

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

**OHIO ENERGY GROUP MEMORANDUM CONTRA
MOTION FOR LIMITED STAY OF DISTRIBUTION RIDERS**

On December 6, 2023, the Northwest Ohio Aggregation Coalition, Ohio Manufacturers' Association Energy Group, and the Office Of The Ohio Consumers' Counsel ("Movants") filed a Motion For Limited Stay of FirstEnergy's Distribution Riders ("Motion"). For the reasons set forth below, the Ohio Energy Group ("OEG") opposes the Motion.

I. The Indictment Does Not Mention Rider DCR And Movants' Assertions That The Criminal Trial May Provide Relevant Evidence To This Case Are Speculation.

On November 29, 2023, former Commission Chairman Samuel Randazzo was criminally indicted on eleven counts related to bribery and embezzlement. That indictment does not once mention the Companies' Delivery Capital Recovery Rider ("DCR"). Nevertheless, the Motion and Memorandum in Support repeatedly speculate that the pending criminal proceeding may uncover new information which could potentially impact the reasonableness of the charges and accounting practices of Rider DCR.¹

¹ Motion at 1 ("New information has come to light that **may** directly impact the charges and accounting practices" of Rider DCR.); Id. at 1-2 ("In light of this new information and the impact 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 DCR."); Memorandum at 2 ("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. The corruption **potentially** involves FirstEnergy and Rider DCR and its relationship with Randazzo."); Id. ("[T]here is now evidence that the corruption runs deeper and **may be** the basis of inappropriate charges to customers through Rider DCR."); Id. at 11 ("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."). Emphasis added.

Setting rates based on speculation that new evidence may emerge in the criminal prosecution that undermines the charges and accounting practices of Rider DCR is unreasonable. The Commission is required to set rates based on the evidence of record, not speculation. As the Commission has stated *“while the Commission is aware of reports containing allegations against FirstEnergy Corp. regarding its conduct in the passage of Am. Sub. H.B. 6 and the subsequent referendum, we are determined to act in a deliberate manner, based upon facts rather than speculation, and with due consideration to the limits on our statutory authority over FirstEnergy Corp. and over the political and charitable activity of all public utilities in this state.”*²

II. The Relief Requested By Movants Is Unclear And Contradictory.

The relief requested by the Motion is unclear and contradictory. At times, the requested relief is limited to a stay of consideration of *increases* to Rider DCR.³ In other places the requested relief is broader and seeks a stay of implementation, reapproval, continuation and/or increases to Rider DCR.⁴

² Entry, Case No. 19-361-EL-RDR (Dec 30, 2020) at 9 (citing *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 17-974-EL-UNC, Entry (Nov. 4, 2020) at ¶ 17.

³ Motion at 3 (*“FirstEnergy would not be prejudiced by this limited stay as any Rider **DCR increases** could still be considered in its upcoming rate case proceeding.”*); Id. at 3 (*“FirstEnergy’s need for **additional distribution revenues through Rider DCR** would be addressed in its upcoming rate case proceeding.”*); Memorandum at 2 (*“Before **increasing** Rider DCR under its proposed electric security plan, consumers have a right to know how deep the corruption runs...”*); Id. at 2 (*“[I]t 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.”*); Id. at 8 (*“It would be unfair for the PUCO to consider FirstEnergy’s Rider DCR charges under FirstEnergy’s Rider DCR under the present circumstances and consider **increasing** those charges to customers.”*); Memorandum at 12 (*“[T]his factor weighs in favor of staying consideration of **increases** to Rider DCR in FirstEnergy’s ESP V case.”*); Id. at 13 (*“[A] limited stay that delays consideration of **increases** to Rider DCR contained in FirstEnergy’s ESP V case will not harm customers.”*). Emphasis added.

