.

When the PUCO issued its initial Stay Entry in the H.B. 6 cases, the PUCO relied on *F.T.C. v. E.M.A. Nationwide, Inc.*²⁵ and related cases, which use a balancing test to decide whether a civil case should be stayed due to a related criminal proceeding.²⁶

²³ *Id.* at 46.

²⁴ *Id.* at 52.

²⁵ 767 F.3d 611 (6th Cir. 2014).

²⁶ See, e.g., *In the Matter of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry (Aug. 24, 2022).

Consistent with its orders assessing the U.S. Attorney’s request for a stay in those cases, the PUCO should apply the six-part balancing test to this request for a limited stay. When this test is properly applied to the present case, it is clear that the consideration of FirstEnergy’s Rider DCR should be stayed until FirstEnergy’s next distribution rate case and after the H.B. 6 cases are resolved and former Chair Randazzo’s indictment runs its course. The following analysis shows how this balancing test should be applied to this case.

1. There are overlapping issues that exist making a limited stay reasonable.

The first factor in the PUCO’s balancing test is whether there is any overlap of the issues between the criminal case and the PUCO case.²⁷ The PUCO concluded that this factor weighed in favor of a stay in the H.B. 6 investigation cases due to “the similarities between the legal issues and subject matter such as the charges, fact issues, witnesses, and evidence.”²⁸ This factor also weighs in favor of a limited stay of Rider DCR requested in FirstEnergy’s ESP V case due to the similarities of the legal issues and subject matter.

²⁷ *In the Matter of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at ¶ 71 (Aug. 24, 2022).

²⁸ *Id.* at ¶ 72.

In Case No. 20-1629-EL-RDR, the Auditor found cost misallocations related to H.B. 6.²⁹ These cost allocation issues also permeate the corporate separation investigation³⁰ and the political and charitable spending³¹ investigation.

As part of the limited stay, the PUCO would defer ruling on distribution Rider DCR and address the distribution revenue requirements as part of FirstEnergy's upcoming base rate case to be filed in May 2024. The PUCO Staff testimony already suggests that Rider DCR as well as several other riders be reset at the base rate case.³² FirstEnergy in both its written testimony³³ and testimony at the hearing³⁴ admits that it could recover in a base rate case the same amounts it requests in its pending ESP V case for Rider DCR.

²⁹ *In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 20-1629-EL-RDR, Audit Report, Expanded Scope (Aug. 3, 2021).

³⁰ *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC.

³¹ *In the Matter of the Review of the Political and Charitable Spending by Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 20-1502-EL-UNC.

³² *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 23-301-EL-SSO, Direct Testimony of Christopher Healey at 12 (Oct. 10, 2023).

³³ *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 23-301-EL-SSO, Direct Testimony of Santino L. Fanelli at 5 (April 5, 2023).

³⁴ *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 23-301-EL-SSO, Transcript at 143-145 (Nov. 20, 2023).

2. The status of the criminal proceeding weighs in favor of a stay of Rider DCR proposed in FirstEnergy’s ESP V.

The second factor is the status of the criminal proceeding.³⁵ The PUCO concluded that the U.S. Attorney’s ongoing investigation into the H.B. 6 scandal is sufficient to satisfy this second factor.³⁶ Now, we have learned of a new criminal proceeding that appears to relate specifically to Rider DCR. Therefore, this factor also weighs in favor of a stay of Rider DCR proposed in FirstEnergy’s ESP V case. Most recently, former Chair Randazzo was indicted on eleven counts, including bribery and violation of federal and state laws pertaining to his involvement with FirstEnergy. That indictment needs to proceed to its logical end before picking back up on the distribution rider which may have played a part in the alleged corrupt bribery scheme. In fact, the case for a stay here is even stronger because the U.S. Attorney’s recent indictment of Mr. Randazzo³⁷ is an open criminal case.

3. The interests of the PUCO (and the courts) weigh in favor of staying the Rider DCR proposed in FirstEnergy ESP V.

Other factors address whether the stay is in the interests of the courts and the PUCO.³⁸ The PUCO concluded that these factors weighed in favor of staying the House Bill 6 cases to avoid the risk of interfering with the federal criminal investigation.³⁹ If FirstEnergy’s Rider DCR was completely and fairly adjudicated, including an investigation of the account of Rider DCR and how the “settlement payments” relate to

³⁵ *In the Matter of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at ¶ 71 (Aug. 24, 2022).

³⁶ *Id.*, Entry at ¶ 76 (Aug. 24, 2023).

³⁷ *United States v. Randazzo*, Case No. 1:23-cr-00114, Indictment (Nov. 29, 2023).

³⁸ *Id.* (Aug. 24, 2022).

³⁹ *Id.*

the costs that customers pay under Rider DCR and how payments to Randazzo's company relate to the costs paid by customers, then this would also run the risk of interfering with the federal criminal investigations, given the cost misallocation issues, which are common to both proceedings, and common witnesses/subjects of the investigation to both proceedings. Again, with the indictment of former Chair Randazzo, there is an even stronger reason to stay the PUCO's consideration of the FirstEnergy Rider DCR. This factor therefore also weighs in favor of a stay of the distribution riders proposed in FirstEnergy's ESP V case. As noted above, the case for a stay is even stronger here due to the pending criminal case against Mr. Randazzo.

