BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

INITIAL BRIEF OF NORTHWEST OHIO AGGREGATION COALITION

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Thomas R. Hays
Counsel of Record
Bar Reg. O054062
8355 Island Lane
Maineville, Ohio 45039
Tel: 419-410-7069
trhayslaw@gmail.com

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1. Executive Summary

We thank the Commission for this chance to discuss with you the way forward in FirstEnergy's Toledo Edison (TE) territory. The Northwest Ohio Aggregation Coalition (NOAC) fifteen communities are in TE Territory.[1]

Cost is the number one issue for all customers. Proposed ESP 5 increases the cost[2] and together with the Companies 'proposed Grid Mod II[3], customers face **more than $2 billion in cost increases**. Unfortunately, customers also face other significant cost pressures that we discuss below. Whether the Commission decides upon an ESP or an MRO, significant cost cuts must be made if electricity is to be affordable.[4] NOAC recommends for the Commission's consideration cost saving measures in addition to those identified by the PUCO Staff.

At the same time, better managerial accounting practices are required to quell the turmoil that occurred during ESP 4. This turmoil is not synonymous with HB 6 but includes a pattern of overcharges and difficulties in auditing the Companies. (See for example the testimony of Staff Witness Borer) Effective cost management is a vital part of achieving lower costs.

The PUCO Staff recommendations produce a better result and lower costs for FirstEnergy's consumers. Its analysis is thought provoking. The Staff Alternative rather than the Companies ' application is our jumping off point on most issues.

The Staff recommends a six-year ESP with the distribution riders to be reconsidered in the coming base rate case. There the Commission would determine if the distribution riders should be continued. The Staff refers to this period between the PUCO's resolution of this case and the resolution of the FirstEnergy to-be-filed base rate case as the "bridge period."[5]

Based on the evidence, NOAC believes that the Commission should reject both the Companies ESP 5 Application and the Staff Alternative because neither is more favorable in the aggregate than an MRO with a traditional base rate case.

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[1] These communities are the Cities of Maumee, Perrysburg, Toledo, Sylvania, Oregon, Rossford, Northwood, and Waterville; the Villages of Delta, Holland, Ottawa Hills and Walbridge; the Townships of Lake and Perrysburg; and Lucas County.
[2] Direct Testimony Companies Witness Fanelli places the increased cost at $1.4 billion.
[3] Grid Mod 2 Application in case no.22-704 places the cost at $700 million.
[4] See Direct Testimony of Staff Witness Smith on affordability.
[5] Staff exhibit 19, Direct Testimony of Staff Witness Healy, discussion of coming base rate starting at P 5.

If the Commission instead determines to approve an ESP, then NOAC has several recommendations. The Staff Alternative proposes that the Commission reconsider the distribution riders at the coming base rate case. NOAC recommends that the Commission reconsider the other riders and terms in ESP 5 as well. Considering the entire ESP 5 would allow the Commission a comparison of actual costs for both the MRO/base rate case versus ESP price allowing a true comparison. It would also allow a "big picture" analysis that is helpful in prioritizing spending and looking for synergies and cost savings. Going forward, we recommend Commission set the same termination date for both the base rate case and ESP (if any) in the coming case.

Finally, NOAC recommends that the Commission during this bridge period set certain deferral charges at zero and lower the return on equity ("ROE") to reflect current market conditions.

Let us now turn to the consumer protection problems of affordability and managerial accounting.

2. Burden of Proof and Standard of Review

R.C. 4928.143(C)(1), places the burden of proof on the utility and sets forth the standard of review for a proposed electric security plan:

> The burden of proof in the proceeding shall be on the electric distribution utility. The commission shall issue an order under this division for an initial application under this section not later than one hundred fifty days after the application's filing date and, for any subsequent application by the utility under this section, not later than two hundred seventy-five days after the application's filing date. Subject to division (D) of this section, the 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 . . . Otherwise, the commission by order shall disapprove the application.

The first and only specific factor mentioned in the section is pricing, and whether that ESP pricing is more favorable in the aggregate than a market rate offer ("MRO").

In determining if the ESP is more favorable in the aggregate than the MRO, the PUCO must also consider whether each of the policy objectives set out in R.C. 4928.02 are met.[5] In addition, R.C. 4905.22 requires that the EDU must furnish necessary and adequate service and facilities, and the charges for any service must be just and reasonable (emphasis added).

