

**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.)	

**INITIAL BRIEF FOR CONSUMER PROTECTION
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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January 19, 2024

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. STANDARD OF REVIEW	3
III. RECOMMENDATIONS	5
A. The PUCO should grant the Motion for Limited Stay by OCC, OMAEG and NOAC.	5
B. FirstEnergy’s proposal to implement ESP V for eight years is unjust and unreasonable and would harm consumers. An eight-year length is inconsistent with PUCO precedent for recent electric security plans for other utilities. If the PUCO approves an electric security plan, the duration should be limited to no longer than four years and FirstEnergy should be required to file a new base distribution rate case at the end of that term.....	7
C. FirstEnergy’s SSO auction proposal is unjust and unreasonable because it does not provide for separate SSO auctions for residential consumers.	8
D. FirstEnergy’s SSO auction proposal is unjust and unreasonable for failing to include a capacity pass-through mechanism.....	11
E. FirstEnergy’s electric security plan proposal is unjust and unreasonable because it includes an unreasonably high return on equity, which would require consumers to pay unfair rates and allow FirstEnergy to earn excessive profits until a new return on equity is decided in the 2024 base distribution rate case.	12
F. FirstEnergy’s electric security plan proposal is unjust and unreasonable because it allows FirstEnergy to earn an unreasonably high return on equity for grid modernization spending. In addition, the plan is unjust and unreasonable because the return on equity for grid modernization spending would remain in effect for the entire duration of Advanced Metering Infrastructure Rider (“Rider AMI”), regardless of any changes in FirstEnergy’s return on equity to be decided in the 2024 base distribution rate case. This would result in an unreasonably higher return on equity for Rider AMI spending, which would require consumers to pay unfair rates and would allow FirstEnergy to earn excessive profits for Rider AMI spending.	18
G. FirstEnergy’s proposal to increase Delivery Capital Recovery Rider (“Rider DCR”) spending by \$21 million annually is unjust and unreasonable because the additional spending is excessive, the annual increases are tied to achieving reliability scores which FirstEnergy is	

	already required to meet under the PUCO’s rules and because FirstEnergy failed to prove that any improved reliability performance would be attributable to Rider DCR spending.....	20
H.	FirstEnergy’s electric security plan is unjust and unreasonable in that Rider DCR purportedly contains annual revenue “caps,” but the caps are ineffective in controlling Rider DCR spending because FirstEnergy can collect any excess revenues during the following year or during the next rate case.....	22
I.	FirstEnergy’s electric security plan is unjust and unreasonable because it allows FirstEnergy to use Rider DCR to collect costs for both transmission-related and distribution-related FERC accounts, even though the capital expense riders for other Ohio electric distribution utilities are limited to distribution-related FERC accounts.	23
J.	FirstEnergy’s Rider DCR and Rider AMI proposals are unjust and unreasonable because they allow FirstEnergy to charge consumers rates based on projected plant-in-service balances, even though a traditional base distribution rate case, as well as existing distribution riders for other utility companies, calculate the revenue requirement based on the utility’s historic plant-in-service balances.....	25
K.	FirstEnergy’s electric security plan is unjust and unreasonable because FirstEnergy’s failure to include a depreciation offset for Rider DCR forces consumers to pay higher rates as compared to a base rate case.....	26
L.	FirstEnergy’s Advanced Metering Infrastructure Rider (“Rider AMI”) proposal is unjust and unreasonable because the failure to include revenue caps for Rider AMI could lead to excessive rate increases and is inconsistent with PUCO precedent.	28
M.	FirstEnergy’s Rider AMI proposal is unjust and unreasonable and in conflict with R.C. 4909.15(A) because it improperly allows FirstEnergy to collect a return on and of the stranded grid modernization equipment which is taken out of service.....	29
N.	The sheer number of riders proposed by FirstEnergy is excessive, which weakens consumer protection by reducing the incentive for FirstEnergy to control costs. The PUCO should therefore reject FirstEnergy’s proposal to establish new riders for storm restoration costs (Rider SCR) and for vegetation management costs (Rider VMC).....	30
O.	FirstEnergy’s Storm Cost Recovery Rider (“Rider SCR”) proposal is unjust and unreasonable because FirstEnergy failed to demonstrate any need for Rider SCR. FirstEnergy’s failure to limit the rider to major storms would result in excessive rates and conflicts with PUCO precedent for other Ohio utilities’ storm cost restoration cost riders.	32

P.	FirstEnergy’s Vegetation Management Cost Rider (“Rider VMC”) proposal is unjust and unreasonable because FirstEnergy failed to demonstrate any need for the rider and the rider does not pass cost savings through to consumers.....	35
Q.	FirstEnergy’s Economic Load Response Program (“Rider ELR”) proposal requires consumers to pay massive subsidies to 24 large industrial customers for interruptible service in the event of electric emergencies. This proposal is unjust and unreasonable. PJM, not FirstEnergy, decides whether to curtail electric service in the event of an emergency. FirstEnergy consumers should not be required to subsidize these large industrial customers. Duke and AES Ohio consumers, who are similarly situated, are not required to pay these subsidies and neither should FirstEnergy consumers.....	37
R.	FirstEnergy’s Rider NMB proposal is unjust and unreasonable because it would improperly shift costs to the residential class and is contrary to the PUCO-appointed auditor’s recommendation to eliminate the program. ...	46
S.	FirstEnergy’s Energy Efficiency Cost Recovery Rider (“Rider EEC”) proposal is unjust and unreasonable and inconsistent with Ohio statutes and Supreme Court precedent because consumers who receive service during the last four years of the eight-year plan must pay for the programs even though they had no opportunity to enroll in or receive services under the programs. The programs are also unjust and unreasonable and contrary to PUCO precedent by allowing FirstEnergy to charge consumers for non-low-income energy efficiency and demand response programs which are widely available through the competitive market.	48
T.	FirstEnergy should modify its proposed low-income programs to optimize program benefits.	53
U.	The PUCO should reject FirstEnergy’s proposed electric security plan and approve a market rate option because the electric security plan fails to meet the “more favorable in the aggregate” standard.	54
IV.	CONCLUSION.....	58

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I. INTRODUCTION

FirstEnergy seeks approval of an eight-year so-called electric security plan (“ESP V”) that will cost consumers approximately ***\$1.4 billion***.¹ If approved by the PUCO, FirstEnergy’s proposed ESP V would deal a tough blow to many FirstEnergy electric consumers who have already been slammed by inflation, the financial fallout from the coronavirus pandemic, and rising charges for other utility services. FirstEnergy’s ESP V plan should be rejected.

FirstEnergy’s request for approval of ESP V comes after it admitted to the U.S. Department of Justice to committing honest services wire fraud and bribing the former PUCO chair as part of the H.B. 6 scandal (otherwise known as “the largest bribery, money laundering scheme ever perpetrated against the people of the state of Ohio”²). FirstEnergy admitted to bribing the former PUCO Chair Sam Randazzo, who has since

¹ FirstEnergy Ex. 2, Direct Testimony of Santino L. Fanelli (“Fanelli Testimony”) at SLF-1 (April 5, 2023).

² T. Armus, *GOP Ohio House speaker arrested in connection to \$60 million bribery scheme*, The Washington Post (July 23, 2020).

been criminally indicted for bribery and embezzlement.³ Parts of ESP V, like FirstEnergy's proposal to charge consumers *\$21 million annually* through the Delivery Capital Recovery Rider, are inextricably intertwined with the H.B. 6 scandal and FirstEnergy's corrupt bribery scheme. Yet FirstEnergy expects the PUCO to consider and approve ESP V while the PUCO has blocked moving forward with other investigations regarding how FirstEnergy consumers have been harmed by the H.B. 6 scandal and whether they should receive refunds. That is unfair. Indeed, regulators in other states have ordered H.B. 6-related refunds to consumers.⁴ Meanwhile, the PUCO's H.B. 6 investigations are operating under a third consecutive six-month stay.⁵

FirstEnergy's criminal scheme corrupted the PUCO's regulatory authority. FirstEnergy 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."⁶ The PUCO should consider this as it weighs

³ *United States v. Randazzo*, Case No. 1:23-cr-114, Indictment (Nov. 29, 2023).

⁴ D. Anderson, *Potomac Edison faces Maryland audit after admitting it charged customers for FirstEnergy's bribes and lobbying*, Utility Dive (Oct. 26, 2023); K. Kowalski, *How Randazzo spent millions from FirstEnergy*, Energy News Network (May 17, 2023).

⁵ *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).

⁶ *United States of America v. FirstEnergy Corp.*, Case No. 1:21-cr-86, Deferred Prosecution Agreement at 17 (July 20, 2021) (emphasis added).

whether to approve FirstEnergy's plan to charge consumers \$1.4 billion over the next eight years for ESP V.

Apart from the H.B. 6 scandal, OCC and others presented ample evidence demonstrating how FirstEnergy's proposal to increase charges to consumers is unreasonable. For the reasons explained below, the PUCO should reject FirstEnergy's proposed ESP V.

II. STANDARD OF REVIEW

The standard of review for electric security plan cases is found in R.C. 4928.143(C)(1), which states in pertinent part:

[T]he commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. Additionally, if the commission so approves an application that contains a surcharge under division (B)(2)(b) or (c) of this section, the commission shall ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge. Otherwise, the commission by order shall disapprove the application.

To determine whether an electric security plan passes this statutory test, the PUCO must individually examine each electric security plan provision, in light of the fourteen policy objectives of R.C. 4928.02. An electric utility meets the "more favorable in the aggregate" standard "only to the extent that the electric utility's proposed MRO is

consistent with the policies set forth in section 4928.02, Revised Code.”⁷ The PUCO must also ensure that every public utility furnishes necessary and adequate service and facilities, and that all charges for any service must be just and reasonable.⁸

The PUCO has authority to modify FirstEnergy’s proposed electric security plan under R.C. 4928.143. Indeed, this authority does not depend upon any finding that the electric security plan is not more favorable in the aggregate than the expected results of a market-rate option.⁹ Rather, the PUCO has the inherent statutory authority to make modifications to the electric security plan that are supported by the record in the case.¹⁰

The electric security plan must also provide for FirstEnergy to furnish necessary and adequate service and facilities, and for all charges for any service to be just and reasonable.¹¹

R.C. 4928.143(C)(1) provides that the “burden of proof in the [electric security plan] proceeding shall be on the electric utility.” That burden refers to not only proving the electric security plan meets the statutory test of being more favorable in the aggregate

⁷ *In the Matter of the Application of Ohio Edison Companies, the Cleveland Electric Illuminating Companies, and the Toledo Edison Companies for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated with Reconciliation Mechanism, and Tariffs for Generation Service*, Case No. 08-936-EL-SSO, Opinion and Order at 14 (Nov. 25, 2008); *see also In the Matter of the Application of Ohio Edison Companies, the Cleveland Electric Illuminating Companies, and the Toledo Edison Companies for Authority to Establish a Standard Service offer Pursuant to Section 4928.143, Revised Code in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO, Opinion and Order at 12 (Dec. 19, 2008) (finding that in determining whether the ESP meets the requirements of R.C. 4928.143, the Commission takes into consideration the policy provisions of R.C. 4928.02).

⁸ R.C. 4905.22.

⁹ *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to Its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, Opinion and Order at 72 (March 18, 2009).

¹⁰ *Id.*

¹¹ R.C. 4905.22.

than a market-rate option, but also extends to proving that each provision in the electric security plan has a basis in law under R.C. 4928.143(B)(2)(b).

III. RECOMMENDATIONS

A. The PUCO should grant the Motion for Limited Stay by OCC, OMAEG and NOAC.

On December 6, 2023, OCC, along with OMAEG and NOAC, moved for a limited stay of FirstEnergy's ESP V Application as it pertains solely to one distribution rider, the Delivery Capital Recovery Rider ("DCR").¹² The Ohio Energy Group ("OEG")¹³ and FirstEnergy¹⁴ filed memoranda in opposition to the stay. OCC, OMAEG and NOAC replied to both memoranda.¹⁵

The stay would still allow PUCO to consider all other aspects of FirstEnergy's ESP V while considering the need for additional distribution revenues through Rider DCR in its upcoming rate case proceeding.¹⁶ 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.¹⁷

The new indictment and allegation of criminal behavior by former PUCO Chair Randazzo have again been tied to FirstEnergy's scheme, which apparently are related to

¹² FirstEnergy's Memorandum in Opposition to Motion for Limited Stay of Distribution Riders (Dec. 21, 2023).

