

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Edison Company, The Cleveland)	Case No. 23-0301-EL-SSO
Electric Illuminating Company, and)	
The Toledo Edison Company for)	
Authorization to Establish a Standard)	
Service Offer Pursuant to R.C.)	
4928.143 in the Form of an Electric)	
Security Plan.)	

INITIAL POST-HEARING BRIEF OF WALMART INC.

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Dated: January 19, 2024

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TABLE OF CONTENTS

I.	INTRODUCTION AND FACTUAL BACKGROUND	1
II.	ARGUMENT	3
	A. The Commission Should Take Steps to Reduce the Number of Riders Employed by the Companies.	3
	B. Customers Do Not Benefit from the Multitude of Riders Proposed in ESP V.	4
	C. As an Alternative to Denying Rider Recovery Entirely, Walmart Does Not Oppose the Commission Adopting Staff's Compromise Proposal.	8
	D. The Commission Should Adopt the Reporting Recommendations of Walmart Witness Perry Concerning the Energy Solutions for Business Program.....	9
	E. The Commission Should Order the Companies to Undertake EV Rate Design.	9
III.	CONCLUSION	11

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INITIAL POST-HEARING BRIEF OF WALMART INC.

Walmart Inc. ("Walmart"), by its attorneys, respectfully submits its Initial Post-Hearing Brief to the Public Utilities Commission of Ohio ("Commission") and states as follows:

I. INTRODUCTION AND FACTUAL BACKGROUND

On April 5, 2023, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "Companies" or "FirstEnergy") filed an Application to establish the Companies' fifth Electric Security Plan ("ESP V").

Walmart actively participated in this proceeding and caused to be admitted into the record the Direct Testimony and Exhibits of Lisa V. Perry, Director, Utility Partnerships – Regulatory ("Perry Direct").¹ Through the Direct Testimony of Ms. Perry, Walmart addressed discrete issues related to the Companies' ESP V. First, Ms. Perry addressed the number of riders employed by the Companies, arguing that steps need to be taken to reduce the number of riders beyond even that proposed by the Companies in this proceeding. Ms. Perry proposed to address this issue by rolling costs currently recovered through individual riders into the Companies' base rates. Perry Direct, p. 9, lines 5-9. Ms. Perry next addressed the Energy Solutions for Business Program proposed by the Companies for recovery through the Energy Efficiency Cost Recovery Rider ("Rider EEC").

¹ Walmart Ex. 1, Perry Direct; *see also* Hearing Transcript ("Tr."), Volume XIII, p. 2323.

While Ms. Perry did not take a specific position on whether the Energy Solutions for Business Program should be approved or disapproved by the Commission, Ms. Perry recommended certain reporting requirements that should be adopted if the Commission opted to approve the program. Finally, Ms. Perry addressed the need for Electric Vehicle ("EV") rate design, particularly for Direct Current Fast Charging ("DCFC"), to encourage the growth and development of EV charging infrastructure throughout the Companies' service territory. *Id.*, p. 15, lines 1-10. Ms. Perry encouraged the Commission to adopt EV rate design in this proceeding for the term of the ESP and provided the Commission with an EV Tariff employed by Eversource in Massachusetts and Connecticut that could be deployed in the Companies' service territory and would address the specific use case and concerns associated with the deployment of EV infrastructure. *Id.*, p. 15, line 11 to p. 16, line 1. As discussed below, no parties opposed Ms. Perry's recommended rate design. Alternatively, Ms. Perry requested that the Commission direct the Companies to develop an EV rate targeted at DCFC customers that could be implemented by no later than the Companies' next base rate case. *Id.*, p. 15, lines 8-10.

