BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan	)))))))	Case No. 23-301-EL-SSO

INITIAL POST-HEARING BRIEF BY THE CITIZENS' UTILITY BOARD OF OHIO

The Citizens Utility Board of Ohio ("CUB Ohio") hereby submits this Brief to the Public Utilities Commission of Ohio ("Commission") in the above captioned proceeding.

Respectfully Submitted,

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I. INTRODUCTION & FACTS

On April 5, 2023, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or the Companies) filed an application that, if approved, would establish the Companies' fifth Electric Security Plan ("ESP V") for a period to commence on June 1, 2024, and continue through May 31, 2032. According to the Application in this case, the ESP V will procure Standard Service Offer ("SSO") generation supply through a competitive bidding process ("CBP").[1] In addition, ESP V includes terms and conditions which are intended to promote reliability, affordability, and stewardship. The Companies propose provisions that would invest hundreds of millions of dollars in capital investment in, and maintenance of, the Companies' distribution system. In addition, the Companies propose a portfolio of energy efficiency and demand response ("EE/PDR") programs to help customers save money on their electric bills, with costs deferred and amortized to mitigate bill impacts.

[1] *See* FirstEnergy Ex. 1 (Application)

After weeks of evidentiary hearings, the ultimate issue before the Commission is whether ESP V should be approved, denied, or modified. Pursuant to Ohio Revised Code Section 4928.141(A), an electric distribution utility shall provide a standard service offer ("SSO") of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation service, to all consumers within its certified territory. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143. When, like in this proceeding, a utility chooses an ESP, the Revised Code provides that the Commission: "[S]hall approve or modify and approve an application . . . if it finds that" the ESP, "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" of an MRO.[2]

It should be noted that, in accordance with the Stipulation the Commission approved in Case Nos. 20-1476-EL-UNC, et al., the Companies will file a base distribution rate case in May 2024.[3] The Companies' last rate case was filed in 2007 - before the very first ESP was filed.[4] Unlike ESPs, full rate cases require the PUCO staff to perform an investigation of the facts and issues raised in the utility's application and prepares a report which advises the commissioners of the staff's recommendations regarding the rate case. PUCO staff conduct infrastructure inspections, reviews plant and financial records and assess the quality of service provided to customers. This great amount of disclosure and scrutiny of rates, costs and other information from the Companies, and a full report conducted by the Commission staff provides the most transparent

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[2] Ohio Rev. Code 4928.143(C)(1)
[3] *See* FirstEnergy Ex. 1 (Application) at 8.
[4] *See 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 Nos. 07-551-El-AIR, et al., Application (May 8, 2007).*

way to determine if customer rates are fair. The ESP, however, does not have such a deep review. Thus, CUB Ohio urges the Commission to carefully consider whether many of these riders continue, or continue at the amounts proposed, until there is a full review in the soon-to-be-filed rate case, while at the same time providing FirstEnergy customers the opportunity to invest in their own energy savings, now, through energy efficiency programs.

II. ARGUMENT

A. The proposed capital costs and rate of return in the ESP V would better suit customers' interest if part of the Companies' next full distribution rate case.

As stated above, and discussed by Staff Witness Christopher Healey, it has been more than 16 years since the Companies last filed a bast distribution rate case.[5] For over a decade and a half, FirstEnergy customers have been paying base rates that are "stale" and based on a May 31, 2007 date certain and a test year ending in February of 2008.[6] This does not mean, however, that the rates to customers have stayed the same. Riders of varying types, for varying customer classes, and varying investments have been added to customer bills without the benefit of the full, comprehensive and transparent review that a rate case provides.

If any utility at any time needed to be brought under the transparency and the holistic investigation brought by a distribution rate case, it is now with these Companies. For any utility, two decades of riders "should not become the primary form of cost recovery for utilities to the exclusion of base distribution rates cases."[7]

[5] Staff Ex. 10 (Healey) at 5.
[6] *Id.*
[7] Staff Ex. 10 (Healey) at 7.

In this proposed ESP V, one of the significant costs for customers is the Delivery Capital Recovery Rider ("DCR"), with an annual cap of $390 million. Such an investment necessitates the full staff investigation of whether FirstEnergy needs Rider DCR and assist the Commission to determine costs caps and continuation of the Rider. In fact, Staff Witness Healey states that it would be "putting the cart before the horse" to approve the DCR for the length of the ESP, and instead have the DCR continue on an interim basis (under much lower caps) until the rate case has concluded.[8] Similarly, OMAEG Witness Seryak goes even further, and recommends that the Commission should discontinue FirstEnergy's Rider DCR altogether, and any distribution related costs should be recovered through base distribution rates.[9] While we do not opine on which approach the Commission should use, it is evident that capital investment riders such as the DCR, which can lock costs in for years, should face scrutiny through the rate case mechanism.