¹³ OEG's Memorandum Contra Motion for Limited Stay of Distribution Riders (Dec. 19, 2023).

¹⁴ FirstEnergy's Memorandum in Opposition to Motion for Limited Stay of Distribution Riders (Dec. 21, 2023).

¹⁵ Joint Reply to OEG's Memorandum Contra (Dec. 26, 2023); Joint Reply to FirstEnergy's Memorandum Contra (Dec. 28, 2023).

¹⁶ Motion for Limited Stay of FirstEnergy's Distribution Riders and Memorandum in Support by Northwest Ohio Aggregation Coalition, Ohio Manufacturers' Association Energy Group and Office of the Ohio Consumers' Counsel, at 3 (Dec. 6, 2023).

¹⁷ *Id.* at 3-4.

“settlement payments” received in conjunction with FirstEnergy’s ESP proceeding pending before the PUCO in 2010.¹⁸ In the H.B. 6 cases, the PUCO relied on *F.T.C. v. E.M.A. Nationwide, Inc.*¹⁹ and related cases, which use a balancing test to decide whether a civil case should be stayed due to a related criminal proceeding.²⁰ The same balancing test which the PUCO applied when issuing its initial Stay Entry in the H.B. 6 cases supports the Motion for Limited Stay in the present case.

The PUCO should protect customers by determining whether harm has been perpetrated on them by FirstEnergy and Randazzo through their criminal activities,²¹ and assure that FirstEnergy consumers are only being charged just and reasonable rates through Rider DCR and ESP V.²² Considering and continuing Rider DCR in the ESP V proceeding is inefficient and prejudicial to consumers²³ so the PUCO should ensure fairness in the PUCO’s regulation by granting the limited stay.

¹⁸ Memorandum in Support of Motion for Limited Stay, at 2 (Dec. 6, 2023).

¹⁹ 767 F.3d 611 (6th Cir. 2014).

²⁰ 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).

²¹ *Id.* at 3.

²² *Id.*

²³ *Id.* at 5.

- B. FirstEnergy’s proposal to implement ESP V for eight years is unjust and unreasonable and would harm consumers. An eight-year length is inconsistent with PUCO precedent for recent electric security plans for other utilities. If the PUCO approves an electric security plan, the duration should be limited to no longer than four years and FirstEnergy should be required to file a new base distribution rate case at the end of that term.**

FirstEnergy proposes to implement ESP V for eight years.²⁴ An eight-year duration would be unjust and unreasonable because FirstEnergy’s earnings would be subject to a relaxed “significantly excessive earnings” test during this time.²⁵ This is also inconsistent with recent PUCO precedent approving plans of no longer than four years for other electric distribution utilities. If the PUCO approves an electric security plan for FirstEnergy, the duration should be limited to no longer than four years. FirstEnergy should be required to file a new base distribution rate case at the end of that term.

If no electric security plan were in effect, FirstEnergy would be required to request increases in base distribution rates more frequently, which means that FirstEnergy’s earnings would be subject to a more rigorous standard under *Bluefield Water Works v. Public Service Comm’n*, 262 U.S. 679 (1923) (“Bluefield”) and *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (“Hope”). The *Bluefield* decision summarizes the standard as follows: “The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management to maintain and support its credit to enable the utility to raise necessary capital.”²⁶ This distinction between “significantly excessive earnings” and “reasonably sufficient earnings” is a meaningful difference such that, all

²⁴ Application at 1 (April 5, 2023).

²⁵ R.C. 4928.143(F).

²⁶ *Bluefield Water Works v. Public Service Comm’n*, 262 U.S. 679 (1923).

else equal, consumers receive better protection under shorter duration electric security plans which force the utilities to file base distribution rate cases in order to implement rate increases.

The PUCO has approved shorter duration electric security plans in more recent rounds of electric security plans for Ohio electric distribution utilities. The PUCO has not yet decided the pending AEP electric security plan; however, PUCO Staff supports the settlement agreement which calls for a four-year electric security plan.²⁷ The PUCO most recently approved a three-year electric security plan for AES Ohio.²⁸

Consistent with these cases, the PUCO should limit any electric security plan for FirstEnergy to no longer than four years. FirstEnergy should also be required to file a new base distribution rate case at the end of that term.

C. FirstEnergy’s SSO auction proposal is unjust and unreasonable because it does not provide for separate SSO auctions for residential consumers.

FirstEnergy’s electric security plan should be rejected because it does not include separate standard service offer (“SSO”) auctions for residential consumers. This is unjust and unreasonable because FirstEnergy’s plan for SSO auctions for all consumers as a single group involves more risk and more volatile prices than residential consumers would face in a stand-alone SSO auction.

OCC witness James F. Wilson testified that holding separate SSO auctions for residential consumers, or perhaps residential and small commercial consumers, has the

²⁷ *In the Matter of the Application of 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 No. 23-23-EL-SSO, et al., Stipulation and Recommendation (Sept. 6, 2023).

²⁸ *In the Matter of the Application of the Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan*, Opinion and Order, at 24 (Aug. 9, 2023).

potential to lead to more efficient and lower cost SSO auction outcomes for residential consumers.²⁹ Mr. Wilson recommended that the PUCO require FirstEnergy to implement separate SSO auctions for residential consumers, perhaps also including small commercial consumers.³⁰

Consumer classes are different in two principal ways relevant to the cost to serve under an SSO obligation:³¹

- (1) Different consumer groups have different load shapes throughout the hours of the day and on a seasonal basis; in general, more variable load shapes are more costly to serve; and
- (2) The consumer groups also differ in the propensity to switch into or out of SSO service when market prices change and render a switch attractive. Generally speaking, smaller consumers with less to save by switching are less likely to switch; large consumers with more at stake are more likely to be watching the market for opportunities to save on their electricity costs.

Mr. Wilson explained that holding separate auctions for different consumer classes would allow SSO suppliers to tailor their bids to the particular costs and risks presented by each customer class.³² When the costs and risks differ but the classes are included in the same auction, the lower-cost consumer classes subsidize the service provided to the higher-cost consumer classes.³³

²⁹ OCC Ex. 2, Direct Testimony of James F. Wilson (“Wilson Testimony”) at 18.

³⁰ *Id.* at 13.

³¹ *Id.* at 10.

³² *Id.* at 11.

³³ *Id.*

It is common in other states to hold separate auctions for either residential consumers, or residential together with small commercial.³⁴ In particular, New Jersey, Maryland, the District of Columbia, and Illinois hold separate auctions for residential consumers together with small commercial consumers.³⁵ In Pennsylvania, Delaware and Massachusetts the auctions are by consumer class, so residential consumers have a separate auction.³⁶ These approaches to standard offer service in these states have been in place for many years.

The following paragraphs summarize early decisions to employ these approaches:

- Massachusetts (2000), providing a six-month fixed price approach for residential and small commercial and industrial consumers, and a variable price approach for medium and large commercial and industrial consumers.³⁷
- New Jersey (2002), approving two auctions for Basic Generation Service, one for larger commercial and industrial consumers and one for all other small consumers.³⁸
- Maryland (2004), providing for Residential Standard Offer Service (“SOS”) and three types of non-residential SOS.³⁹

³⁴ *Id.* at 12.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* (citing Massachusetts Public Utilities Commission, Opinion and Order, *Re Pricing & Procurement of Default Service*, Docket No. 99-60 (June 30, 2000), at 4).

³⁸ *Id.* (citing New Jersey Board of Public Utilities Decision and Order, *In the Matter of the Provision of Basic Generation Service Pursuant to the Electric Discount and Energy Competition Act*, Docket Nos. EX011110754 and EO02070384 (Dec. 11, 2001), at 3).

³⁹ *Id.* at 13 (citing Maryland Public Service Commission Order No. 78400, *In the Matter of the Commission’s Inquiry into the Competitive Selection of Electricity Supplier/Standard Offer Service*, Case No. 8098 (April 29, 2003), at 3).

- Delaware (2005), providing for a fixed price SOS for all but the largest consumers and an hourly priced service for the largest consumers.⁴⁰
- Illinois (2006), adopting an approach with three-year contracts for serving residential and small commercial consumers.⁴¹
- Pennsylvania (2007), recommending different procurement strategies for different consumer classes, consistent with the level of energy knowledge, financial resources, and opportunity to shop associated with these groups.⁴²

Holding separate SSO auctions for residential, or perhaps residential and small commercial consumers, an approach many other states have adopted, is the best option for improving the efficiency of SSO auction outcomes, thereby benefiting consumers and the public interest.⁴³ SSO suppliers are likely to find smaller consumers less likely to switch into and out of SSO service and, therefore, less risky to serve.⁴⁴ FirstEnergy's electric security plan is unjust and unreasonable for failing to schedule stand-alone residential SSO auctions.

D. FirstEnergy's SSO auction proposal is unjust and unreasonable for failing to include a capacity pass-through mechanism.

FirstEnergy's electric security plan is unjust and unreasonable because it did not include a capacity pass-through mechanism. FirstEnergy's failure to include such a mechanism increases risk for suppliers and could lead to more volatile prices for

⁴⁰ *Id.* (citing Delaware Public Service Commission Order No. 6746, *In the Matter of the Provision of Standard Offer Supply to Retail Consumers in the Service Territory of Delmarva Power & Light Company after May 1, 2006*, Docket No. 04-391 (Oct. 11, 2005), at 4).

⁴¹ *Id.* (citing Illinois Commerce Commission, Order, *Central Illinois Light Company d/b/a AmerenCILCO*, Docket No. 05-1650 (Jan. 24, 2006), at 129).

⁴² *Id.* (citing Pennsylvania Public Utility Commission Final Policy Statement, Default Service and Retail Electric Markets, Docket No. M-00072009 (May 10, 2007), at 6).

⁴³ *Id.* at 14.

⁴⁴ *Id.*

consumers.⁴⁵ Mr. Wilson recommended that a capacity pass-through mechanism should be used when the PJM capacity prices are not known when the SSO auction is scheduled.⁴⁶ In such cases, a Capacity Proxy Price (“CPP”) could be established which would be known to bidders before the auction.⁴⁷ When the actual PJM capacity prices become known, the CPP would be trued-up with the actual capacity prices.⁴⁸

On December 13, 2023, the PUCO issued a Finding and Order in Case No. 23-781-EL-UNC requiring all Ohio electric distribution utilities to include a CPP in their SSO auction tariffs.⁴⁹ The PUCO’s Finding and Order validates OCC’s point. If the Finding and Order remains in effect, then FirstEnergy will be required to use a CPP for its SSO auctions. The PUCO should order FirstEnergy in this case to establish a capacity pass-through mechanism, consistent with OCC witness Mr. Wilson’s testimony and consistent with the PUCO’s recent Finding and Order.

E. FirstEnergy’s electric security plan proposal is unjust and unreasonable because it includes an unreasonably high return on equity, which would require consumers to pay unfair rates and allow FirstEnergy to earn excessive profits until a new return on equity is decided in the 2024 base distribution rate case.

OCC Witness Buckley testified that “the rate of return proposed by the FirstEnergy Utilities for the proposed ESP is not appropriate because the proposed rate of return is not reasonable and the resulting rates charged to consumers under the ESP will

⁴⁵ *Id.* at 4.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 5.

⁴⁹ *In the Matter of the Proposed Modifications to the Electric Distribution Utilities’ Standard Service Offer Procurement Auctions*, Case No. 23-781-EL-UNC, Finding and Order (Dec. 13, 2023).

be too high.”⁵⁰ The primary reason the rate of return is excessive is because the Return on Equity (“ROE”) is unreasonably high.