In light of the evidence presented at the hearing by Walmart and other parties, Walmart requests that the Commission:

1. Reduce the number of riders employed by the Companies by, among other options, rolling certain costs currently recovered through riders into base rates and requiring the Companies to recover those costs on a going forward basis through periodic base rate cases, or, alternatively, adopting the compromise position of Commission Staff ("Staff") to permit rider recovery on a bridge period basis only and deferring final approval of riders for the duration of the ESP V term, including deciding whether ongoing rider recovery is appropriate, to the forthcoming base rate case to be filed by the Companies by May 2024;

2. Adopt Walmart witness Perry's reporting recommendations concerning the Energy Solutions for Business Program as a condition of its approval; and

3. Require the Companies to adopt the DCFC EV rate design sponsored by Ms. Perry and modeled after a tariff employed by Eversource for the ESP term.

II. ARGUMENT

A. The Commission Should Take Steps to Reduce the Number of Riders Employed by the Companies.

For many years, including in this ESP V, Walmart has raised concerns about the complexity of the Companies' rates, which stem predominantly from the overwhelming number of riders maintained by the Companies. *See* Perry Direct, p. 8, line 14 to p. 9, line 4.² Indeed, a single commercial general service ("GS") customer needs to apply more than a dozen riders in order to monitor usage and project future costs; this is a complex undertaking for even the most sophisticated energy users. *Id.*, p. 8, line 17 to p. 9, line 1. Walmart's perspective on this issue is as an energy user with nationwide operations involving dozens of different utility companies. The notion that FirstEnergy's overabundance of riders operates as an outlier in the industry was echoed by Office of Consumers' Counsel ("OCC") witness Meyer, who noted that "[t]he number of riders in effect for FirstEnergy is the most riders I have seen for any utility I have audited in my career." OCC Exhibit 1, Direct Testimony of Greg R. Meyer ("Meyer Direct"), p. 11, lines 1-4. The Companies' rate structure needs to be transparent and understandable; with the sheer multitude of riders employed by FirstEnergy, such transparency is lacking and should be addressed in this case.

² *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, Direct Testimony of Steve W. Chriss (filed Dec. 22, 2014), p. 6, lines 5-14.

The Companies propose to eliminate 18 of 67 riders. *See* Companies' Exhibit 2, Direct Testimony of Santino L. Fanelli ("Fanelli Direct"), Attachment SLF-1. While Walmart views this movement as a step in the right direction, with the three new riders proposed in this case, the Companies simply do not go far enough. If ESP V is approved as filed, the Companies will still employ 52 riders. *Id.* As Walmart witness Perry recommended, the Commission should take further steps to simplify the Companies' rates by ordering that costs, particularly those where a portion are already included in base rates, *i.e.*, the costs recovered in the Delivery Capital Recovery Rider ("Rider DCR") and the Vegetation Management Cost Recovery Rider ("Rider VMC"), only be recovered through base rates. Perry Direct, p. 9, lines 5-11. This would further reduce the complexity of customer bills, benefitting customers.

B. Customers Do Not Benefit from the Multitude of Riders Proposed in ESP V.

While this case proceeds under the long-standing, familiar framework set forth in ORC § 4928.143(C)(1), it is unique in many respects, not least of which is the turmoil that has surrounded the Companies in recent years following the House Bill ("HB") 6 scandal. Layered on top of these ongoing issues, and particularly relevant to the Commission's consideration of ESP V, is the fact that nearly 17 years have passed since the Companies last filed a base distribution rate case. *See* Case No. 07-551-EL-AIR. For the better part of two decades, this Commission and parties have been deprived of the opportunity to conduct a full-scale review of the Companies' operations. While the Commission (and Staff and other parties) have been able to have some level of review and oversight through annual rider audit proceedings, significantly excessive earnings test ("SEET") cases, and reviews of ESPs lasting longer than three years, as Staff witness Healey noted, "none [of these] is a substitute for the openness and thorough review that a base distribution rate case affords." Staff Exhibit 10, Direct Testimony of Christopher Healey ("Healey Direct"), p. 5, line 15 to p. 6, line 2. With a distribution base rate case filing imminent, the Commission

should not perpetuate rider recovery until it has had an opportunity to conduct a full-scale review of the Companies' operations to allow it to determine that the amounts proposed for recovery through these riders are reasonable and prudent.