Similarly, the rate of return and equity recommended by the Companies appears excessive, and the scrutiny of a rate case is not only needed but most appropriate to ensure fairness to customers. The Companies are currently authorized a rate of return of 8.48 percent with a cost of debt of 6.54 percent and a return on equity (ROE) of 10.5 percent.[10] As pointed out by OCC Witness Buckley these returns (cost of debt and ROE) and the resulting authorized rate of return are no longer reflective of the returns being granted to regulated electric utilities nationally in recent years.[11] The record evidence provided by Witness Buckley shows that the proposed rate of return is unreasonable and harmful to customers, and should be drastically reduced pending the necessary and full investigation of the upcoming rate case.[12] Without a full analysis of these returns

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[8] *Id.* at 8.
[9] OMAEG Ex. 1 (Seryak) at 22.
[10] OCC Ex. 5 (Buckley) at 4.
[11] *Id.*
[12] *Id.*

by the Commission, Staff, and intervening stakeholders through the rate case process, the Companies are poised for a windfall, at least until the rate case can be completed. To show this is not hyperbole, Witness Buckley cites that the average ROE granted for distribution-only rate cases for electric utilities for the first six months of 2023 (January 1, 2023, through June 30, 2023) was 9.22 percent, and a rate of return for all electric rate cases of 6.92 percent during the same period.[13]

Therefore, as it pertains to capital riders like DCR and the determination of rates of return and equity, we urge the Commission to not allow these rates to be locked in without the full rate case analysis to capture both increases and decreases, which balances the interests of the utility and its customers.

B. Pending the 2024 Rate Case, FirstEnergy Customers should be provided the opportunity to reap the benefits of programs within the ESP V.

While we believe that proper regulation of FirstEnergy and their current request for more than $1.4 Billion must be first put to the full rigor of a distribution rate case, putting *everything* on hold could be a detriment to consumer ability to reap the benefits from the innovation investments in the Companies' Application. As Staff Witness Healey opines, allowing cost recovery through a rider can give the utility an added incentive to make investments that are beneficial to customers and the grid, including investments targeting reliability improvements.[14] CUB Ohio advocates for cheaper utility bills, reliable service, transparency, consumer rights, and clean, healthy energy delivered equitably for residential and small business utility customers. CUB Ohio believes that to reduce costs, reduce energy use, and expand reliability, utilities need to harness technology (such

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[13] *Id.*
[14] Staff Ex. 10 (Healey) at 6.

as through smart thermostats) available within programs like the Companies' Energy Efficiency and Peak Demand Reduction plan.

1. **The Commission should approve the investments in reliability and affordability in the proposed Energy Efficiency and Peak Demand Reduction ("EE/PDR) Rider.**

The termination of the energy efficiency standards, the consequent loss of utility programs, and the continued fall-out of the HB6 scandal did a lot to negatively impact Ohio's energy future. However, the termination of mandates *did not* remove the stated energy policies from our code. The termination of mandates *did not* change the fact that energy efficiency is our cheapest and cleanest resource. And the termination of energy efficiency mandates *did not* change the fact that utilities are currently in the best position to provide the scalable programs that result in incentives and rebates from retailers that result in customers knowing of, understanding, and seeking out those savings. Thus, if the Commission hopes to ensure affordable, reliable, and clean energy for the customers of the Companies' service territory, and further the state's energy policy goals, the Commission must allow the Companies to implement energy efficiency programs. It is with this backdrop that FirstEnergy is proposing to voluntarily bring back four residential and one commercial energy efficiency and demand reduction plan under the EE/PDR Rider.

The Companies' Application proposes a portfolio of cost-effective energy efficiency and demand response programs, including, but not limited to appliance recycling and rebates, energy education, programs to support energy efficiency for low-income customers, load control, and energy management for business customers.[15] The Companies' Residential Rebate program in particular will harness the innovation of heat pumps and smart thermostats, as well as qualified ENERGY STAR appliances by ensure customers can easily purchase energy efficient

[15] FirstEnergy Ex. 1 (Application) at 11.

equipment.[16] As the Companies' testimony in support of these programs points out, "energy efficiency saves money, protects the environment, and helps address energy equity."[17] These programs will help customers use electricity more efficiently and save on their electric bills while reducing carbon emissions.[18] According to Companies' Witness Miller, the Companies are proposing a $72.1 million annual plan over four years that is outweighed by $637.9 million in estimated lifetime savings of the plan's measures.[19] To show the financial benefit of these energy saving programs, the Companies conducted three different tests to calculate the cost effectiveness of their proposed programs, the Total Resource Cost Test ("TRC"), Utility Cost Test ("UCT"), and Societal Cost Test ("SCT").[20] The proposed programs in all three tests are projected to be cost-effective at the portfolio level, scoring a 1.3 benefit cost ration under the TRC and 2.1 under both the UCT and SCT, and estimated to result in between $139 million and $524 million in net benefits to customers.[21] The Companies, as Witness Miller explains, designed the residential programs for both shopping and non-shopping customers to address educational barriers; address cost barriers; and tap a variety of delivery channels and vendors.[22]

