

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

**COMPANIES’¹ MEMORANDUM IN OPPOSITION TO MOTION
FOR LIMITED STAY OF DISTRIBUTION RIDERS**

The Commission should deny Movants’² request to stay the Companies’ proposal to continue the Delivery Capital Recovery Rider (“Rider DCR”) in ESP V. Movants invoke the November 29, 2023 indictment against the former Commission Chair – specifically the indictment’s references in Count 6 to “2010” and unidentified “settlement payments” – to contrive a relationship between Rider DCR and criminal proceedings. However, nothing in Count 6 (a count alleging an attorney’s embezzlement from a client) or elsewhere in the indictment supports the Movants’ claim. The Commission recently concluded that ESP V is “completely unrelated” to the Commission’s HB 6-related investigations³ and nothing in the indictment disproves that conclusion.

¹ Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

² Movants are Northwest Ohio Aggregation Coalition, Ohio Manufacturers’ Association Energy Group and the Office of the Ohio Consumers’ Counsel.

³ Entry on Rehearing, Case Nos. 17-974-EL-UNC, 17-2474-EL-RDR, 20-1502-EL-UNC, 20-1629-EL-RDR (Oct. 18, 2023) ¶19. The Commission has already heard and rejected several attempts to create a relationship between ESP V and the Commission’s investigations related to HB 6. This memorandum in opposition will not address arguments the Commission has previously rejected. Instead, this memorandum will focus on responding to the Movants’ incorrect suggestions that there has been a recent change in circumstances that justifies a departure from the Commission’s October 18, 2023 Entry on Rehearing.

Further, Movants' requested stay could harm customers. Rider DCR supports capital investments to maintain distribution system reliability and counteract system degradation, and provides other protections for customers. Rider DCR is too important to compromise based on speculation. Therefore, the Motion should be denied.

I. ARGUMENT

A. The Motion is based on speculation and conjecture.

In its October 18, 2023 Entry on Rehearing in the four investigations, the Commission concluded that ESP V is "completely unrelated" to HB 6.⁴ In their Motion, Movants attempt to establish a relationship using the November 29, 2023 indictment against the former Commission Chair. According to Movants, the indictment reveals "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."⁵

Nothing in the indictment, however, supports the Movants' claim. The Movants rely on Count 6 of the indictment, which alleges Wire Fraud.⁶ Count 6 alleges an "embezzlement scheme" lasting "[f]rom in or about 2010 through in or about March 2019," whereby the defendant "entered into agreements and arrangements on behalf of Industry Group 1 and its members, which resulted in companies making payments ('settlement payments') to Industry Group 1 and its members," and that defendant "kept money intended for Industry Group 1 and its members for himself."⁷ Based on the Indictment's mere mention of "2010" and "settlement payments," Movants claim that Count 6 relates to the 2010 settlement of the Companies' ESP II, which created Rider DCR,

⁴ Id.

⁵ Movants' Supporting Memo at 2.

⁶ Movants' Supporting Memo at 2 n. 7 (citing Indictment at 16-19), 6.

⁷ Case No. 1:23-cr-114, Indictment (Nov. 29, 2023), ¶¶ 28, 30(b) and (c).

and that “this rider [DCR]...appears to be the subject of the recent indictment and the criminal activities” of the former Commission Chair.⁸

Count 6 does not support Movants’ argument. Count 6, which alleges an attorneys’ embezzlement from a client, does not: (1) refer to any Commission proceedings, (2) refer to any proceedings of the Companies, (3) mention any ESP, let alone ESP II, or (4) suggest that any company making the referenced “settlement payments” participated in the alleged embezzlement scheme. Accordingly, there is nothing in the indictment supporting Movants’ speculation that Rider DCR “appears to be the subject of the recent Indictment and...criminal activities...”⁹ or that “we have learned of a new criminal proceeding that appears to relate specifically to Rider DCR.”¹⁰

Because the Motion’s premise is incorrect, Movants’ application of the six-part test articulated in *F.T.C. v. E.M.A. Nationwide, Inc.*¹¹ is unnecessary. The Commission need not “decide whether a civil case should be stayed due to a related criminal proceeding”¹² because Movants have not identified any criminal proceeding “related” to ESP V, much less related to Rider DCR.

B. Movants’ requested stay could harm customers.

The Movants assert the limited stay would not cause prejudice to the Companies because “any Rider DCR increases could still be considered in [the Companies’] upcoming rate case proceeding,”¹³ and “other portions of the utility’s electric security plan could go forward.”¹⁴ Contrary to the Movants’ assertion, the requested stay would harm the Companies. Currently, the Companies make capital investments of hundreds of millions of dollars per year, and their annual

⁸ Movants’ Supporting Memo at 2.

⁹ Movants’ Supporting Memo at 2.

¹⁰ Movants’ Supporting Memo at 11.

¹¹ 767 F.3d 611, 626-27 (6th Cir. 2014).