As an abstract concept, Walmart agrees that riders *can* be beneficial and, in certain circumstances, are the appropriate vehicle to recover certain types of costs. As Staff witness Healey noted, riders can be beneficial to smooth rate increases in between rate increases and/or for special circumstances such as the Tax Cuts and Jobs Act of 2017. Healey Direct, p. 7, lines 1-4. The riders at issue here, however, have not been used historically to smooth increases between rate cases but as a substitute for the base rate case process. Walmart agrees with Staff witness Healey that (a) "riders should not become the primary form of cost recovery for utilities to the exclusion of base distribution rate cases;" and (b) "there are benefits to *periodic* base distribution rate cases." Healey Direct, p. 6, lines 13-14 and p. 7, lines 7-9. Having gone nearly 17 years without filing a base rate case but having numerous ESP proceedings during this time is proof the Companies have relied on riders to the exclusion of base rates. This long-term delay in coming in for a base rate case harms customers. Mr. Healey succinctly described the benefits of a base distribution rate case as compared to riders, stating

Over time, some of a utility's costs might increase, and others might decrease. Riders can capture some of these changes, but riders often allow the utility to increase rates based on new investments and incremental cost increases without also requiring utilities to lower rates when they reduce expenses over time. A base distribution rate case, on the other hand, is intended to capture both increases and decreases, which balances the interests of the utility and its customers.

Healey Direct, p. 6, lines 4-10.

By avoiding the base rate case process, at least two negative, quantitative impacts have been perpetuated to the detriment of customers.³ First, the Commission has not been able to reset the return on equity ("ROE") for the Companies. At least with respect to Rider DCR, the Companies have been able to recover the costs associated with those investments based on an ROE of 10.50 percent, which was set in 2009 in the Companies' last base rate case.⁴ Hearing Tr., Vol. I, p. 143, line 2 to p. 148, line 19 (Companies witness Fanelli). This ROE stands in stark contrast

³ This evidence stands in contrast to Companies witness Fanelli's claim that there is "no quantifiable net cost or benefit" to recovering certain revenues through riders versus base rates. Fanelli Direct, p. 12, line 22 to p. 13, line 1. As the Companies bear the burden to prove their proposed ESP satisfies the requirements of ORC § 4928.143(C)(1), these detrimental impacts to customers are directly relevant to the Commission's consideration of whether the Companies have satisfied their burden for approval of ESP V.

⁴ This Commission has recently signaled that the ROE applicable to riders such as those proposed herein should be based on the Companies' last distribution rate case regardless of the vintage of that prior rate case. *See In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-0468-GA-ALT ("Dominion CEP Rider Case"), Opinion and Order (Dec. 30, 2020) at ¶¶ 68-70. Indeed, in its Second Order on Rehearing in the Dominion CEP Rider Case, the Commission stated that "it has long been the Commission's practice to utilize the capital structure and cost of capital from the company's last base rate proceeding in the calculation of riders and alternative rate plans. *The Commission is obligated to follow its precedent.*" Dominion CEP Rider Case, Second Entry on Rehearing (Feb. 23, 2022) at ¶ 20 (emphasis added). Walmart generally supports the Commission following this precedent. In fact, Walmart specifically relied upon this prior precedent in its Reply Brief in Case No. 23-0023-EL-SSO. *See In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan ("AEP Ohio ESP V")*, Case No. 23-00023-EL-SSO, Walmart Reply Brief (filed Dec. 22, 2023). Walmart also believes that precedent should not be automatically followed in every circumstance. In this case, important factors, namely First Energy's fraud and misconduct associated with the HB 6 scandal, warrant may departure from that precedent with respect to the ROE applicable to the various riders proposed for recovery in this ESP V. The Commission will have the opportunity to set a new ROE as part of the Companies' forthcoming distribution base rate case, and the ROE decided in that proceeding should flow through all of the Companies' riders upon approval. Until that time, however, the Commission should not allow the Companies to benefit from an ROE that is too high. Instead, Walmart supports the Commission adopting an ROE consistent with the 9.70 percent ROE agreed to by AEP Ohio in the Stipulation and Recommendation filed in the AEP Ohio ESP V case. *See AEP Ohio ESP V*, Initial Brief of Walmart, pp. 6-7. Not only would a 9.7 percent ROE put the Companies on par with other electric distribution utilities in Ohio, but a 9.7 percent ROE is the mid-point of the Companies' current ROE of 10.50 percent and the 9.22 percent ROE recommended by the Office of Consumer's Counsel. *See Direct Testimony of OCC witness Buckley*, p. 8, lines 1-9. Again, Walmart believes the Commission should adopt this lower ROE only until a new ROE is determined as part of the Companies' forthcoming base rate case.