Yet, the Companies' EE/PDR plan has been met with opposition that suggests that the market can provide better and cheaper energy savings, though opposition based on **no actual analysis** and **no probative evidence**. For example, Staff Witness Braun recommends a reduction in the number of programs offered by the Companies and a coincidental reduction of the EE/PDR budget. Specifically, Staff recommends removing the Residential Rebate Program, and all of its $17.88 million annual spending, as well as the Energy Solutions for Business program and its

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[16] FirstEnergy Ex 5 (Miller) at 11-12.
[17] *Id.* at 5.
[18] FirstEnergy Ex. 1 (Application) at 11.
[19] FirstEnergy Ex. 5 (Miller) at 4.
[20] FirstEnergy Ex. 1 (Application) at 11.
[21] FirstEnergy Ex. 5 (Miller) at 28.
[22] *Id. at 6.*

$38.58 million budget. Staff's recommendation thus reduces the Companies' spending on energy efficiency related programs to $15.66 million.[23] Reducing the budget, means fewer customers can participate, energy savings potential is decimated, the impacts to grid stability are lessened, and thus customers lose all around. Staff bases its recommended reduction of energy efficiency programs (and resulting loss to customer benefits) on the blanket statement that "Staff finds that this approach is consistent with previous Commission Orders (for example, Columbia Gas of Ohio's most recent base distribution rate case) that have provided a framework of what the Commission finds to be appropriate energy efficiency programs at this time."[24] Witness Braun goes on to state that the Staff's "recommendations create a program that is appropriate size and scale to allow FirstEnergy to provide residential customers with energy efficiency and demand response services." However, Witness Braun does not back up this statement though with any evidence that the reduced size and scope is in any way appropriate to benefit customers. Staff performed no analysis on the potential savings to customers. Staff does not explain how or if the market will provide for any of the benefits that otherwise will be on the Commission's cutting room floor. [25]

Similarly, Ohio Consumers Counsel opposes non-low-income programs in the EE/PDR plan and recommends denial of its budget and resulting energy savings and customer bill reductions.[26] OCC Witness Shutrump bases this recommendation seemingly solely on "evidence" found in a 2022 press release by Home Depot announcing that it exceeded its own goal to help its consumers save $2.8 billion on utility bills through the sale of energy efficiency products and services.[27]

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[23] Staff Ex. 3 (Braun) at 4.
[24] *Id.*
[25] Tr. Vol XIII at 2299-3001.
[26] OCC Ex. 4 (Shutrump) at 4.
[27] *Id.*

Basing a recommendation to not allow customers to have the opportunity to reap millions in cost savings because a press release from a national retailer claims to have saved unidentified customers somewhere a certain amount of money is not what makes an adequate replacement, nor does it equate to evidence to be relied upon by the Commission. Further, while suggesting that the customers of the FirstEnergy Companies, who the agency purportedly represents, can just go out to the competitive market to find energy efficiency, on cross examination, the OCC's efficiency expert was not sure that CRES providers in Ohio offered access to energy efficiency programs, and doubted that they did.[28] The Commission cannot reasonably and prudently make a decision that aligns with OCC or the Staff's testimony when that testimony is based on zero analysis and one social media post.

Residential and small business consumers, and Ohioans at large, have lived with the market running efficiency "programs" for a number of years now. After HB6 was passed in 2019, customers in the FirstEnergy territory and throughout Ohio have been without utility energy efficiency programs, creating a four-year pilot program (as it could be called) for market-based energy efficiency programs to meet and exceed the savings of the utility programs. However, no evidence has been provided to deem that "pilot program" a success. All that has been provided in this case (and the cases referenced by the energy efficiency opponents) are references to the Energy Star Program and a national press release from Home Depot.[29]

Even if the market of Energy Star products found at big box retailers or offered by competitive suppliers were an option, it is unreasonable to rely on the hope that a piecemeal approach of unvetted programs from varying numbers of competitive suppliers and expect to achieve the economies of scale necessary to achieve reductions needed for Ohio's electric supply

[28] *Id.* at 1713
[29] OCC Ex. 4 (Shutrump) at 7.

to be affordable, reliable, and clean. The best way to make sure benefits of efficiency programs are spread as widely as possible is to make sure that the portfolio of programs is diverse enough to offer opportunities for all customers to participate and that there is enough budget to support broad participation. It is also important to maintain stability in the offering of programs over time because not all customers are in the market to buy significant energy consuming products each year. Companies' Witness Miller puts it simply but aptly, "most of the benefits of these programs would not be realized if the Companies did not offer the programs," and thus customers lose.[30]

What is more, the EE/PDR programs proposed by the Companies further specific state energy policies that benefit customers specifically and the state's economy generally. First, under Ohio Rev. Code 4905.70, the Commission is required to "initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption."[31] Approving these programs, overseeing these programs, and ensuring these programs are cost effective, meets that expectation on the Commission. Assuming that only the market can and will play the role of cost-effective energy conservation and reduction, however, does not fulfill that role.