FirstEnergy’s electric security plan provides that the rate of return for the plan’s riders would be based on the rate of return from FirstEnergy’s last distribution base rate case.⁵¹ However, FirstEnergy’s last rate case was decided nearly 15 years ago.⁵² In that case, the PUCO decided on a rate of return of 8.48 percent, based on a cost of debt of 6.54%, return on equity of 10.5% and capital structure of 51% debt and 49% equity.⁵³

The ROE is the allowed rate of profit for a regulated company. In a competitive market, a company’s profit level is determined by a variety of factors. These factors include the state of the economy, the degree of competition a company faces, the ease of entry into its markets, the existence of substitute or complementary products/services, the company’s cost structure, the impact of technological changes, and the supply and demand for its products and/or services.⁵⁴

The judicial guidance for calculating an appropriate rate of return comes primarily from the decisions in the *Bluefield Water Works v. Public Service Comm’n*, 262 U.S. 679 (1923) (“Bluefield”) and *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (“Hope”). The *Bluefield* decision can be summarized as follows: “The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be

⁵⁰ OCC Ex. 5, Direct Testimony of Joseph P. Buckley (“Buckley Testimony”) at 3:6-9 (Oct. 23, 2023).

⁵¹ McMillen Testimony at 3; Buckley Testimony at 4.

⁵² *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, Opinion and Order at 20-23 (Jan. 21, 2009).

⁵³ McMillen Testimony at 3; Buckley Testimony at 4.

⁵⁴ Buckley Testimony at 5.

adequate, under efficient and economical management to maintain and support its credit to enable the utility to raise necessary capital.”⁵⁵

The *Hope* decision can be summarized as follows:

The return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital. ***In addition, it is the end result that is important and not the methods used to arrive at the rates.***⁵⁶

For a regulated monopoly, such as a public utility, the regulator determines the level of profit available to the public utility. The United States Supreme Court established the guiding principles for determining an appropriate level of profitability for regulated public utilities in *Hope* and *Bluefield*. In those cases, the Court recognized that the fair rate of return on equity should be:

- (1) comparable to returns investors expect to earn on other investments of similar risk;
- (2) sufficient to assure confidence in the company’s financial integrity; and
- (3) adequate to maintain and support the company’s credit and to attract capital.⁵⁷

Thus, the appropriate ROE for a regulated utility requires determining the market-based cost of equity. The market-based cost of equity for a regulated firm represents the return investors could expect from other investments, while assuming no more and no less risk. The purpose of all the economic models and formulas for calculating cost of

⁵⁵ *Id.*

⁵⁶ *Id.* (emphasis added).

⁵⁷ See, e.g., *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

capital or cost of equity for a regulated firm is to estimate, using market data for firms with similar risk, the rate of return on equity investors require for that risk class of firms.⁵⁸

There are many ways to measure the risk of an entity. One methodology is to evaluate the current average rate of return for electric utilities nationwide. OCC witness Buckley testified that the average rate of return for electric utilities currently being granted nationwide for the period from January 1, 2023 through June 30, 2023 was 6.82 percent based on the outcome of 19 electric rate cases.⁵⁹ Mr. Buckley testified that an appropriate return on equity for FirstEnergy would be 9.22 percent, based on the average rate of return for distribution-only electric utilities for the last six months.⁶⁰ Mr. Buckley concluded that FirstEnergy did not have a much higher or lower risk profile as compared to the average overall risk profile of the distribution-only electric utilities in this comparison group.⁶¹

Mr. Buckley determined that the appropriate cost of debt for FirstEnergy was 5.36%, based on the following calculation:⁶²

	Interest Expense	Long Term Debt	Cost of Debt
CEI	75,000	1,403,000	5.35%
OE	67,000	1,263,000	5.30%
TE	<u>25,000</u>	<u>450,000</u>	<u>5.56%</u>
Total	167,000	3,116,000	5.36%

⁵⁸ Buckley Testimony at 7.

⁵⁹ *Id.*

⁶⁰ *Id.* at 8.

⁶¹ *Id.*

⁶² *Id.*

Mr. Buckley testified that the rate of return should be 52.63% equity/ 47.37% long-term debt, based on the actual capital structure for the FirstEnergy Utilities and calculated as follows:⁶³

	Total Equity	Long Term Debt	Total Capital
CEI	1,655,000	1,403,000	3,058,000
OE	1,242,000	1,263,000	2,505,000
TE	565,000	450,000	1,015,000
Total	<u>3,462,000</u>	<u>3,116,000</u>	<u>6,578,000</u>
Percentage	52.63%	47.37%	100%

Using the above methods, Mr. Buckley calculated the resulting Rate of Return as follows:⁶⁴

Rate of Return Summary				
The FirstEnergy Utilities				
Capital Structure as 2022 end of Fiscal Year (Per S&P) ⁶⁵				
	Amount	% of	%	Weighted
	\$	Total	Cost	Cost %
Long Term Debt	\$3,116,000	47.37%	5.63%	2.66%
Preferred Stock	\$0	0.00%	0.00%	0.00%
Common Equity	\$3,462,000	52.63%	9.22%	4.85%
	_____	_____		_____
Total Capital	\$6,314,400	100.00%		7.51%

FirstEnergy's electric security plan incorporates an excessive ROE of 10.5%.⁶⁶ For the sake of comparison, the settlement in the AEP electric security plan case proposed using the same rate of return from AEP's last rate case (approved less than

⁶³ *Id.* at 9.

⁶⁴ *Id.*

⁶⁵ *Id.* at 11 ("the most recent information available from S&P [was used] to update the capital structure and long-term debt cost. If the cost of equity is updated, then the entire rate of return should be updated as well").

⁶⁶ McMillen Testimony at 3; Buckley Testimony at 4.

three years ago), which used an ROE of 9.71 percent,⁶⁷ and which Mr. Buckley testified was also excessive.⁶⁸

As noted earlier, Mr. Buckley testified that the average rate of return for electric utilities currently being granted nationwide for the period from January 1, 2023 through June 30, 2023 was 6.82 percent based on the outcome of 19 electric rate cases.⁶⁹ Based on this finding, Mr. Buckley concluded that an appropriate Return on Equity for FirstEnergy would be 9.22 percent, based on the average rate of return for distribution-only electric utilities for the last six months.⁷⁰ He also testified that FirstEnergy did not have a much higher or lower risk profile as compared to the average overall risk profile of the distribution-only electric utilities in this comparison group.⁷¹

Mr. Buckley's testimony is persuasive on a stand-alone basis and the PUCO should adopt his recommendations. There is another factor in play, which makes Mr. Buckley's testimony even more compelling. This additional factor is the sheer number of riders contained in FirstEnergy's electric security plan. OCC witness Brian Collins/Greg Meyer⁷² noted that FirstEnergy has proposed *54 different riders* – the most he has ever seen for any utility.⁷³ Mr. Meyer stated: “An abundance of riders will be more beneficial

⁶⁷ *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*, Case No. 23-23-EL-SSO, et al., Joint Stipulation and Recommendation at 11 (Sept. 6, 2023).

⁶⁸ *Id.*, Buckley Testimony at 3-4 (Sept. 20, 2023).

⁶⁹ *Id.* at 7.

⁷⁰ *Id.* at 8.

⁷¹ *Id.*

⁷² OCC Ex. 1, Direct Testimony of Greg R. Meyer (“Meyer Testimony.”) Mr. Meyer was unavailable to testify at the evidentiary hearing and his testimony was adopted and supported by Brian Collins, his colleague at Brubaker & Associates.

⁷³ *Id.* at 10.

to shareholders and will not provide the heightened consumer protection of utility cost control.”⁷⁴ Mr. Meyer recommended that the PUCO should consider reducing FirstEnergy’s return on equity merely based on the sheer number of riders, which tend to decrease FirstEnergy’s risk.⁷⁵

In short, the ROE in FirstEnergy’s electric security plan is unjust and unreasonable because it requires consumers to pay higher rates than needed “to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital.”⁷⁶ This is an important issue because this rate of return would remain in effect until the PUCO renders its decision in FirstEnergy’s next rate case, to be filed in May 2024. Using the 10.5% would allow FirstEnergy to earn excessive profits at consumers’ expense. The PUCO should not reward FirstEnergy with excessive profits.

F. FirstEnergy’s electric security plan proposal is unjust and unreasonable because it allows FirstEnergy to earn an unreasonably high return on equity for grid modernization spending. In addition, the plan is unjust and unreasonable because the return on equity for grid modernization spending would remain in effect for the entire duration of Advanced Metering Infrastructure Rider (“Rider AMI”), regardless of any changes in FirstEnergy’s return on equity to be decided in the 2024 base distribution rate case. This would result in an unreasonably higher return on equity for Rider AMI spending, which would require consumers to pay unfair rates and would allow FirstEnergy to earn excessive profits for Rider AMI spending.

FirstEnergy Witness McMillen testified that the ROE currently in effect for Rider AMI is 10.38 percent.⁷⁷ For Rider DCR, Mr. McMillen stated that the ROE will incorporate the new rate of return to be determined in the May 2024 rate case, including

⁷⁴ *Id.* at 11.

⁷⁵ *Id.*

⁷⁶ *Id.* at 5.

⁷⁷ Hearing Transcript Volume III, p. 496 (Nov. 11, 2023).

“all applicable inputs that were approved in the base distribution case, including return on equity, cost of debt, capital structure, depreciation rates, revenue requirement allocations, and FESC allocation factors.”⁷⁸

Witness McMillen did not make a similar commitment regarding Rider AMI, so FirstEnergy will use the existing 10.38% ROE for Rider AMI during the entire time Rider AMI is in effect. Mr. McMillen confirmed this when he testified that the May 2024 distribution rate case filing won’t have any impact on the 10.38 percent ROE for Rider AMI spending under the Companies’ proposal.⁷⁹ Rider AMI spending includes costs for equipment with a useful life of 20 years.⁸⁰ Per Mr. McMillen, FirstEnergy will continue using the 10.38 percent ROE for Rider AMI spending until these costs are fully collected.⁸¹

As previously discussed, OCC witness Buckley concluded that an appropriate ROE for FirstEnergy would be 9.22 percent, based on the average rate of return for distribution-only electric utilities for the last six months.⁸² He also testified that FirstEnergy did not have a much higher or lower risk profile as compared to the average overall risk profile of the distribution-only electric utilities in this comparison group.⁸³ Thus, the ROE in FirstEnergy’s electric security plan is unjust and unreasonable because it requires consumers to pay higher rates than necessary. The PUCO should treat Rider AMI in a manner that is consistent with FirstEnergy’s Rider DCR, where the ROE will be

⁷⁸ *Id.* at 498.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 497.

⁸² Buckley Testimony at 8:5-9.

⁸³ *Id.* at 8:7-9.

adjusted to reflect the ROE to be decided in the 2024 rate case. Furthermore, the PUCO should not reward FirstEnergy by allowing it to earn an ROE for Rider AMI spending which is higher than the ROE for FirstEnergy's all other distribution spending.

FirstEnergy's proposal to continue using the current Rider AMI ROE after the 2024 rate case is decided is inconsistent with FirstEnergy's proposal on the ROE for Rider DCR, as noted above. It is also inconsistent with PUCO rulings involving other utilities.⁸⁴ For example, the PUCO required Dayton Power and Light to file a new rate case (and establish a new ROE) for its Distribution Investment.⁸⁵ Likewise, the PUCO established a similar requirement for Duke Energy's Distribution Capital Investment Rider.⁸⁶ Finally, continuing the current Rider AMI beyond the date of the 2024 rate case would violate the precept that the ROE must reflect current conditions.⁸⁷ The PUCO should therefore reject FirstEnergy's proposal to continue the existing 10.38% ROE for Rider AMI spending after the 2024 rate case is decided.

G. FirstEnergy's proposal to increase Delivery Capital Recovery Rider ("Rider DCR") spending by \$21 million annually is unjust and unreasonable because the additional spending is excessive, the annual increases are tied to achieving reliability scores which FirstEnergy is already required to meet under the PUCO's rules and because FirstEnergy failed to prove that any improved reliability performance would be attributable to Rider DCR spending.

FirstEnergy's electric security plan is unjust and unreasonable because the annual \$21 million in Rider DCR revenue increases to consumers are too high. Moreover, it is unjust and unreasonable to link the amounts of the annual revenue increases to enhanced

⁸⁴ See *AES Ohio ESP 4*, Case No. 22-900-EL-SSO, et al., Opinion & Order at 25 (Aug. 9, 2023); *Duke ESP 4*, Case No 17-1263-EL-SSO, Opinion & Order (Dec. 19, 2018).