to the ROEs awarded to the other distribution utilities in Ohio, which range from 9.70 to 9.999 percent.⁵

Second, customers have been deprived of the potential offsetting impacts that flow from looking at all of the Companies' expenses. As Companies witness Fanelli acknowledged, a base rate case looks at "all the costs that are included in the proposed test year in that case." Hearing Tr., Vol. I, p. 150, lines 5-12. Under the Companies' proposal, customers are deprived of this comprehensive review of the entirety of the Companies' operations and are, instead, confined to a piecemeal review of riders that recover siloed categories of expenses. While these riders are subject to annual audit, they are a poor substitute for a rate case because the audits are confined to costs within the scope of that specific rider. For example, a Rider DCR audit will only relate to Rider DCR-related costs. *See* Hearing Tr., Vol I, p. 149, line 25 to p. 150, line 4 (Companies witness Fanelli). There is no occasion in a rider audit for the Commission to balance overearnings in one category against under-earnings in another. Because the Companies plan to file a base rate case by May 2024, the Commission should deny any rider recovery for Riders DCR, VMC, AMI, and SCR, and should defer any decision on whether to continue these riders and, if so, at what levels to the base rate case.⁶

⁵ *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case Nos. 20-0585-EL-AIR, *et al.*, Opinion and Order (issued Nov. 17, 2021), p. 17; *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*; Case Nos. 21-0887-EL-AIR, *et al.*, Opinion and Order (issued Dec. 14, 2022), p. 60. *In the Matter of the Application of The Dayton Power and Light Company to Increase Its Rates for Electric Distribution*, Case Nos. 20-1651-EL-AIR, *et al.*, Opinion and Order (issued Dec. 14, 2022), p. 36.

⁶ Walmart anticipates the Companies will argue that the caps proposed for many of these riders serve to protect customers. Testimony from Companies' witness Fanelli at the hearing undercuts this conclusion. Specifically, Mr. Fanelli acknowledged that notwithstanding any caps imposed on the riders, nothing would prohibit the Companies from seeking recovery in a future proceeding of reasonably and prudently incurred costs that exceeded whatever caps would be set in this case. Hearing Tr., Vol. I, p. 91, line 21 to p. 92, line 19. At best, the caps limit the maximum amount of dollars recovered in a specific year and/or during the term of ESP V; they would not prevent the Companies from recovering those monies period.

C. As an Alternative to Denying Rider Recovery Entirely, Walmart Does Not Oppose the Commission Adopting Staff's Compromise Proposal.