3. Cost/Price: The Problem

A. NOAC Agrees with the Staff that ESP 5 is Too Costly

NOAC's foremost concern is that our homeowners, renters, small businesses and industry face an unaffordable (unjust and unreasonable) $1.4 billion cost increases in FirstEnergy's ESP 5 Application.[6] The Staff's Alternative proposals do not sufficiently reduce FirstEnergy's ESP 5 cost burden.

PUCO Staff Witness Smith testified[7] that the Companies ESP 5 Application is "burdensome" for some customers and "does not address affordability for these customers." (P. 3, lines 14-16). The PUCO Staff calculated that customers with household incomes of $45,660 or less would exceed the 5% PIPP cut-off standard in the proposed Year 1 bill. (P. 5, lines 14-16). Witness Smith explains that FE's residential customers significantly cut back on electric use following the large generation cost increase June 2023 and that historically a cut in usage is a harbinger of customer disconnection.

The Staff points out that some COVID era assistance programs are ending. He states:

> Staff believes **the reduction in usage to be a clear demonstration of customers not finding value in their electric service** and pulling back on its use. Any downturn in household incomes or employment, however, will further impact disconnections as

[6] FirstEnergy Ex. 2, Direct Testimony of Santino L. Fanelli ("Fanelli Testimony") at SLF-1 (Apr. 5, 2023).

customers have pulled back on consumption already which precedes potential payment concerns. (P.8, lines 3-8 emphasis added).

Translated, "I am cutting back, my electric bill is too high."

The PUCO Staff analysis does not include other regulatory price increases that consumers are facing. These upcoming cost increases will add to the number of customers "who do not find value in their electric service."

B. The Full Picture of Coming Costs Customers Face

FirstEnergy is currently regulated (and can increase charges to its consumers) through a base rate case, an ESP case and Rider cases. Riders like Grid Mod I and II are further separated into their own proceedings. But customers are charged all the costs from these various cases in one monthly bill.

We ask the Commission to consider the total price impact that customers now face that includes:

1) The price increase of $1.4 billion in the proposed eight-year ESP 5. Or about $175 million more per year.

2) The failure of the projected $1 billion in Grid Mod1customer cost savings to materialize for consumers after a $600 million spend.

3) The Companies requested $700 million spend on Grid Mod 2 over the next several years that is unlikely to produce significant off-settings savings during this period. (About $200+ million/year.)

4) Supplemental transmission projects.

5) The price of electricity itself. FE SSO customers got hammered with higher generation costs in June 2023as a response to higher market prices that were caused by higher natural gas costs and hundreds of thousands of customers returning to SSO supplies. This undercut market stability and predictability.

6) Inflation increases and other coming costs.

In sum, customer affordability is increasingly challenged by very significant price increases.

C. Fashioning a Solution to Reduce the Cost Problem

To keep rates just and reasonable (affordable to customers), the answer is the time tested "spend your money wisely." That means, budgeting backward from what customers can afford.

The Staff identified affordability issues with ESP 5 but does fully consider the "big picture" of coming costs. Similarly, the Staff Alternative finds managerial accounting issues in, for example, the storm costs (Staff Witness Borer) but does not consider the the Corp/companies overall pattern of turmoil that FirstEnergy/Companies under the ESP/rider system. (This turmoil is not synonymous with HB 6, but involves the wide-ranging issues discussed below.)

The Staff Alternative recommends an ESP with a six-year term while an MRO (instead of an ESP) with traditional regulation (base rate cases) and more stringent monitoring would better protect consumers and control costs. The Staff Alternative also fails to pare out overcharges that are carried forward and leaves "low hanging" cost cuts unharvested.

In the next sections NOAC will often only discuss the PUCO Staff Alternative rather than the Application because it is better for consumers and a better jumping off point.

4. Recommendations to Reduce and Eliminate Unjust, Unreasonable and Unaffordable Costs

A. Rider ELR

NOAC recommends that the Commission fully eliminate Rider ELR. This will save about $60 million per year over current costs. (Or $30 million per year versus the Staff Alternative, which would cut the rates in half but allow new participants and costs,) [7]

All customers pay for 24 very large companies ("ELR Cos") to be on standby to curtail electric service when the Companies 'call a distribution emergency. The ELR Cos receive a total of

[7] See Healey discussion of Rider ELR beginning at page 16 where he reviews the costs and cost savings of both the Application and Staff Alternative versus historic cost.

$10/kW per month. The direct testimony and cross examination of of Staff Witness Healy, Company Witnesses Fanelli, and OMAEG Witness Seryak reveal:

1) Rider ELR events are seldom called.