⁸⁵ *AES Ohio ESP 4*, Case No. 22-900-EL-SSO, et al., Opinion & Order at 25 (Aug. 9, 2023).

⁸⁶ *Duke ESP 4*, Case No 17-1263-EL-SSO, Opinion & Order (Dec. 19, 2018).

⁸⁷ *In re Application of E. Ohio Gas Co.*, 2023-Ohio-3289.

reliability performance because FirstEnergy cannot prove that any reliability improvements stem from increased Rider DCR spending. The proposal is also unjust and unreasonable because the annual increases are tied to meeting the reliability metrics which FirstEnergy is already required to meet under the PUCO's rules.⁸⁸

The PUCO originally approved Rider DCR in FirstEnergy's ESP II.⁸⁹ When initially approved, Rider DCR provided for \$15 million annual revenue increases.⁹⁰ The PUCO re-approved Rider DCR in FirstEnergy's ESP III.⁹¹ When re-approved in ESP III, Rider DCR provided for \$15 million annual revenue increases.⁹² The PUCO again re-approved Rider DCR in FirstEnergy's ESP IV.⁹³ The PUCO approved higher Rider DCR annual increases in the initial years of FirstEnergy's ESP IV, but then the annual increases settled back to the \$15 million annual revenue increase level.⁹⁴

FirstEnergy failed to prove why \$21 million in annual increases are needed, when the PUCO has traditionally allowed \$15 million in annual increases. FirstEnergy's proposed higher annual increases contradict regulatory principles and state policy supporting the availability to consumers of adequate, reliable, safe, efficient, and

⁸⁸ McMillen Testimony at 5:1-2.

⁸⁹ *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. 10-388-EL-SSO, Opinion and Order (Aug. 25, 2010).

⁹⁰ *Id.*

⁹¹ *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. 12-1230-EL-SSO, Opinion and Order (July 18, 2012).

⁹² *Id.*

⁹³ *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company for Authority to Provide a Standard Service Offer Pursuant to R.C. § 4928.14*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016).

⁹⁴ *Id.*

reasonably priced retail electric service.⁹⁵ If the PUCO approves any annual revenue increases for Rider DCR, the level of annual increase should be the same as what the PUCO has traditionally approved in past cases - \$15 million annually. It would not be appropriate to reward FirstEnergy with higher annual increases. Moreover, tying higher annual increases to meeting the PUCO's reliability standards makes no sense. Electric distribution utilities are already required to meet certain reliability targets, such as the customer average interruption duration index ("CAIDI") and the system average interruption frequency index ("SAIFI").⁹⁶ FirstEnergy should not be rewarded for doing something which the law already requires it to do.

H. FirstEnergy's electric security plan is unjust and unreasonable in that Rider DCR purportedly contains annual revenue "caps," but the caps are ineffective in controlling Rider DCR spending because FirstEnergy can collect any excess revenues during the following year or during the next rate case.

FirstEnergy's electric security plan is unjust and unreasonable because the revenue "caps" for Rider DCR do not function as caps on the amount consumers must pay. FirstEnergy is permitted to carryover any excess Rider DCR spending and collect the excess revenue in the following year or the next rate case. The PUCO approved this "revenue carryover" provision for the Rider DCR revenue caps when FirstEnergy's Rider DCR was originally approved in ESP II.⁹⁷ OCC Witness Meyer testified that the revenue cap is intended to mitigate the impact of rising costs in a single year so allowing this

⁹⁵ See R.C. 4928.02(A).

⁹⁶ O.A.C. 4901:1-10-10.

⁹⁷ *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. 10-388-EL-SSO, Opinion and Order at 12 (Aug. 25, 2010).

“revenue carryover” would harm consumers by eliminating FirstEnergy’s incentive to control costs.⁹⁸

The Rider DCR revenue “caps” do not protect consumers because the caps do not limit FirstEnergy’s spending. If FirstEnergy spends in excess of the caps’ revenue limits, then FirstEnergy is entitled to carryover the excess into the following year or the next rate case. The PUCO has taken a more rigorous approach to revenue caps in recent years and now requires that the revenue caps must function as hard caps such that excess revenues do not carry-over into the following year or the next rate case.⁹⁹ The PUCO should, consistent with its past precedent, impose hard caps for Rider DCR to protect consumers.

FirstEnergy’s electric security plan is unjust and unreasonable because, by allowing it to carry-over excess Rider DCR revenues into future periods, the total Rider DCR spending is unchecked, and the purported revenue “caps” do not limit FirstEnergy’s total Rider DCR spending.

I. FirstEnergy’s electric security plan is unjust and unreasonable because it allows FirstEnergy to use Rider DCR to collect costs for both transmission-related and distribution-related FERC accounts, even though the capital expense riders for other Ohio electric distribution utilities are limited to distribution-related FERC accounts.

FirstEnergy’s electric security plan is unjust and unreasonable because Rider DCR allows FirstEnergy to collect not only capital expenses in distribution-related FERC accounts but also distribution-related capital expenses in transmission-related FERC accounts. OCC Witness Meyer testified that a FirstEnergy subsidiary is implementing a

⁹⁸ Meyer Testimony at 27:19-24.

⁹⁹ See, e.g., *In the Matter of the Application of the Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan*, Case No. 22-900-EL-SSO, et al., Opinion and Order at ¶ 77 (Aug. 9, 2023).

multi-year transmission upgrade¹⁰⁰ and Rider DCR allows the company to collect costs that support this initiative.¹⁰¹ This is unfair to FirstEnergy's consumers because the capital expense riders for other Ohio utilities are limited to distribution-related FERC accounts.

FirstEnergy owns American Transmission Systems, Inc., which provides transmission service for the FirstEnergy Utilities. The FERC Uniform System of Accounts classifies accounts by type of service rendered. For example, distribution-related accounts are Accounts 360-374. Transmission-related accounts are Accounts 350-359. In some cases, the FirstEnergy Utilities own distribution equipment, but the equipment is classified in a transmission-related account because the primary purpose of that piece of distribution equipment is to support transmission operations.

FirstEnergy's Rider DCR currently allows it to collect for FERC Accounts 350-359 and 360-374,¹⁰² even though the capital expense riders for other Ohio utilities are limited to FERC Accounts 360-374.¹⁰³ The time has come to align FirstEnergy's Rider DCR with the capital expense riders for the other Ohio electric distribution utilities. It would be unjust and unreasonable for the PUCO to continue giving FirstEnergy special

¹⁰⁰ Meyer Testimony at 22.

¹⁰¹ *Id.* at 23.

¹⁰² *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company for Authority to Provide a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order (March 31, 2016).

¹⁰³ *See, e.g., In the Matter of the Application of the Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan*, Case No. 22-900-EL-SSO, et al., Opinion and Order at ¶ 77 (Aug. 9, 2023); *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case No. 17-1263-EL-SSO, Opinion and Order at ¶ 114 (Dec. 19, 2018).

treatment to allow it to collect on transmission-related FERC accounts through Rider DCR.

J. FirstEnergy’s Rider DCR and Rider AMI proposals are unjust and unreasonable because they allow FirstEnergy to charge consumers rates based on projected plant-in-service balances, even though a traditional base distribution rate case, as well as existing distribution riders for other utility companies, calculate the revenue requirement based on the utility’s historic plant-in-service balances.

FirstEnergy’s electric security plan will allow it to earn excess profits because the Rider DCR and Rider AMI revenue requirement calculations will be based on projected plant-in-service balances. This proposal is unjust and unreasonable because in a base distribution rate case, as well as in other utility distribution riders, the revenue requirement is calculated based on historic plant-in-service balances.

FirstEnergy’s use of projected plant-in-service balances for Rider DCR and Rider AMI is problematic because, as PUCO Staff Witness Devin Mackey noted, it allows FirstEnergy to “recover their capital expenditures almost immediately upon their placement in service.”¹⁰⁴ Mr. Mackey recommended against allowing FirstEnergy to collect for projected plant-in-service balances under Rider DCR because in the quarterly Rider DCR filings from October 2021 until January 2023 “the annual revenue requirement during each quarter was over-estimated by a combined \$20.8 million, with all but one quarter over-estimated by at least \$3 million” with the following quarter’s error being even greater at \$13.3 million.¹⁰⁵ Mr. Mackey also recommended that the

¹⁰⁴ Staff Ex. 8, Direct Testimony of Devin Mackey (“Mackey Testimony”) at 8-9 (Oct. 30, 2023).

¹⁰⁵ *Id.*

PUCO reject FirstEnergy's proposal to use projected plant-in-service balances in calculating the revenue requirement for Rider AMI.¹⁰⁶

Mr. Mackey also explained how FirstEnergy's use of projected plant-in-service balances is inconsistent with PUCO precedent. He recommended that FirstEnergy's proposal to use projected plant-in-service balances should be rejected in order to "conform the [FirstEnergy] DCR calculation to similar distribution riders that the Commission has approved for AEP Ohio, AES Ohio, and Duke Energy Ohio, which only recover actual, not projected, plant balances in their riders."¹⁰⁷ Similarly, the revenue requirement in a traditional distribution base rate case must be calculated based on the historic plant-in-service balance which is used and useful as of the date certain.¹⁰⁸

OCC supports Mr. Mackey's recommendations. FirstEnergy's proposal to use projected plant-in-service balances for Rider DCR and Rider AMI is inconsistent with PUCO precedent and is unjust and unreasonable. FirstEnergy should not be rewarded with a more favorable methodology for calculating the revenue requirement for Rider DCR and Rider AMI as compared to the methodology used for similar riders of other Ohio electric utilities.

K. FirstEnergy's electric security plan is unjust and unreasonable because FirstEnergy's failure to include a depreciation offset for Rider DCR forces consumers to pay higher rates as compared to a base rate case.

FirstEnergy's Rider DCR proposal is unjust and unreasonable because FirstEnergy failed to include a depreciation offset. This omission will allow FirstEnergy

¹⁰⁶ *Id.* at 18.

¹⁰⁷ *Id.*

¹⁰⁸ R.C. 4909.15(A)(1).

to earn excess profits for Rider DCR spending based on a level of plant investment that is overstated. OCC Witness Meyer testified that Rider DCR “requires FirstEnergy consumers to pay for new investment without looking at all of the relevant factors of FirstEnergy’s operations.”¹⁰⁹

The depreciation offset would account for the depreciation from legacy plant that was included in FirstEnergy’s previous rate case and would properly recognize that the value of FirstEnergy’s legacy plant-in-service has declined since the date when it was originally placed in service.¹¹⁰ The PUCO has approved a depreciation offset in certain capital expense rider cases.¹¹¹ This offset would protect consumers by calculating the revenue requirement based on the same type of approach used in a traditional distribution base rate case and would prevent FirstEnergy’s shareholders from enjoying enhanced profits on overstated plant investment through Rider DCR.¹¹²

FirstEnergy’s failure to include a depreciation offset for Rider DCR spending is unjust and unreasonable. This omission harms consumers because they would not receive the depreciation offset which would normally occur if FirstEnergy collected these costs through a regular base rate case. The PUCO should deny ESP V.

¹⁰⁹ Meyer Testimony at 32.

¹¹⁰ *Id.* at 33.

¹¹¹ *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-791-GA-ALT, Opinion and Order (April 21, 2021).

¹¹² *Id.* at 33.

L. FirstEnergy’s Advanced Metering Infrastructure Rider (“Rider AMI”) proposal is unjust and unreasonable because the failure to include revenue caps for Rider AMI could lead to excessive rate increases and is inconsistent with PUCO precedent.

FirstEnergy’s Rider AMI proposal is unjust and unreasonable because it lacks revenue caps for the Rider AMI spending. This could lead to excessive Rider AMI spending for consumers to pay during any particular year because there is no limit on the amount of revenue FirstEnergy could collect. The lack of revenue caps is inconsistent with FirstEnergy’s own Rider DCR proposal and with PUCO precedent for other riders for collection of capital costs.