In the event the Commission does not desire to deny the Companies' request for approval of Riders DCR, VMC, AMI, and SCR, Walmart supports Staff's recommendation, which was limited to Rider DCR, to approve only a bridge period amount of recovery that is subject to further review, analysis, and approval in the forthcoming base rate case. *See* Healey Direct, p. 8, line 15 to p. 10, line 15. As Mr. Healey explained, any extension of riders for the duration of ESP V should only be determined after the Commission (and parties) have had the opportunity to conduct a "wholesale review of the Companies' capital investments, expenses, and revenues." *See* Healey Direct, p. 7, lines 15-17. Staff's proposal represents a compromise that would

allow for a Bridge Period while the rate case is pending, during which FirstEnergy could continue to charge customers under its DCR Rider, though with a reduced cap that sets more appropriate boundaries for what should be recovered through a capital investment rider. Then, in the 2024 Rate Case, parties will have an opportunity to weigh in on the appropriateness of continuing Rider DCR for the remainder of the ESP V term, and they can do so with the benefit of a complete record as developed in the 2024 Rate Case.

Healey Direct, p. 11, lines 1-8. While Staff only sets specific "bridge period" amounts for Rider DCR, Mr. Healey notes that the Companies' other riders, including Riders AMI, VMC, and SCR, would also be considered in the upcoming base rate case. Healey Direct, p. 12, line 7 to p. 13, line 1. Walmart believes that it would be appropriate to place safeguards similar to those proposed by Staff for Rider DCR on these other riders, including reducing them to \$0 if a base rate case is not filed by May 31, 2024, and conditioning rider recovery beyond the rate case, let alone the full ESP V term, on the Companies obtaining specific authorization from the Commission in the May 2024 base rate case.

D. The Commission Should Adopt the Reporting Recommendations of Walmart Witness Perry Concerning the Energy Solutions for Business Program.

If the Commission opts to approve the Energy Solutions for Business program proposed by the Companies for recovery through Rider EEC,⁷ the Commission should adopt the reporting recommendations of Walmart witness Perry. Perry Direct, p. 12, lines 1-12. Among other things, Walmart recommended that the Companies track the level of participation by eligible customers, including the number of opt-outs, which will provide the Companies, parties, and Commission with valuable insight into the level of participation and interest in the program. *Id.* Not only will this information assist the Commission in assessing the effectiveness of the program, but the Companies conceded the relevance of Ms. Perry's recommendations during the hearing in this matter and confirmed they would have the data that Walmart recommended be reported. Hearing Tr., Nov. 16, 2023, Vol. IV, p. 862, line 9 to p. 964, line 20 (Companies witness Miller). No other parties opposed Walmart's recommendation, thus the Commission should adopt it if it decides to approve the Energy Solutions for Business Program.

E. The Commission Should Order the Companies to Undertake EV Rate Design.

The Companies' ESP V, whether approved for the eight-year term recommended by the Companies or the six-year term proposed by Staff, coincides with a time period of anticipated substantial growth in the electric vehicle ("EV") market.⁸ The increase in EVs can only occur if there is sufficient charging infrastructure to support it. *See* Perry Direct, p. 15, lines 4-6. At present, the Companies' rates and tariffs disincentivize investment in public EV chargers, particularly DCFC chargers, because of the way fixed charges are calculated and billed, which can deter

⁷ *See* Miller Direct, p. 8, lines 2-7.

⁸ *See* <https://governor.ohio.gov/media/news-and-media/governor-dewine-announces-locations-for-interstate-electricvehiclechargingstations#:~:text=There%20are%20currently%20about%2053%2C000,charging%20stations%20across%20the%20state.>

investment in this critical charging infrastructure. *Id.*, p. 13, line 1 to p. 14, line 4. As the EV market is in its infancy, rate design is needed that addresses these unique use cases but that is also flexible enough to transition to a more traditional rate design as utilization of chargers grows. *Id.*, p. 14, lines 9-17.