2) PJM has region-wide responsibility for grid stability and runs a far cheaper (about $3.40/kW month), competitively bid program, Numerous events are called.

3) Neither Duke nor AES have a similar rider and no evidence shows that the absence of an ELR program caused extra disruptions in their service territories.

4) Its structure is not competitive. Companies are not selected, for example, by low bid.

5) The payments to ELR Cos are endless. Most ELR Companies have received payments since at least ESP 2.

6) Rider ELR lacks traditional economic development attributes like job creation or retention requirements, ime limits, requirement to keep plants operating (in fact two ELR Cos closed their Ohio facilities and left), and there are no "claw back" requirements.[8]

7) Suppliers and consumers are forced to pay higher electric rates to subsidize the ELR Cos. Essentially residential and small commercial customers pay a cross-class subsidy to support the ELR subsidy.

In sum, **Rider ELR is a really bad deal for every customer but ELR Cos**. In budgeting for affordable electric rates, NOAC recommends that every Rider ELR dollar be cut.

B.. Rider EEC

The Application proposes a new Rider EEC ("Energy Efficiency Cost Recovery Rider"). NOAC recommends that the Commission approve only the low-income portion of the proposed program on the same basis it has done in the recent AEP and AES cases.

[8] OEG raised in its cross examination and testimony the "principle of gradualism" and "rate shock" to ELR Cos as a justification to slowly wean them from this subsidy. It fails to mention the true rate shock to customers of the June 2023 SSO auction and the coming costs they face.

The Companies 'Witness Miller proposes an EE spend of $72.1 million per year, broken down as follows[9]:

- $ 3,592,681 - Energy Education
- $ 8,613,982 - Low Income Energy Efficiency
- $ 3,456,539 - Demand Response for Residential
- $17,883,228 - Residential Rebates Program
- $38,581,786 - Energy solutions for Business

The low-income portion of this is about $12 million per year. In addition, the Inflation Reduction Act will be increasing Home Weatherization Grants to the states, here in Ohio managed by the Department of Development.

OCC Witness Shutrump points out these EE products are readily available at Home Depot and other vendors:

> 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. [10]'

NOAC agrees with this assessment.

The PUCO Staff recommends that the Residential Rebates and Energy for Businesses be eliminated but would retain the Demand Response for Residential in addition to low income. NOAC disagrees. Residential rebates for smart thermostats are just that: a residential rebate. Smart thermostats are a well-developed market. They are sold by major players like Honeywell-Amazon, Google Nest, and Ecobee. A trip to a big box home store will show a substantial smart

[9] Miller written testimony, Attachment ECM-2 "Ohio ESP V – Projections"
[10] Shutrump Direct Testimony at 3:20-21(Oct 23, 2023).

thermostat display. These companies actively advertise the products which are a portion of their large "Internet of Things" efforts.

Who is not likely to buy (or need) a smart thermostat? Those who live in an apartment or lack central air conditioning or are stay home all day. We agree with OCC that these non-participating customers should not subsidize other customers.[11]

NOAC urges the Commission to limit the EE program to just low-income consumers.

C. Rider SCR and New Rider VMC

PUCO Staff Witness Borer presented the Staff Alternative to the CompaniesRider SCR (storm costs). PUCO Staff Witness Messenger presented the Staff Alternative to the new Companies Rider VCM (vegetation management costs).

The PUCO Staff Alternative bring these two riders into conformance with Ohio's other electric utilities. Witness Messenger states that both riders could be collected under base rate case or an ESP—and that cost wise it is a wash. In her discussion of the ESP-MRO test she suggests that one factor favoring the ESP is its better accounting. Let us look.

Staff Witness Borer admits:

> Staff has **concerns about the auditability of the annual storm restoration expenses**, as there are several things that could make it difficult to properly perform annual audits.
>
> First, if Rider SCR is allowed to include expenses related to non-Major Events, it would be difficult to ensure that expenses are related to storms as opposed to routine maintenance that occurred around the same time as the storm. An example would be vegetation management expenses. **It may be difficult or impossible to differentiate vegetation management expenses related to non-Major Events from the Companies regular vegetation management program.** (P 7-8 to P 8-l 2) Emphasis added.

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Witness Borer is raising a basic issue in managerial accounting: multiple (similar) accounts where an expense can be placed. Multiple accounts make it possible to double book or to choose the account with the greatest economic advantage. This makes it hard to audit.