OCC witness Mr. Meyer testified that FirstEnergy failed to provide compelling arguments why collecting the cost of replacing customer meters through Rider AMI is necessary.¹¹³ Mr. Meyer testified generally that a rider “decreases a utility’s incentive to manage all aspects of its business in a cost effective manner.”¹¹⁴ Specifically as to Rider AMI, Mr. Meyer testified that consumers could be harmed through the lack of revenue caps for Rider AMI.¹¹⁵ Mr. Meyer also testified that the lack of revenue caps for Rider AMI was inconsistent with FirstEnergy’s own proposal to use revenue caps for Rider DCR.¹¹⁶ Additionally, FirstEnergy’s lack of revenue caps for Rider AMI is inconsistent with PUCO approving revenue caps for other utilities’ riders which seek collection of large amounts of capital costs from consumers.¹¹⁷

¹¹³ *Id.* at 38.

¹¹⁴ *Id.* at 10.

¹¹⁵ *Id.* at 38.

¹¹⁶ *Id.* at 38-39.

¹¹⁷ *In re AES Ohio ESP IV Case*, Case No. 22-900-EL-SSO, et al., Opinion & Order at ¶ 77 (Aug. 9, 2023); *In re Duke ESP IV Case*, Case No 17-1263-EL-SSO, Opinion & Order (Dec. 19, 2018) (approving revenue caps for Rider DCI); *In re AEP ESP IV*, Case No. 16-1852-EL-SSO, Opinion & Order (April 25, 2018) (approving revenue caps for Rider DIR).

The PUCO should reject FirstEnergy's Rider AMI proposal because the lack of revenue caps harms consumers, is inconsistent with PUCO precedent and is unjust and unreasonable.

M. FirstEnergy's Rider AMI proposal is unjust and unreasonable and in conflict with R.C. 4909.15(A) because it improperly allows FirstEnergy to collect a return on and of the stranded grid modernization equipment which is taken out of service.

FirstEnergy's Rider AMI proposal is unjust and unreasonable and contrary to R.C. 4909.15(A) because it allows FirstEnergy to continue earning a return on and of the stranded grid modernization equipment even after the equipment is removed from service. This directly contradicts the requirement in Ohio law that investment must be used and useful before consumers are required to pay for it.¹¹⁸

FirstEnergy should not be allowed to collect a return on and of stranded investments through Rider AMI. The meters and associated equipment removed from service are not providing service because they have been replaced, and thus are not "used and useful."¹¹⁹ And there is no provision in Ohio law that allows FirstEnergy to collect stranded costs from consumers.

Ohio Revised Code section 4909.15(A) states:

(A) The public utilities commission, when fixing and determining just and reasonable rates, fares, tolls, rentals, and charges, shall determine: (1) The valuation as of the date certain of the property of the public utility used and useful or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be used and useful as of the date certain, in rendering the public utility service for which rates are to be fixed and determined. The valuation so determined shall be the total value as set forth in division (C)(8) of section 4909.05 of the Revised Code,

¹¹⁸ *In re Application of Suburban Natural Gas Co.*, 166 Ohio St.3d 176, 2021-Ohio-3224.

¹¹⁹ Meyer Testimony at 39.

and a reasonable allowance for materials and supplies and cash working capital as determined by the commission.¹²⁰

Mr. Meyer testified in his capacity as a regulatory expert as follows:

Under a plain reading of this statutory language, it appears that rates may not include any consideration of plant that is neither used nor useful as of the date certain. Given that language, my recommendation would be to exclude recovery for stranded AMI investments from any approved Rider AMI.¹²¹

As Mr. Meyer noted, R.C. 4909.15(A) prohibits utilities from collecting costs for equipment which is not used and useful on the date certain. Rider AMI allows FirstEnergy to continue collecting a return on and of the meters and equipment taken out of service. This provision of Rider AMI is therefore unjust and unreasonable and contrary to Ohio law.

N. The sheer number of riders proposed by FirstEnergy is excessive, which weakens consumer protection by reducing the incentive for FirstEnergy to control costs. The PUCO should therefore reject FirstEnergy's proposal to establish new riders for storm restoration costs (Rider SCR) and for vegetation management costs (Rider VMC).

OCC witness Mr. Meyer testified that riders are special regulatory mechanisms which allow for the recovery of an expense incurred during the test year to be collected over an extended period of time.¹²² However, as explained above in **Section B**, riders can harm consumers because the charges to consumers receive less regulatory scrutiny.

Mr. Meyer identified various types of special regulatory mechanisms used by utilities, such as amortizations which allow for costs to be collected over multiple years, deferrals which negate the need for an immediate rate case, riders for costs that are

¹²⁰ R.C. 4909.15(A).

¹²¹ Meyer Testimony at 40.

¹²² *Id.* at 6.

beyond the utility's control and riders to address regulatory lag.¹²³ Mr. Meyer explained that regulatory lag is the amount of time in between when a cost is incurred by the utility and the expense is collected from the consumers, and may benefit consumers or the utility.¹²⁴ According to Mr. Meyer, utilities often benefit from the decline in legacy rate base once rates are established in a rate case, and notes that it is imperative to capture this decline in rate base if other aspects of the rate base are to be singled out for recovery outside the context of a rate case.¹²⁵ If such offsets are not captured, the profits of the utility will be greatly enhanced with no corresponding benefit provided to consumers.¹²⁶

Mr. Meyer cited a Missouri Public Service Commission Case No. ER-2012-0166, for the principle that "In general, the Commission remains skeptical of proposed tracking mechanisms. There is a legitimate concern that a tracker can reduce a company's incentive to aggressively control costs."¹²⁷ Mr. Meyer explained that this principle illustrates how reliance on an excessive number of trackers, riders and other special regulatory mechanisms decreases a utility's incentive to manage all aspects of its business in a cost-effective manner.¹²⁸ He noted that FirstEnergy has an average of 54 riders and nine tariff provisions for each of its Ohio utilities. and proposes to add three additional new riders in ESP V.¹²⁹ Mr. Meyer explained that such an excess of riders is more beneficial to shareholders than consumers because it undermines FirstEnergy's

¹²³ *Id.* at 7.

¹²⁴ *Id.* at 9.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* at 10.

¹²⁸ *Id.*

¹²⁹ *Id.*

incentive to control costs.¹³⁰ He observed that the number of FirstEnergy riders was the most riders he has seen for any utility he has audited in his entire career.¹³¹

Given the excessive number of FirstEnergy's existing riders, it would be unjust and unreasonable for the PUCO to approve FirstEnergy's proposed new riders for storm restoration costs (Rider SCR) and for vegetation management costs (Rider VMC). PUCO should therefore reject FirstEnergy's Rider SCR and Rider VMC proposals.

O. FirstEnergy's Storm Cost Recovery Rider ("Rider SCR") proposal is unjust and unreasonable because FirstEnergy failed to demonstrate any need for Rider SCR. FirstEnergy's failure to limit the rider to major storms would result in excessive rates and conflicts with PUCO precedent for other Ohio utilities' storm cost restoration cost riders.

FirstEnergy's Rider SCR is unjust and unreasonable and inconsistent with PUCO precedent established in the storm restoration cost riders for other Ohio utilities.

OCC witness Mr. Meyer testified that FirstEnergy failed to establish a need for this rider.¹³² He stated that Rider SCR would allow FirstEnergy to charge consumers for storm costs without determining the aggregate impact on operations, essentially serving as an insurance policy.¹³³ He recommended that storm cost recovery be considered an issue in the upcoming rate case.¹³⁴

According to FirstEnergy Witness Juliette Lawless, Rider SCR would apply to "major storms."¹³⁵ This term is nearly indistinguishable from the O.A.C. terminology of

¹³⁰ *Id.*

¹³¹ *Id.* at 11.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* at 12.

¹³⁵ FirstEnergy Ex. 7, Direct Testimony of Juliette Lawless ("Lawless Testimony"), at 2 (April 5, 2023).

“major events.”¹³⁶ FirstEnergy’s definition of “major storms,” however, is much broader than the O.A.C.’s definition of “major events.” Per Ms. Lawless, the “major storms” to be covered by Rider SCR would be any storms “anticipated to last longer than twelve (12) hours (using local only crews), including the time to pre-stage personnel for the event.”¹³⁷ By contrast, the O.A.C.’s definition of major events incorporates an industry standard definition developed by the Institute of Electrical and Electronics Engineers (“IEEE”) in “IEEE Guide for Electric Power Distribution Reliability Indices.”¹³⁸

FirstEnergy’s definition of “major storms” is hopelessly vague and subject to manipulation by FirstEnergy. The definition purports to apply to events “anticipated to last longer than twelve (12) hours (using local only crews), including the time to pre-stage personnel for the event.”¹³⁹ However, it is unclear whether this means that the storm would last more than twelve hours, or the restoration effort would last more than twelve hours. The term “anticipated” is also unclear. Anticipated by whom? How would this be documented? How would someone’s “anticipation” be audited? Moreover, the length of response time would be driven by how quickly FirstEnergy mobilizes a response and how many crews are assigned to respond – leaving the rider’s applicability subject to manipulation. What if 99% of consumers have their service restored within one hour, but a single remaining consumer’s service is not restored for thirteen hours – does the rider cover all these storm restoration costs?

¹³⁶ O.A.C. 4901-1:1-10-01(T).

¹³⁷ Lawless Testimony at 3.

¹³⁸ O.A.C. 4901-1:1-10-01(T).

¹³⁹ Lawless Testimony at 3.

PUCO Staff Witness Borer correctly recognized the problems inherent in FirstEnergy’s Rider SCR proposal. He testified that FirstEnergy’s Rider SCR proposal (which covers different types of storms) is inconsistent with the existing storm riders in place for other utilities.¹⁴⁰ He recommended that FirstEnergy’s Rider SCR be limited to “expenses related to storms considered major events as defined by O.A.C. 4901-1:1-10-01(T) (Major Events).”¹⁴¹ PUCO Staff witness Mr. Borer further testified that auditing FirstEnergy’s Rider SCR with its broader coverage of storm events would be problematic because “it would be difficult to ensure that costs are related to storms as opposed to routine maintenance that occurred around the same time as the storm”¹⁴² Further, Mr. Borer testified that Staff fundamentally believes that storm riders should only recover for “major events.”¹⁴³ He also recommended that FirstEnergy’s current existing deferral authority cease upon implementation of ESP V¹⁴⁴ because the utility included substantially more storm events than would be allowed if recovery were limited to “major events.”¹⁴⁵

For the foregoing reasons, FirstEnergy’s Rider SCR proposal is unjust and unreasonable and inconsistent with PUCO precedent. The PUCO should therefore reject FirstEnergy’s Rider SCR proposal.

¹⁴⁰ Staff Ex. 2, Direct Testimony of Jonathan J. Borer (“Borer Testimony”), at 6-7 (Oct. 30, 2023).

¹⁴¹ *Id.* at 6.

¹⁴² *Id.* at 7.

¹⁴³ *Id.* at 9.

¹⁴⁴ *Id.* at 7.

¹⁴⁵ *Id.* at 9.

P. FirstEnergy’s Vegetation Management Cost Rider (“Rider VMC”) proposal is unjust and unreasonable because FirstEnergy failed to demonstrate any need for the rider and the rider does not pass cost savings through to consumers.

FirstEnergy’s Rider VMC proposal is unjust and unreasonable and should be rejected. FirstEnergy failed to demonstrate a need for Rider VMC. Rider VMC is also unreasonable because it results in significant savings to the company, but those savings will not be passed back to consumers.

Rider VMC would allow FirstEnergy to collect vegetation management costs. FirstEnergy Witness Shawn Standish explained that the rider would also cover the costs of an “enhanced vegetation management program, which will focus on removing on- and off-corridor trees, removing overhang, and controlling brush in the distribution clearing zone in a more proactive manner.”¹⁴⁶ OCC witness Mr. Meyer testified that FirstEnergy failed to demonstrate any need for the program because it could collect the costs for any enhanced vegetation management program in the upcoming 2024 distribution base rate case.¹⁴⁷

Rider VMC is also unjust and unreasonable because it does not contain any proposal to pass through to consumers the cost savings generated by Rider VMC. Mr. Meyer testified that allowing FirstEnergy to collect incremental vegetation management expenses through Rider VMC (as compared to a baseline level established in base distribution rates) would benefit FirstEnergy by reducing regulatory lag for vegetation management expenses.¹⁴⁸ In addition, the enhanced vegetation management program

¹⁴⁶ FirstEnergy Ex. 8, Direct Testimony of Shawn T. Standish (“Standish Testimony”), at 8 (April 5, 2023).