To address this issue, Walmart proposed that the Companies adopt an EV tariff targeted at public-facing DCFC chargers, which would be modeled after an Eversource tariff deployed in their Massachusetts and Connecticut service territories. *See* Perry Direct, p. 15, lines 11-17.⁹ No party opposed this testimony and/or argued that there was some reason the Companies could not or should not adopt this rate design in their service territory.¹⁰ Staff, for its part, agreed that it is appropriate for a distribution utility like the Companies to engage in rate design for EV charging such as Ms. Perry proposed. Hearing Tr., Vol. XIII, p. 2332, line 12 to p. 2333, line 1 (Staff witness Schaefer). Staff further agreed with Walmart that tackling rate design for EVs should happen sooner rather than later. *Id.*, p. 2337, lines 16-22.

While Staff elected not to address Ms. Perry's recommendations in their testimony, on cross examination, Staff witness Schaefer stated Staff's preference that EV rate design be addressed in a distribution rate case, but also acknowledged they have approved of EV rate design outside of distribution rate cases. *Id.*, p. 2333, line 2 to p. 2334, line 12. The justification for preferring a base

⁹ *See also* Eversource 2023 Summary of Eastern Massachusetts Electric Rates for Greater Boston Service Area effective July 1, 2023, pp. 3-4, available at https://www.eversource.com/content/docs/default-source/rates-tariffs/emagreater-boston-rates.pdf?sfvrsn=c27ef362_50; *see also* NStar Electric Company d/b/a Eversource Energy's General Service Optional Electric Vehicle Charging tariff sheet M.D.P.U. No. 79A, available at https://www.eversource.com/content/docs/default-source/about/mdpu-number-79a-general-service-optional-electricvehicle.pdf?sfvrsn=4b98dd84_1.

¹⁰ In this case, the procedural schedule specifically authorized Staff to file its testimony *after* both the Companies and intervening parties filed their Direct Testimony. Thus, Staff clearly had an opportunity to take a position on Ms. Perry's proposed rate design. Instead, Staff opted not to take a position. Hearing Tr., Vol. XIII, p. 2333, line 22 to p. 2334, line 21 (Staff witness Schaefer).

rate case is because Staff considers it the "best place to look at the cost to serve those types of customers." *Id.*, p. 2333, lines 17-19. Generally speaking, a rate case is the best place to assess the cost to serve a class of customers. In this case, however, Walmart is not claiming that such an identifiable class exists. Rather, Walmart's position is that the Companies' current rates are disincentivizing and preventing the development of this "class of customers." A basis for the class to develop, by creating appropriate rate design that would encourage this type of load to come online, is needed before Staff can assess the "cost to serve" this class. As such, the May 2024 base rate case is not likely to provide Staff with the data upon they would like to make a decision on EV rate design. Instead, the Commission should approve the EV rate design proposed by Walmart on an interim or pilot basis so that it can be studied and adjusted as needed in the next base rate case after the May 2024 base rate case.

III. CONCLUSION

For all the reasons set forth above, Walmart respectfully requests that this Commission take the following actions with respect to the Companies' ESP V Application:

1. Reduce the number of riders employed by the Companies by, among other options, rolling certain costs currently recovered through riders into base rates and requiring the Companies to recover those costs on a going forward basis through periodic base rate cases, or, alternatively, adopting the compromise position of Staff to permit rider recovery on a bridge period basis only and deferring final approval of riders for the duration of the ESP V term, including deciding whether ongoing rider recovery is appropriate, to the forthcoming base rate case to be filed by the Companies by May 2024;
2. Adopt Walmart witness Perry's reporting recommendations concerning the Energy Solutions for Business Program as a condition of its approval;

3. Require the Companies to adopt the DCFC EV rate design sponsored by Ms. Perry and modeled after a tariff employed by Eversource for the ESP term; and

4. For such other and further relief as the Commission deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Initial Post-Hearing Brief of Walmart Inc. was served by electronic mail, upon the following Parties of Record on this 19th day of January, 2024.

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

Summary: Brief Initial Post-Hearing Brief of Walmart Inc. electronically filed by
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