¹² Movants’ Supporting Memo at 8.

¹³ Motion at 3.

¹⁴ Movants’ Supporting Memo at 13.

revenue cap for Rider DCR is \$390 million. While the Movants' requested relief is unclear, the Motion creates a risk that Rider DCR could be set to zero at the end of ESP IV and remain at zero until an indefinite date when the Companies' May 2024 base distribution rate case is resolved. The financial challenges of losing Rider DCR would put the Companies' ability to continue investing in their distribution system at risk. This situation would be harmful to the Companies and customers.

Indeed, the Motion overlooks the importance of Rider DCR to customers. Rider DCR supports the Companies' capital investment in the distribution system to offset system degradation and maintain reliability. Rider DCR also promotes gradualism for customers through quarterly updates, and ensures customers are only paying for the Companies' actual costs, subject to reconciliation, annual audits, and revenue caps. Rider DCR is too important to compromise based on an unsupported claim that Rider DCR "appears to be the subject of the recent indictment and the criminal activities."¹⁵

For these reasons, the Commission should deny the Motion.

¹⁵ Movants' Supporting Memo at 2.

Respectfully submitted,

Brian J. Knipe (0090299)
Counsel of Record
Christine E. Watchorn (0075919)
FirstEnergy Service Company
100 E. Broad Street, Suite 2225
Columbus, Ohio 43215
(614) 437-0183
bknipe@firstenergycorp.com
cwatchorn@firstenergycorp.com

(will accept service via email)

/s/ N. Trevor Alexander
N. Trevor Alexander (0080713)
Mark T. Keaney (0095318)
Kari D. Hehmeyer (0096284)
Benesch, Friedlander, Coplan & Aronoff LLP
41 South High Street, Suite 2600
Columbus, Ohio 43215-6164
Telephone: (614) 223-9300
talexander@beneschlaw.com
mkeaney@beneschlaw.com
khehmeyer@beneschlaw.com

*Attorneys for Ohio Edison Company, The
Cleveland Electric Illuminating Company, and
The Toledo Edison Company*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio (“PUCO”) on this 21st day of December 2023. The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

mkurtz@BKLawfirm.com
trhayslaw@gmail.com
cgrundmann@spilmanlaw.com
junger@spilmanlaw.com
bojko@carpenterlipps.com
Paul@carpenterlipps.com
gkrassen@nopec.org
rmains@brickergraydon.com
mjsettineri@vorys.com
eowoyt@vorys.com
dromig@nationwideenergypartners.com
ctavenor@theOEC.org
Thomas.Lindgren@OhioAGO.gov
Rhannon.Howard@OhioAGO.gov
jang@calfee.com
Michael.nugent@igs.com
dproano@bakerlaw.com
eprouthy@bakerlaw.com
john.finnigan@occ.ohio.gov
William.michael@occ.ohio.gov
Thomas.zuehlke@occ.ohio.gov
rdove@keglerbrown.com
little@litohio.com
jdunn@oneenergylc.com
todd.schafer@outlook.com
jrb@smxblaw.com
emcconnell@elpc.org
todonnell@dickinsonwright.com
mpritchard@mcneeslaw.com
tlong@mcneeslaw.com
cadieux@carpenterlipps.com
Brian.gibbs@nationwideenergypartners.com

jkylercohn@BKLawfirm.com
Leslie.kovacik@toledo.oh.gov
dwilliamson@spilmanlaw.com
slee@spilmanlaw.com
Easley@carpenterlipps.com
dstinson@brickergraydon.com
dparram@brickergraydon.com
glpetrucci@vorys.com
aasanyal@vorys.com
knordstrom@theOEC.org
trent@hubaydougherty.com
mbarbara@calfee.com
Amy.BotschnerOBrien@OhioAGO.gov
tamara.turkenton@puco.ohio.gov
rkelter@elpc.org
Evan.betterton@igs.com
ahaque@bakerlaw.com
pwillison@bakerlaw.com
Robert.eubanks@occ.ohio.gov
Alex.hickey@occ.ohio.gov
nbobb@keglerbrown.com
meissnerjoseph@yahoo.com
hogan@litohio.com
ktreadway@oneenergylc.com
jpetroff@lawforlabor.com
mkl@smxblaw.com
cpirik@dickinsonwright.com
kshimp@dickinsonwright.com
awalke@mcneeslaw.com
whitt@whitt-sturtevant.com
nwallace@elpc.org

/s/ N. Trevor Alexander

*Attorney for Ohio Edison Company, The
Cleveland Electric Illuminating Company, and
The Toledo Edison Company*

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

12/21/2023 5:06:11 PM

in

Case No(s). 23-0301-EL-SSO

Summary: Memorandum in Opposition to Motion for Limited Stay of Distribution Riders electronically filed by Mr. N. Trevor Alexander on behalf of Ohio Edison Company and The Cleveland Illuminating Company and The Toledo Edison Company.