¹⁴⁷ Meyer Testimony at 16.

¹⁴⁸ *Id.*

would generate significant cost savings as compared to FirstEnergy's normal vegetation management costs.¹⁴⁹ Mr. Meyer summarized these cost savings as follows:¹⁵⁰

Table GRM-2						
<u>VMC Cost Versus Savings (\$ Millions)</u>						
<u>Year</u>	<u>Minimum Regulatory Costs¹</u>		<u>Additional Reliability Improvements¹</u>	<u>Projected Cost Savings²</u>		
Year 1	\$	51.7	\$	46.8	\$	-
Year 2	\$	53.3	\$	47.8	\$	7.9
Year 3	\$	54.9	\$	48.9	\$	27.0
Year 4	\$	56.5	\$	50.0	\$	55.6
Year 5	\$	58.2	\$	26.0	\$	85.9
Year 6	\$	60.0	\$	26.4	\$	117.9
Year 7	\$	61.8	\$	26.8	\$	136.6
Year 8	\$	63.6	\$	27.3	\$	156.4
Total	\$	460.0	\$	300.0	\$	587.3

Sources:						
1.Direct Testimony of Shawn T. Standish Page 12.						
2. Ohio Edison Company Attachment STS-3						

Rider VMC does not pass these savings on to consumers. The PUCO should therefore reject FirstEnergy's Rider VMC proposal.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 17, Table GRM-2.

Q. FirstEnergy’s Economic Load Response Program (“Rider ELR”) proposal requires consumers to pay massive subsidies to 24 large industrial customers for interruptible service in the event of electric emergencies. This proposal is unjust and unreasonable. PJM, not FirstEnergy, decides whether to curtail electric service in the event of an emergency. FirstEnergy consumers should not be required to subsidize these large industrial customers. Duke and AES Ohio consumers, who are similarly situated, are not required to pay these subsidies and neither should FirstEnergy consumers.

FirstEnergy’s Rider ELR proposal is unjust and unreasonable because it forces consumers to subsidize large industrial customers for interruptible service – even though FirstEnergy may never actually interrupt their service. It is the responsibility of PJM, not FirstEnergy, to curtail service in the event of electric emergencies. Duke and AES Ohio consumers are similarly situated to FirstEnergy consumers because all three utilities belong to PJM, but Duke and AES Ohio consumers are not required to pay subsidies to large industrial customers under an interruptible service tariff. The PUCO should reject FirstEnergy’s Rider ELR proposal.

FirstEnergy Witnesses Edward Stein and Brandon McMillen describe FirstEnergy’s Rider ELR proposal. Rider ELR is an interruptible tariff for 24 large industrial customers who receive massive rate credits in exchange for granting FirstEnergy the right to interrupt service in the event of an emergency situation (*even though FirstEnergy may never actually interrupt service*).¹⁵¹ Rider ELR has been in effect since FirstEnergy’s ESP I but has changed over time.¹⁵² FirstEnergy proposes major changes to Rider ELR which makes it completely superfluous and eliminates any

¹⁵¹ McMillen Testimony at 11-12.

¹⁵² *Id.*

possible reason for implementing the tariff – other than to force consumers to continue paying huge subsidies to 24 large industrial companies.

The first proposed Rider ELR change is to no longer require participating industrial customers to commit their peak demand response capabilities to FirstEnergy.¹⁵³ This feature formerly provided some value to FirstEnergy consumers because Ohio law required electric utilities to meet peak demand reduction targets.¹⁵⁴ This requirement, however, ended in 2020¹⁵⁵ and the energy efficiency and peak demand reduction requirements were effectively repealed by H.B. 6 in 2019. So, this reason for having an interruptible tariff no longer exists.

The second proposed Rider ELR change is to eliminate FirstEnergy's role as a Curtailment Service Provider.¹⁵⁶ Under the current interruptible tariff, FirstEnergy acts as the Curtailment Service Provider.¹⁵⁷ This allows FirstEnergy to bid the demand reduction capability of the 24 large industrial companies into the PJM capacity market.¹⁵⁸ These PJM capacity market revenues help offset the cost for Rider ELR.¹⁵⁹ By eliminating FirstEnergy's role as Curtailment Service Provider, FirstEnergy will no longer earn capacity market revenues to help offset the cost of Rider ELR.¹⁶⁰ So this reason for having an interruptible tariff no longer exists.

¹⁵³ *Id.* at 12.

¹⁵⁴ R.C. 4928.66(A)(1)(b).

¹⁵⁵ *Id.*

¹⁵⁶ FirstEnergy Ex. 10, Direct Testimony of Edward B. Stein ("Stein Testimony"), at 4 (April 5, 2023).

¹⁵⁷ *Id.*

¹⁵⁸ OELC Ex. 32, Direct Testimony of Matthew Brakey ("Brakey Testimony"), at 39 (Oct. 23, 2023).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

Rider ELR is limited to 24 large industrial customers.¹⁶¹ During ESP IV, these 24 large industrial customers received payments between \$55.1 million and \$67.5 million each year, as shown below in Table CH-1 from the testimony of PUCO Staff Witness Christopher Healey:¹⁶² The payments to these consumers were subsidized by the remaining FirstEnergy consumers.

Table CH-1

Date	Credits
June 2016 - May 2017	\$67,483,141
June 2017 - May 2018	\$64,726,780
June 2018 - May 2019	\$65,313,963
June 2019 - May 2020	\$63,132,340
June 2020 - May 2021	\$55,138,140
June 2011 - May 2012	\$60,575,415
June 2012 - May 2023	\$61,046,075

The total subsidy paid to these 24 large industrial customers during the past seven years of ESP IV was \$437,415,854.¹⁶³ On average, this amounts to \$18,225,660 for each of the 24 large industrial customers. Rider ELR might be worthwhile if FirstEnergy ever needed to actually interrupt service to these 24 large industrial customers in the event of an emergency; however, FirstEnergy never actually interrupted service during the entire

¹⁶¹ PUCO Staff Ex. 10, Direct Testimony of Christopher Healey (“Healey Testimony”), at 17 (Oct. 30, 2023).

¹⁶² *Id.*

¹⁶³ *Id.*

term of ESP IV except once per year to comply with PJM's testing requirement that interruptible customers must demonstrate they are capable of interrupting service once per year.

FirstEnergy Witness Edward Stein admitted that FirstEnergy never declared an emergency curtailment under Rider ELR during ESP IV:

Q. How many times has the Company initiated an emergency curtailment under Rider ELR during ESP IV?

A. *I do not believe we called an event during ESP IV.*¹⁶⁴

FirstEnergy never invokes the interruptible tariff because curtailing service during emergencies falls within PJM's control as the reliability coordinator, as Mr. Stein stated:

Q. Okay. You -- first, under your proposal, a customer -
- you would not issue any notice [to interrupt service] if there is a PJM emergency; that would be PJM's responsibility, correct?

A. Correct.

Mr. Stein further explained that FirstEnergy, as a PJM member, must follow PJM's Reliability Assurance Agreement.¹⁶⁵ The PJM Reliability Assurance Agreement spells out that, when an electrical emergency occurs, PJM is the entity that gives orders to individual utilities on how to respond to an emergency, such as curtailing load:

9.1 Overall Coordination.

Each Party shall cooperate with the other Parties in the coordinated planning and operation of their owned or contracted for Capacity Resources to obtain a degree of reliability consistent with the Reliability Principles and

¹⁶⁴ Hearing Transcript, Vol. VII, p. 1495 (Dec. 6, 2023) (emphasis added).

¹⁶⁵ Hearing Transcript, Vol. VII, p. 1466-1467 (Dec. 6, 2023)

Standards. In furtherance of such cooperation each Party shall:

* * *

(e) implement emergency procedures and take such other coordination actions as may be necessary *in accordance with the directions of the Office of the Interconnection in times of Emergencies*;¹⁶⁶

FirstEnergy's Rider ELR payment of \$437 million to 24 large industrial customers, for an interruptible tariff (subsidized by other FirstEnergy consumers) where FirstEnergy never actually interrupts service is unjust and unreasonable. Consumers receive no benefit under the tariff, yet they are forced to subsidize these large industrial consumers. FirstEnergy's Rider ELR proposal violates Ohio energy policy as follows:

- With this unnecessary cost of \$437 million, FirstEnergy's retail electric service is not "reasonably priced," in violation of R.C. 4928.02(A);
- FirstEnergy's consumers do not receive "comparable retail electric service" to service received by Duke and AES Ohio consumers in violation of R.C. 4928.02(B) because the latter two utilities do not have any interruptible tariff;¹⁶⁷
- Rider ELR allows for "anticompetitive subsidies" to a select group of 24 industrial customers, in violation of R.C. 4928.02(H);
- Rider ELR does not "protect consumers against FirstEnergy's market power, "as the monopoly utility, by imposing this unavoidable tariff on consumers even though they receive no benefit from the service, in violation of R.C. 4928.02(I);
- Requiring consumers to pay this massive \$437 million subsidy to 24 large industrial customers "fails to protect at-risk populations," in violation of R.C. 4928.02(L); and

¹⁶⁶ OCC Ex. 13, PJM Reliability Assurance Agreement at Section 9.1.

¹⁶⁷ Hearing Transcript, Vol. XIV, p. 2543:12 – p. 2544:7 (Dec. 13, 2023).

- Rider ELR fails to “facilitate the state’s effectiveness in the global economy” because all other industrial and commercial consumers must pay their share of the \$437 million subsidy, in violation of R.C. 4928.02(N).

Rider ELR is also unjust and unreasonable because it is discriminatory. The rider is limited to 24 large industrial customers.¹⁶⁸ These 24 large industrial customers were the first to enroll when ESP IV was implemented. This improperly discriminates against other industrial and commercial consumers who may want to enroll on the tariff, in violation of R.C. 4909.35.¹⁶⁹ Unequal treatment of similarly situated consumers must be based upon some actual and measurable differences in the furnishing of services to the consumer, which is not the case here.¹⁷⁰

Rider ELR also improperly causes FirstEnergy’s consumers to be treated differently from consumers of Duke and AES Ohio. As noted earlier, Duke and AES Ohio do not have any interruptible tariff.¹⁷¹ All three utilities are members of PJM. PJM is the reliability coordinator for its member utilities, meaning that PJM is the entity responsible for balancing supply and load and managing emergency electric events.¹⁷²

The following testimony by Mr. Healey shows that all three utilities are similarly situated as to their ability to provide reliable service (assuming that the PUCO approves FirstEnergy’s request to implement Rider SCR (storm restoration costs) and Rider VMC (vegetation management costs) as requested by FirstEnergy):

Q. Do you have an opinion as to whether an interruptible tariff is necessary for an electric utility

¹⁶⁸ Healey Testimony at 17.

¹⁶⁹ R.C. 4909.35.

¹⁷⁰ *Mahoning County v. Public Utilities Com.*, 58 Ohio St.2d 40, 43-44 (1979).

¹⁷¹ Hearing Transcript, Vol. XIV, p. 2543:12 – p. 2544:7 (Dec. 13, 2023).

¹⁷² Hearing Transcript, Vol. VII , p. 1472:6-20 (Dec. 6, 2023).

to offer safe, adequate, and reliable service for its utility consumers?

A. I think that would depend on the utility.

Q. In what way would it depend on the utility?

A. Would depend on what other resources they have to maintain safe and adequate and reliable service. There may be some utilities where having an interruptible tariff is the best way to maintain that system amongst all the various other things that they do to maintain reliability, whereas, there may be others where they can do it without it. So without looking at each individual utility, I can't say across the -- I can't say that across the board is never necessary for purposes of reliability.

Q. Are you aware of whether either Duke or AES has resources available to them for providing reliable service to consumers which FirstEnergy would not have available to it?

A. Yes. I believe that currently both AES and Duke have riders in place like vegetation management and storm costs that FirstEnergy does not, and other Staff witnesses have testified those - vegetation management at the very least does contribute to reliability so that would be something that those utilities currently have that FirstEnergy does not.