These programs, as proposed, also address the state's policies under Ohio Rev. Code 4928.02. First under subsection (A), the programs "ensure the availability to consumers of adequate, safe, efficient, nondiscriminatory, and reasonably priced retail electric service"[32] by both increasing the efficiency of customer homes and businesses while reducing demand. The programs encourage the education of small business owners in the state regarding the use of and encourage the use of energy efficiency programs in their businesses.[33] Additionally, while CUB Ohio focuses

[30] FirstEnergy Ex. 5 (Miller) at 26.
[31] Ohio Rev. Code 4905.70.
[32] Ohio Rev Code 4928.02(A).
[33] Ohio Rev Code 4928.02(M).

on the impact of the programs to benefit customers, we cannot discount the contribution these programs make to the broader state economy. As Companies' Witness Miller points out, these programs contribute to economic development through a focus on reducing the cost of energy efficiency products and services, improving the energy efficiency of businesses, and making those businesses more competitive.[34] Further, the providers of these energy efficiency products and services are job creators within their local communities.

With every day that energy efficiency programs remain mothballed, Ohio's energy system becomes less affordable, less reliable, and less clean. PUCO therefore must work *with* the Companies' customer, utility, and environmental interests to develop a pathway to voluntary, well-vetted, and cost-effective utility energy efficiency programs that will resume yearly progress towards energy savings Ohio consumers deserve, not create costly roadblocks.

2. The Commission should approve the Community Connections Program with the proposed increase in budget.

Another benefit of the EE/PDR plan in furtherance to the state's energy policy is how these programs, and specifically the low-income residential programs, are designed to protect at-risk populations as envisioned by Ohio Revised Code 4928.02(L). As part of its energy efficiency proposal, the Companies propose to continue the Community Connections program with increased funding.[35] The Companies' Application looks to maintain its Community Connections program. The reasons to maintain (and increase) these low-income energy efficiency programs are vast and varied, and beyond just fulfilling state policy. First, they are needed to reduce the energy cost burden on our low-income neighbors. As has been observed, these customers "have

[34] FirstEnergy Ex. 5 (Miller) at 9.
[35] FirstEnergy Ex. 1 (Application) at 11.

disproportionately high energy burdens compared to non-low income households" spending three times more on energy bills.[36] The programs such as Weatherization provides long-term solutions to energy affordability, lessening the need for bill assistance and keeping people in their homes.[37] OPAE Witness Sarver suggests that maintaining the program at *status quo* is not enough but that the Application's $2 million increase in annual funding for the proposed program over the current ESP IV is "necessary to meet the needs of customers in the face of rising costs to service those needs."[38] Secondly, the programs further provide health benefits by keeping homes warmer, identifying gas and carbon monoxide leaks. In fact, as Witness Sarver points out, studies have shown that weatherization services actually reduce medical costs by an average of $14,000 over the 16-year life of the measures.[39]

Residential customers with fixed incomes or of less means deserve the right to benefit in the cost savings, energy savings, and environmental protection that comes with utility scale energy efficiency programs. A portfolio of utility programs that include one or more programs targeted to the elderly and low-income customers ensures these customers are protected, especially since many times these programs are less than cost-effective and thus may not be profitable enough for non-utility providers. Furthermore, as it is the policy of this state for electric service to "protect at-risk populations"[40] and to encourage innovation and market access for cost-effective demand-side retail electric service including demand-side management programs,[41] the Commission should approve these programs within the EE/PDR plan.

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[36] OPAE Ex. 1 (Sarver) at 4.
[37] See *Id.* at 5.
[38] *Id*. at 4.
[39] *Id.*
[40] Ohio Rev Code 4928.02(L).
[41] *Id*. at 4928.02(D).

III. CONCLUSION

CUB Ohio believes that the interests of residential and small business consumers, as well as the public at large, would be best suited if the bulk of the capital costs and revenue requirements proposed by the Companies were determined as part of the May 2024 rate case. Further, despite the upcoming rate case, FirstEnergy customers deserve the opportunity to invest in their own energy savings, now, through energy efficiency programs.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this filing will be electronically served via the Public Utility Commission of Ohio's e-filing system on all parties referenced in the service list of the docket.

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