Under the PUCO Staff Alternative, at least five similar accounts would exist: base rate storm costs, rider storm costs, base rate vegetation costs, rider vegetation costs, and base rate routine maintenance. Rider SCR and the newly proposed Rider VMC should be eliminated to improve accountability and supervision and auditability.

Staff Witness Borer also addressed the Companies' deferral of storm expense recovery, citing Companies Witness Lawless. The deferrals plus carrying costs total of $127 million and would

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accumulate $21 million more in interest during the proposed five-year recovery period.[12] The deferrals began in 2009 at an unfair, above market rate of 10.5%. Under the rule of 72, that means the original deferrals doubled by 2016 and then doubling again by 2023.

Staff Witness Borer recommended a separate proceeding is needed to address the deferrals:

> Q: Why does Staff believe the audit of the deferral should be resolved in a separate proceeding?
>
> A. The Companies have been deferring these storm expenses since 2009 and continue to defer additional expenses. For reference, the deferral includes nearly 350,000 line item expenses totaling $337.5 million through June 2023. Since the Companies will continue to defer storm restoration costs until ESP V becomes effective, Staff believes a separate proceeding is necessary to ensure a comprehensive audit of the entire balance can be performed. The magnitude of the deferral means a significant amount of time is needed to ensure the balance is audited thoroughly and with the proper due diligence. Because the

[12] Borer P 17 L 9-12.

> Companies have requested recovery of the deferral in this ESP case, Staff has begun to audit the expenses deferred through June 2023, and Staff believes the best approach would be to continue the current audit process with a goal of completing the audit sometime in the middle of 2024 (in a separate proceeding) once all amounts deferred through May 31, 2024, are known. (P 18 L 24 thru P 19 L 13).

NOAC commends this action.

<u>We ask that the Commission immediately stop all collection of interest or carrying costs on the deferrals (set the deferral rate to zero).</u> The delay to perform this audit is not caused by customers. It is caused by the Companies. In NOAC's experience, auditors usually randomly sample from such a lrge list. They do not investigate every single line item unless *there is a reason,* Our conclusion is that the Staff found a significant reason to require this level of scrutiny. (See first quote above)

NOAC also recommends that the Staff determine if FE charged a fair price for goods and services. This is an evaluation to see if the underlying charges themselves reasonable. For example, Staff Witness Borer notes that FE's prepositioning of equipment started the time clock for a 12-hour storm event. Was the staging necessary? Was the charge for the equipment itself reasonable? AEP or Duke would have charges in their base rate costs for similar events. These can and should be compared.

It is not clear that similar scrutiny is being applied to vegetation management. A determination should also be made if its underlying costs are justified. Similarly, any vegetation management deferrals should be set to zero,

D. Rider DCR

Again the Staff Alternative presented by PUCO Staff Witness Healey and Staff Witness Mackey is our jumping off point because it would save customers significant money versus the Companies proposed Rider DCR.

Still, it will come as no shock that NOAC recommends Rider DCR be eliminated as we have done in every Rider case since ESP 2. Our comments thus are brief.

NOAC for years has been perplexed by the unjust and unreasonable $15 million and now $21 million yearly increase if the Companies meet CAIDI and SAIF. History shows this is a "gimme" and by law FirstEnergy must meet these reliability standards.[13] Our communities are very familiar with capital budgets. Rider DCR ignores that a capital expenditure may reduce labor costs and replacement parts, for example. In fact, a well thought out and executed capital expenditure may reduce the need for other capital projects. Why is there a need for increased capital expenditure always, every single year?

The FE Corp/Companies make money through their capital investments. When any company is offered a chance to make more money, it is a temptation hard to control. In FirstEnergy's case, their entry into the PDA demonstrates the dark side. (We hope equal zeal will be applied to the review of Rider DCR expenditures as is proposed for Rider SCR. The dollars at stake are much higher.)

E. Rates of Return and Balance Sheets

The Companies propose to use a 10.5% rate on investment which was used in its last base rate case. This rate is unaffordable (unjust and unreasonable). This is not based on evidence of current interest rates or return on capital. FE's justification is PUCO's precedent of using the last base rate case to set current riders.

The PUCO is both free to review its precedents and there is no precedent for using a 16-year-old base rate case. The use of the 10.5% rate throughout the term of ESP 4 has been enormously and needlessly costly to consumers. While interest and mortgage rates hit historic lows, customers were saddled with a usurious rate in ESP 4.

[13] O.A.C. 4901:1-10-10.