Q. Okay. But FirstEnergy does propose those in this case, correct?

A. Correct.

Q. And Staff supports those recommendations?

A. It supports approval of those riders with modification as proposed by other Staff witnesses, yes.¹⁷³

¹⁷³ *Id.* at p. 2546:16 – p. 2547:25.

If the PUCO approves Rider SCR and Rider VMC in this case, then FirstEnergy would be similarly situated to Duke and AES Ohio in terms of having the same available resources for providing reliable service. If the PUCO approves FirstEnergy's proposed Rider SCR and Rider VMC, then the PUCO should reject FirstEnergy's Rider ELR proposal. It would be unjust and unreasonable for FirstEnergy to continue collecting Rider ELR costs for a massive subsidy from FirstEnergy consumers to a small group of industrial consumers, for an interruptible tariff which is never utilized, while Duke and AES Ohio consumers are not required to pay such subsidies.

The PUCO should also reject Rider ELR because it appears to be an integral part of FirstEnergy's corrupt H.B. 6 bribery scheme. FirstEnergy admitted in the Deferred Prosecution Agreement that "[a] 2013 consulting agreement was subsequently amended in 2015. The 2015 amendment coincided with and was made in exchange for [Mr. Randazzo's] industrial group withdrawing its opposition to a 2014 PUCO Electric Security Plan [ESP IV] settlement package involving FirstEnergy Corp.'s Ohio electric distribution subsidiaries."¹⁷⁴ When the Deferred Prosecution Agreement made this stunning revelation, the PUCO immediately opened an investigation into whether FirstEnergy's secret "consulting agreement" with Mr. Randazzo was an illegal side deal under R.C. 4928.145.¹⁷⁵

What was the change or *quid pro quo* to ESP IV which led to "[Mr. Randazzo's] industrial group withdrawing its opposition to a 2014 PUCO Electric Security Plan [ESP

¹⁷⁴ *United States of America v. FirstEnergy Corp.*, Case No. 1:21-cr-86, Deferred Prosecution Agreement at 34 (July 22, 2021) (emphasis added).

¹⁷⁵ *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 (Dec. 15, 2021).

IV] settlement package involving FirstEnergy Corp.’s Ohio electric distribution subsidiaries”?¹⁷⁶ This *quid pro quo* could easily be determined by doing a side-by-side comparison of the draft versions of ESP IV under discussion both before and after Mr. Randazzo withdrew his opposition to the plan. These various versions of ESP IV are available in the docket of that case. In addition, one could check how many of these 24 large industrial customers were Mr. Randazzo’s clients.

Rider ELR is a likely candidate as the *quid pro quo* – an “interruptible tariff” limited to 24 certain large industrial companies which pays them \$437 million in exchange for the right of FirstEnergy to interrupt their electrical service during an emergency – even though their service never actually gets interrupted.

OCC and other stakeholders have been barred from investigating this issue for the past 18 months due to stays of the H.B. 6 investigation cases requested by the U.S. Attorney.¹⁷⁷ FirstEnergy actively supported the stay orders,¹⁷⁸ but it continues seeking to collect billions of dollars in new revenues under ESP V and other cases. FirstEnergy has continued to collect costs under ESP IV to pay the 24 industrial customers their \$437

¹⁷⁶ *United States of America v. FirstEnergy Corp.*, Case No. 1:21-cr-86, Deferred Prosecution Agreement at 34 (July 22, 2021) (emphasis added).

¹⁷⁷ *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).

¹⁷⁸ *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, FirstEnergy’s Memorandum Contra Office of the Ohio Consumers’ Counsel’s Application for Rehearing (Oct. 10, 2023).

million in rate credits. It is questionable whether consumers will be able to obtain a refund of this amount. The PUCO could protect consumers by rejecting any further charges to FirstEnergy consumers under FirstEnergy's Rider ELR proposal in ESP V.

For all the foregoing reasons, the PUCO should reject FirstEnergy's Rider ELR proposal.

R. FirstEnergy's Rider NMB proposal is unjust and unreasonable because it would improperly shift costs to the residential class and is contrary to the PUCO-appointed auditor's recommendation to eliminate the program.

FirstEnergy's Rider NMB proposal is unjust and unreasonable because it improperly shifts transmission costs to the residential class and is contrary to the PUCO-appointed auditor's recommendation to eliminate the Rider NMB pilot program.

FirstEnergy currently operates a Non-Market-Based Services Rider ("Rider NMB") pilot program to collect transmission charges such as Network Integration Transmission Service ("NITS") and Regional Transmission Expansion Plan ("RTEP") costs.¹⁷⁹ FirstEnergy proposes to eliminate the Rider NMB pilot program and replace it with a new and expanded program.¹⁸⁰ The new Rider NMB would add a charge for unaccounted-for energy and also provide an optional rate design for commercial and industrial consumers with interval or advanced meters.¹⁸¹

The PUCO ordered an independent audit of the Rider NMB pilot program.¹⁸² The audit was performed by Exeter Associates, Inc. and was introduced into evidence at the

¹⁷⁹ Lawless Testimony at 8.

¹⁸⁰ *Id.* at 10.

¹⁸¹ *Id.*

¹⁸² *In the Matter of the Review of the Non-Market-Based Services Rider Pilot Program Established by Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company*, Case No. 22-391-EL-RDR, Entry (April 20, 2022).

evidentiary hearing.¹⁸³ Exeter noted that Rider NMB uses a four-coincident-peak cost allocation methodology which shifts an additional \$1 million in transmission costs to residential consumers.¹⁸⁴ Exeter stated that “[t]he existence of the Pilot reveals the shortcomings of Rider NMB in allocating certain PJM costs to nonparticipating customers based on the principle of cost causation.”¹⁸⁵ Exeter further explained that “[s]ome, but not all, of the avoided transmission costs for the Pilot Program are shifted to the Companies’ non-participating customers under Rider NMB. The remainder of the transmission cost shift is borne by other loads in the ATSI zone that are not customers of the Companies.”¹⁸⁶

Exeter compared the Rider NMB pilot program to a hypothetical scenario which assumed that no Rider NMB pilot program existed. When assuming no pilot program, the result was a \$231 million difference in revenues over the six-year period (March 2017 to February 2023).¹⁸⁷ Of that amount, \$107 million in additional costs would have been assigned to consumers not participating in the pilot program over the six-year period. According to the Auditor, this means that “there is a \$107.7 million cost shift paid by non-participants over six years.”¹⁸⁸ Exeter found that residential consumers (who are ineligible to participate in the Rider NMB pilot program) received 7.3% of the cost shifts

¹⁸³ OELC Ex. 27, Exeter Audit Report, Case No. 22-391-EL-RDR (July 17, 2023).

¹⁸⁴ *Id.* at 18.

¹⁸⁵ *Id.* at 3.

¹⁸⁶ *Id.* at 26.

¹⁸⁷ *Id.* at 17.

¹⁸⁸ *Id.*

for a total of \$7.8 million in added costs.¹⁸⁹ Non-participating large commercial and industrial consumers absorbed a cost shift of \$57 million.¹⁹⁰

Exeter ultimately concluded that the pilot program is “unlikely to provide direct reliability benefits” and that the pilot program “does not resolve the typical causes of grid stress” and should thus be eliminated.¹⁹¹ Instead of eliminating the Rider NMB pilot program, FirstEnergy proposes to expand it. Mr. Meyer recommended that FirstEnergy’s Rider NMB proposal should be rejected.¹⁹²

FirstEnergy’s Rider NMB proposal is unjust and unreasonable due to the improper shifting of transmission costs. The PUCO should therefore reject FirstEnergy’s Rider NMB proposal.

- S. FirstEnergy’s Energy Efficiency Cost Recovery Rider (“Rider EEC”) proposal is unjust and unreasonable and inconsistent with Ohio statutes and Supreme Court precedent because consumers who receive service during the last four years of the eight-year plan must pay for the programs even though they had no opportunity to enroll in or receive services under the programs. The programs are also unjust and unreasonable and contrary to PUCO precedent by allowing FirstEnergy to charge consumers for non-low-income energy efficiency and demand response programs which are widely available through the competitive market.**

FirstEnergy’s Rider EEC proposal is unjust and unreasonable as well as inconsistent with statutory law and applicable Supreme Court and PUCO rulings. The rider is discriminatory because consumers who receive service during the last four years of the electric security plan have no opportunity to receive services under the energy efficiency/demand response plan. Additionally, the rider seeks to charge consumers for

¹⁸⁹ *Id.* at 20.

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 4, 39.

¹⁹² Meyer Testimony at 40.

the costs of providing energy efficiency and demand response services to non-low-income consumers. The proposal is contrary to recent PUCO rulings that non-low-income energy efficiency and demand response services should be provided through the competitive market rather than programs operated by incumbent utilities with monopoly status.¹⁹³

FirstEnergy Witness Edward Miller explains FirstEnergy's proposed energy efficiency and demand response programs.¹⁹⁴ Per Mr. Miller, FirstEnergy proposes to implement a four-year energy efficiency and demand response program comprised of four residential programs: Residential Rebates, Energy Education, Low Income Energy Efficiency, Demand Response for Residential, and one Commercial and Industrial program called Energy Solutions for Business.¹⁹⁵ The total budget for all programs is approximately \$72.1 million per year over the four-year term.¹⁹⁶

FirstEnergy proposes to use Rider EEC to collect the costs for these programs.¹⁹⁷ The energy efficiency and demand response programs, however, would only remain in effect for four years.¹⁹⁸ FirstEnergy's Rider EEC proposal is unreasonable because it would require all consumers to pay for the programs during the entire eight-year term of

¹⁹³ See, e.g., *In the Matter of the Application of the East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Continue and to Expand Its Demand-Side Management and Energy Efficiency Program*, Case No. 21-1109-GA-UNC, Opinion & Order at ¶ 49 (Oct. 4, 2023); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters*, Case No. 21-637-GA-AIR, et al., Opinion & Order at ¶ 56 (Jan. 26, 2023).

¹⁹⁴ FirstEnergy Ex. 5, Direct Testimony of Edward C. Miller ("Miller Testimony") (April 5, 2023).

¹⁹⁵ *Id.* at 4.

¹⁹⁶ *Id.*

¹⁹⁷ McMillen Testimony at 16.

¹⁹⁸ Miller Testimony at 4.

the electric security plan even though the services would only be available during the first four years of the plan.

Under Ohio law, a utility cannot create unreasonable classifications among consumers when collecting rates (R.C. 4905.31).¹⁹⁹ Consumers in the same rate classification must receive the same opportunity to obtain services from the utility (R.C. 4909.33). Utilities cannot implement rates which place any group of consumers at an unreasonable prejudice or disadvantage (R.C. 4909.35). Ohio law does not require absolute uniformity in rates or prices. However, any differential or inequality in treatment must be based upon some actual and measurable differences in the furnishing of services to the consumer.”²⁰⁰

FirstEnergy’s Rider EEC proposal also violates PUCO precedent holding that non-low-income energy efficiency/demand response programs should be provided through the competitive market rather than entrenched incumbent monopoly utilities.²⁰¹ OCC witness Shutrump testified that “PUCO rulings have increasingly relied on competitive markets for energy efficiency instead of utility programs, finding that the market for energy efficiency services has developed to the extent that ‘consumers should be aware of and sufficiently knowledgeable to explore the availability’ and benefits of energy efficiency through the competitive market.”²⁰² Ms. Shutrump further stated that it would be consistent with the PUCO’s recent findings and that “the PUCO should reject

¹⁹⁹ See *Cleveland Elec. Illuminating Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 403 (1975).

²⁰⁰ *Mahoning County v. Public Utilities Com.*, 58 Ohio St.2d 40, 43-44 (1979).

²⁰¹ See, e.g., *In the Matter of the Application of Ohio Power Company for Approval of Its Energy Efficiency and Peak Demand Reduction Programs*, Case No. 16-574-EL-POR, Opinion & Order (Feb. 24, 2021) (finding that the statewide collective benchmark of 17.5 percent has been met and AEP’s energy efficiency rider must terminate).

²⁰² OCC Ex. 4, Direct Testimony of Colleen Shutrump (“Shutrump Testimony”), at 3 (Oct. 23, 2023).