4. The public interest weighs in favor of staying the PUCO's consideration of Rider DCR in FirstEnergy's ESP V.

The PUCO should also consider whether the stay is in the public interest.⁴⁰ In the H.B. 6 cases, the PUCO viewed the public interest as broader than merely the interests of Ohio consumers and concluded that this factor weighted in favor of a stay. The PUCO stated: "the public interest in effective criminal prosecution generally outweighs any existing civil interests."⁴¹ Applying this same broad view of the public interest, this factor weighs in favor of staying consideration of increases to Rider DCR in FirstEnergy's ESP V case. In the PUCO's investigations of FirstEnergy and FirstEnergy's ESP V case, the continued litigation of these cases while the criminal investigations are in progress could interfere with the criminal investigation.

⁴⁰ *Id.* at ¶ 77.

⁴¹ *Id.*

Although the PUCO expressed concern about a stay of the entire proceeding harming customers,⁴² a limited stay that delays consideration of increases to Rider DCR contained in FirstEnergy's ESP V case will not harm customers. Because this would amount to a limited stay, other portions of the utility's electric security plan could go forward, including the standard service auction. And if FirstEnergy balks at moving forward with its electric security plan without the current Rider DCR remaining in place, there are options for the PUCO that can assure consumers are provided with a standard service offer.

A standard offer can be set by other means than an electric security plan. Indeed, the law allows a utility to meet its standard service offer obligation through a market rate offer, under R.C. 4928.142. There is nothing that stands in the way of implementing a market rate offer for FirstEnergy consumers.

The PUCO also has allowed standard service offer auctions to proceed when a utility's electric security plan is expiring and there is no subsequent PUCO-approved electric security plan in place. For instance, the PUCO approved a competitive bidding process for Dayton Power and Light when its standard offer auction bidding process was about to expire without another PUCO approved electric security plan in place.⁴³ The PUCO could do so here.

⁴² *In the Matter of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at ¶ 19 (Oct. 18, 2023).

⁴³ *In the Matter of the Application of the Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 08-1094-EL-SSO, Entry (March 22, 2017).

5. The private interests of those impacted by the stay weigh in favor of staying the PUCO’s consideration of the Rider DCR under FirstEnergy’s ESP V.

The PUCO also considers balancing the private interests of those impacted by a stay.⁴⁴ The PUCO concluded that these factors are “largely neutral” when evaluated separately in terms of the Department of Justice’s interest in the criminal investigation vs. consumers’ interests in fair rates.⁴⁵ Unlike the H.B. 6 cases these factors are closely aligned and weigh heavily in favor of imposing a stay of Rider DCR in this case.

The private interests in the stay are essentially the interests of FirstEnergy’s two million consumers. Those are public interests as well.

The public’s interest in fair and reasonable utility charges (which would be furthered under a stay) greatly outweighs the interest in implementing increases to Rider DCR under FirstEnergy’s ESP V with their additional charges to consumers.

When all six factors of the PUCO’s balancing test are considered, the case for a stay is strong. In the interests of justice, the PUCO should grant the Motion and stay its consideration of FirstEnergy’s Rider DCR.

III. CONCLUSION

To protect consumers, the PUCO should stay the consideration of Rider DCR as requested in this case until FirstEnergy’s distribution rate case and after the H.B. 6 investigations are concluded. Movants’ motion will not interfere with the evidentiary

⁴⁴ *In the Matter of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at 26 (Aug. 24, 2022).

⁴⁵ *Id.* at ¶ 83.

hearing underway. Movants are not asking for a stay of the entirety of FirstEnergy's ESP V. Under the motion, the PUCO would consider all other aspects of FirstEnergy's ESP V.

FirstEnergy's need for any additional distribution revenues through Rider DCR would be addressed in its upcoming rate case proceeding. Importantly, the record of FirstEnergy's distribution rate case would remain open to allow for evidence produced under the four FirstEnergy investigations to be added and addressed by all parties. To avoid duplication of efforts, and in the vein of promoting judicial economy, briefing on Rider DCR in FirstEnergy's ESP V would also be stayed.

With the handing down of the recent indictment of former PUCO Chair Randazzo, the need to stay the approval, continuation, and/or increases to FirstEnergy's Rider DCR seems fair, just and reasonable to Ohioans. Before paying hundreds of millions of dollars more through Rider DCR to FirstEnergy under its proposed electric security plan, consumers have a right to know how deep the corruption runs, including potentially into FirstEnergy's ESP V. That corruption potentially involves FirstEnergy and its relationship with former PUCO Chair Randazzo, who has been indicted by a federal grand jury for allegedly accepting millions of dollars in bribes from FirstEnergy.⁴⁶

⁴⁶ See <https://apnews.com/article/ohio-bribery-investigation-householder-randazzo-puco-113274f88e7a53843e98a86f07d0844f>.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion for Limited Stay of FirstEnergy's Distribution Riders was served on the persons stated below via electronic transmission, this 6th day of December 2023.

/s/ John Finnigan
John Finnigan
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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: Motion Motion for Limited Stay of FirstEnergy's Distribution Riders by Northwest Ohio Aggregation Coalition, Ohio Manufacturers' Association Energy Group and Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of Finnigan, John.