⁴ Motion at 2 (*“Movants request a **stay of the implementation** of Rider DCR under ESP V and the consideration of **any modifications** to the current Rider DCR.”*); Memorandum at 3 (*“The PUCO should address whether consumers will be harmed by **re-approving, continuing, and/or increasing** Rider DCR...”*); Id. at 4 (*“Staying the **implementation and consideration** of Rider DCR in the ESP V case would create a fairness of balance and symmetry...”*); Id. at 8 (*“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.”*). Emphasis added.

A broad reading of the Motion, which would stay implementation, reapproval, continuation and/or increase to Rider DCR, would harm both consumers and the utility. It would directly harm consumers by foreclosing the \$30 million - \$36 million Rider DCR rate decrease proposed by Staff.⁵

The Movants proceed from an assumption that Rider DCR is unreasonable and must be stopped. That is not an accurate assumption. Rider DCR allows the Companies to invest in distribution system reliability to improve customer service. All of the Ohio investor-owned electric utilities have similar riders. To the extent that Rider DCR contains specific ratemaking differences from the other utilities, such as which FERC accounts are covered or the true-up methodology, Staff proposes to add consistency.⁶ Staff's proposed changes would be prohibited under a broad reading of the Motion, which seeks a prohibition of re-approval of Rider DCR.

If Rider DCR reapproval is stayed, then Rider DCR will arguably expire on May 31, 2024 – at the end of ESP IV. This would cause the Companies to incur an unsustainable annual revenue reduction of approximately \$390 million from May 31, 2024 until new base rates go into effect approximately one year later (the “Bridge Period”).⁷ Because base rates are set prospectively, the lost Rider DCR revenue during the Bridge Period could never be recovered in a future base rate case.

Under this scenario, the Companies would likely exercise their statutory right under R.C. 4928.143 (C)(2)(a) to terminate ESP V and remain in ESP IV. The Commission is well-aware how disruptive that process can be given the recent experience with AES Ohio. If the Companies remain in ESP IV, then all ESP V issues, including the ELR interruptible rate program and the NMB Transmission Pilot, could be called into question.

⁵ Direct Testimony of Christopher Healey at 28.

⁶ Direct Testimony of Devin Mackey at 7-16.

⁷ Direct Testimony of Christopher Healey at 9.

Alternatively, the Companies could seek emergency rate relief under R.C. 4909.16. At a minimum, in order to preserve cash flow, the Companies would restrict new distribution investments which would negatively affect reliability and customer service.

A narrow reading of the Motion to prohibit only increases to Rider DCR is legally unsound. R.C. 4928.143(B)(2)(h) allows for distribution riders, with no limitation other than the Commission's sound judgment supported by record evidence. Rather than impose a blanket prohibition on increases to Rider DCR, the better approach is to adopt Staff's position. Staff would change Rider DCR mechanics to align with the other utilities, which would result in a rate reduction of \$30 million - \$36 million.

III. An Indefinite Stay Of A Filed Rate Would be Unreasonable And Unlawful.

Under either a broad or narrow reading of the Motion, Movants request that the stay continue until FirstEnergy's upcoming rate case and the H.B. 6 investigations are both concluded.⁸

The requested stay is indefinite since it is not known when the H.B. 6 investigations and related appeals will end. Granting an indefinite stay of Rider DCR would rewrite the law. An electric utility is entitled to seek approval of a distribution infrastructure rider in an ESP under R.C. 4928.143(B)(2)(h). That right cannot be taken away by Movants. In addition, R.C. 4905.32 prohibits the utility from charging any rate different than the rate established in its tariff.

Instead of disrupting ESP V after the close of the record, Movants should focus their attention on the upcoming base rate case where all revenues and expenses will be subject to Commission review.

⁸ Memorandum at 14 (*"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."* (Memorandum at 8); *"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."*).

CONCLUSION

The Motion should be denied and all aspects of ESP V should move forward.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO'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 this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 19th day of December, 2023 to the following:

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Summary: Memorandum Ohio Energy Group (OEG) Memorandum Contra Motion for Limited Stay of Distribution Riders electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group.