FirstEnergy's proposal to charge consumers for non-low-income energy efficiency programs. And the PUCO should provide important consumer protections related to FirstEnergy's low-income program."²⁰³

In this proceeding, FirstEnergy is asking consumers to pay \$99.6 million for non-low income energy efficiency programs (total residential program cost of \$134 million minus low-income program cost of \$34.4 million).²⁰⁴ These charges to consumers are improper because "these programs are not benefiting all consumers and should not be subsidized by utility consumers."²⁰⁵ As it currently stands, Ohio electric utilities do not provide energy efficiency services to non-low-income consumers.²⁰⁶ However, "Home Depot and other retailers compete in the free market because consumers demand energy efficient products and services even when no rebates are available from their utility. Home Depot and other retailers offer non-subsidized energy efficient products and services where only the participant pays."²⁰⁷

Ms. Shutrump also explained that "consumers would not benefit from FirstEnergy's additional programs because those programs are laden with costs that are not generally passed onto consumers in the competitive market. For instance, 58% of FirstEnergy's program budget is for things that do not reduce usage for the participating customer."²⁰⁸ Further, Ms. Shutrump explained that "non-participating consumers will not benefit because 100% of the EEC charge on their bill goes to support participants.

²⁰³ *Id.* at 4.

²⁰⁴ *See* Miller Testimony, Attachment ECM-2, Workpaper 2, Total budgets by Cost Category.

²⁰⁵ Shutrump Testimony at 6.

²⁰⁶ *Id.* at 7.

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 8.

Conversely all consumers benefit from energy efficiency in the marketplace because those that don't participate don't pay for those that do participate.”²⁰⁹

This spending by FirstEnergy in an energy storage project would create the opportunity for the utility to own distributed energy resources behind the meter.²¹⁰ Ms. Shutrump recommends that that PUCO should reject his proposal because “[b]ehind the meter investments should be made in the market, not by a regulated utility that earns a return on (and of) that investment in rates charged to utility consumers.”²¹¹

Ms. Shutrump recommended that the PUCO reject FirstEnergy's Rider EEC proposal because the PUCO has previously ruled that the competitive markets should play a more significant role in energy efficiency services.²¹² Non-low-income energy efficiency programs funded by utility consumers should end because the competitive market is already providing energy efficiency to consumers.²¹³ Ms. Shutrump supported FirstEnergy's proposed low-income energy efficiency programs, however, she recommended that appropriate consumer protections be implemented, such as competitive bidding for any outside service providers.²¹⁴

For the foregoing reasons, the PUCO should reject FirstEnergy's proposed non-low-income energy efficiency/demand response programs. The PUCO should approve FirstEnergy's proposed low-income programs provided that such programs are available during the entire term of the electric security plan.

²⁰⁹ *Id.*

²¹⁰ *Id.* at 11.

²¹¹ *Id.*

²¹² *Id.* at 14.

²¹³ *Id.*

²¹⁴ *Id.*

T. FirstEnergy should modify its proposed low-income programs to optimize program benefits.

FirstEnergy proposed certain low-income programs, but the program descriptions are vague and incomplete. To protect consumers, FirstEnergy should adopt OCC's proposed changes to these programs to optimize program benefits.

FirstEnergy Witness Santino Fanelli described FirstEnergy's proposed low-income programs.²¹⁵ FirstEnergy proposes to spend \$36 million in shareholder funding for low-income programs, without cost recovery from consumers.²¹⁶ The funding will consist of \$20 million for bill payment assistance programs (i.e., "Fuel Funds") and \$16 million for a new bill discount program for eligible low-income senior citizen consumers.²¹⁷

OCC Witness Richard Hasselman found a lack of detail in program design or how the new programs would interact with existing programs.²¹⁸ Mr. Hasselman recommended that FirstEnergy coordinate the new programs with existing programs to optimize outcomes and avoid conflicts with those programs.²¹⁹ He recommended that FirstEnergy should explain the expected program outcomes, how funds will be applied to recipient household bills and the marketing approach.²²⁰ Mr. Hasselman further recommended that service disconnections should be reported at the zip-code level to provide guidance on program targeting efforts.²²¹

²¹⁵ FirstEnergy Ex. 2, Direct Testimony of Santino L. Fanelli ("Fanelli Testimony"), at 8-9 (April 5, 2023).

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ OCC Ex. 3, Direct Testimony of Richard Hasselman ("Hasselman Testimony"), at 3 (Oct. 23, 2023).

²¹⁹ *Id.*

²²⁰ *Id.* at 5.

²²¹ *Id.* at 9.

FirstEnergy should adopt the recommendations proposed by Mr. Hasselman in order to fully optimize the benefits provided by the new low-income programs.

U. The PUCO should reject FirstEnergy’s proposed electric security plan and approve a market rate option because the electric security plan fails to meet the “more favorable in the aggregate” standard.

The standard for approval or modification of an ESP case is stated in R.C.

4928.143(C)(1), which reads in pertinent part:

[T]he commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. Additionally, if the commission so approves an application that contains a surcharge under division (B)(2)(b) or (c) of this section, the commission shall ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge. Otherwise, the commission by order shall disapprove the application.²²²

The foregoing standard is commonly called the “MRO versus ESP” test (*i.e.*, market-rate option versus electric security plan). Further, R.C. 4905.22 requires that every public utility furnish necessary and adequate service and facilities, and that all charges for any service must be just and reasonable. Of course, the applicant bears the burden of proof.”²²³ In conducting the statutory MRO versus ESP test, the PUCO has generally evaluated three parts - comparing the results of these elements under the proposed ESP to the results expected under an MRO:

²²² R.C. 4928.143(C).

²²³ *See, e.g.*, R.C. 4928.143(C)(1).

- (1) The SSO price of generation to consumers;
- (2) Other quantifiable provisions; and
- (3) Other qualitative provisions.²²⁴

First Energy fails to satisfy the “MRO versus ESP” test and ESP V should therefore be rejected.

FirstEnergy Witness Santino Fanelli explains the “MRO versus ESP” test from FirstEnergy’s perspective. Mr. Fanelli states two primary reasons why, in his view, the proposed electric security plan is more favorable than a market-rate option:

- (1) The proposed energy efficiency and demand response programs will result in net benefits to customers of between \$139 million and \$524 million, including avoided energy, capacity, transmission, and distribution costs; and
- (2) FirstEnergy will spend \$52 million in shareholder funds on programs designed to support low-income customers and enhance the customer experience.²²⁵

FirstEnergy’s assessment of the “MRO versus ESP” test is faulty because FirstEnergy overlooks many areas where an electric security plan would be *less favorable* than a market-rate option. When considering all applicable factors, the only reasonable conclusion is that consumers would be much better off under a market-rate option. The factors which make an electric security plan less favorable, in the aggregate, to a market-rate option are as follows:

- The electric security plan provides that FirstEnergy will use its existing Return on Equity. This is an unreasonably high Return on Equity, which would require consumers to pay unfair rates and allow FirstEnergy to earn excessive profits

²²⁴ *AEP Ohio ESP*, Case No. 11-346-EL-SSO, et al., Opinion and Order at 73 (Aug. 8, 2012) and Entry on Rehearing at 13-14 (Jan. 30, 2013) and *Dayton Power & Light*, Case No. 12-426-EL-SSO, et al., Opinion and Order at 48-52 (Sept. 3, 2013).

²²⁵ Fanelli Testimony at 12.

until a new Return on Equity is decided in the 2024 base distribution rate case. This feature is discussed more fully in **Section E**, *supra*. As pointed out in that section, the fair and reasonable Return on Equity for FirstEnergy should be 9.22%, not the 10.5% Return on Equity FirstEnergy would receive under its proposal;

- The electric security plan would allow FirstEnergy to earn a 10.38% Return on Equity for all grid modernization spending, regardless of any changes in FirstEnergy's Return on Equity to be decided in the 2024 base distribution rate case. This feature is discussed more fully in **Section F**, *supra*. As the appropriate Return on Equity is 9.22%, this higher 10.38% Return on Equity for all Grid Mod I and Grid Mod II spending would greatly harm consumers;
- FirstEnergy's electric security plan would allow FirstEnergy to use Rider DCR to collect costs for both transmission-related and distribution-related FERC accounts, even though FirstEnergy would not be permitted to collect transmission-related costs in a distribution base rate case. This feature is discussed more fully in **Section I**, *supra*;
- FirstEnergy's Rider DCR and Rider AMI proposals provide for FirstEnergy to calculate the revenue requirement based on projected plant-in-service balances, even though a traditional base distribution rate case, as well as existing distribution riders for other utility companies, calculate the revenue requirement based on the utility's historic plant-in-service balances. This feature is discussed more fully in **Section J**, *supra*. As discussed in **Section J**, using projected plant-in-service balances for Rider DCR allowed FirstEnergy to over-collect about \$20 million;
- FirstEnergy's failure to include a depreciation offset for Rider DCR and Rider AMI fails to recognize that the value of FirstEnergy's legacy plant-in-service has declined since the date when it was originally placed in service. This is discussed more fully in **Sections K and M**, *supra*. This problem would not occur in a traditional distribution base rate case, where the depreciation rates would be brought up to date;

- FirstEnergy’s Rider VMC proposal fails to flow cost savings through to consumers from the new vegetation management practices which reduce the cost of the existing vegetation management practices. This is discussed more fully in **Section P**, *supra*. This problem would not occur in a traditional distribution base rate case, where the reduced costs of the existing vegetation management practices would be reflected in the new rates; and
- FirstEnergy’s electric security plan would continue and expand Rider NMB. This is contrary to the recommendation of the PUCO-appointed independent auditor. This is discussed more fully in **Section R**, *supra*. As noted in that section, the Rider NMB pilot program resulted in cost-shifting to non-participating consumers of more than \$100 million over a six-year period.

The foregoing reasons provide ample proof that an electric security plan would be less favorable to consumers as compared to a market-rate option. Rider EEC provides a separate and independent grounds for rejecting the electric security plan under the “MRO versus ESP” test. As noted above, the statute requires:

Additionally, if the commission so approves an application that contains a surcharge under division (B)(2)(b) or (c) of this section, the commission shall ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge. Otherwise, the commission by order shall disapprove the application.²²⁶

FirstEnergy’s Rider EEC proposal clearly violates this statute because, as discussed more fully in **Section S**, *supra*, consumers who receive service during the last four years of the eight-year plan must pay for the programs even though they would have no opportunity to enroll in or receive services under the programs. Under these

²²⁶ R.C. 4928.143(C).

circumstances, the statute expressly requires that the PUCO must reject the electric security plan as proposed.

The PUCO should modify FirstEnergy's proposed electric security plan transforming it into Ohio's first market-rate offer by an Ohio electric distribution utility. This would finally complete the restructuring of Ohio's retail electricity market which began with S.B. 3 in 1999.

A market-rate offer would allow the PUCO to fulfill its mission of assuring "all residential and business consumers access to adequate, safe and reliable utility services at fair prices, while facilitating an environment that provides competitive choices."²²⁷ A market-rate offer would also end FirstEnergy's lean on the PUCO to layer additional distribution charges on consumers every time FirstEnergy seeks approval of another electric security plan.

IV. CONCLUSION

Public utilities like FirstEnergy are charged with fulfilling a vital public purpose by providing consumers with essential electric service. In exchange, they receive various benefits from regulation, such as avoiding competition through their monopoly status. But such regulation must be balanced. Here it is not.

ESP V, if approved, would increase the cost of consumers' electric service by \$1.4 billion without providing consumers meaningful additional services, increasing reliability, or generating safety benefits. Many of the numerous and varied riders are improper charges to customers, and their sheer number further contributes to rendering

²²⁷ PUCO web page/About Us/Mission and Commitments, available at: <https://puco.ohio.gov/about-us/resources/mission-and-commitments>.

ESP V unjust and unreasonable. Further, ESP V fails the “MRO versus ESP” test. The PUCO should reject the proposal and require FirstEnergy to implement a market-rate option.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Initial Brief for Consumer Protection was served on the persons stated below via electronic transmission, this 19th day of January 2024.

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**This foregoing document was electronically filed with the Public Utilities
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1/19/2024 4:19:16 PM

in

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

Summary: Brief Initial Brief for Consumer Protection by Office of the Ohio
Consumers' Counsel electronically filed by Alana M. Noward on behalf of Finnigan,
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