In the Rider SCR discussion above, we see the 10.5% rate doubled the underlying debt every seven years. That rate of return acts as a magnet to misclassify current expenses like labor and capitalize them. The FERC audit of construction works in progress (CWIP) found exactly that.

The Staff is now investigating 350,000 line items related to Rider SCR deferral. These factors too are unprecedented.

The Companies bore the burden of proof to prove that the 10.5% rate is just and reasonable. It chose not to present evidence that that rate or the interest rate it uses are just and reasonable. Staff Witness Healey rightly referred to these rates as "stale." The only evidence on the record of current interest rates and utility company rates of return is OCC Witness Buckley.[14]

Finally, NOAC is concerned about the projected Toledo Edison balance sheet. We ask the Commission to determine a permanent fix to remove the nuclear plant goodwill from the Toledo Edison balance sheet. This should be at no cost to the customers, as OEG Witness Futral points out in his direct testimony this is a "self-created" problem for the Companies.

There is a second concern we ask the Commission to wxamine,. Fanelli attachment SLE 3 page 9 ot 13 shows a Net Change in Long-Term Debt of $99 million in 2025 and a corresponding decrease in assets, the bulk is a $62 million decrease in working capital. Neither CEI or OE have a similar change to working capital. NOAC also notes that Witness Fanelli projects an 85% rate of dividends up to First Energy Corp.

F. Three Additional Items and Reservation of Rights on Other Issues

A. NOAC asks the Commission to make all consumer charges in its final decision subject to refund in this case.

[14] OCC Ex. 5, Direct Testimony of Joseph P. Buckley ("Buckley Testimony") at 3:6-9 (Oct. 23, 2023).

B. NOAC asks that the Commission make its final decision in this case subject to be reopened if evidence/discovery in the four stayed HB 6 investigations cases or the ongoing investigations would bear on the decision in this case.

C. NOAC preserves its rights to appeal the Hearing Officer's determination to exclude the admission of the Deferred Prosecution Agreement and its questions about corporate honesty. NOAC also filed written motions seeking a stay.[15] We understand that the OCC has addressed these in its brief and NOAC here incorporates these by reference.

NOAC also reserves its rights to comment on other issues raised by the parties that we did not address here.

5. The MRO-ESP Test, Length of the ESP, and the Bridge Issue

Customer affordability is NOAC's primary goal. That is best achieved through an MRO/base rate case. This approach would eliminate all the riders to include Rider ELR, a non-distribution rider. The MRO/base rate case would also lower the "stale" 10.5% ROI. (OCC Witness Buckley sets out additional reasons as well.) These quantitative advantages outweigh the Staff Alternative.

The MRO/base rate case also would provide an enormous qualitative/quantitative benefit by stopping FE Corp/Companies abuse of the ESP/rider system. The resultant turmoil includes:

- FirstEnergy's earnings were at or exceeded the SEET for many years. Customer groups clawed back the excesses.
- Customers were overcharged more than $300 million because the TE and CEI balance sheets carried the goodwill of two nuclear power plants no longer owned by these two companies.[16] Again, customer groups had to claw this back.
- FirstEnergy entered into the DPA on .
- After this DPA date, a FERC audit found improper accounting for CWIP.

[15] Motion for Limited Stay of Rider DCR in ESP V Distribution Riders by Northwest Ohio Aggregation Coalition, Office of the Ohio Consumers' Counsel and Ohio Manufacturers' Association Energy Group

[16] OEG Witness Futral explains the nuclear plants these were transferred to FENUC, and ultimately went through bankruptcy and sold. To an unrelated company,

- The Staff is auditing 350,00 line items associated with Rider SCR deferrals

These qualitative factors rebut the notion that FE ESP's yearly rider reconciliations are time savers or effective.

If the Commission instead determines to approve an ESP, then NOAC has several recommendations. Again our jumping off point is the Staff Alternative.

The Staff recommends a six-year ESP with the distribution riders to be reconsidered in the coming base rate case. There the Commission would determine if the distribution riders should be continued. The Staff refers to this period between the PUCO's resolution of this case and the resolution of the FirstEnergy to-be-filed base rate case as the "bridge period."[17]

If the Commission rejects this approach, then NOAC recommends that in addition to considering the distribution riders, the Commission consider the other riders and terms in ESP 5 as well. Considering the entire ESP 5 would allow the Commission a comparison of actual costs for both the MRO/base rate case versus ESP price comparison. It would also allow a "big picture" analysis that is helpful in prioritizing spending and looking for synergies and cost savings.Going forward, we recommend that the Commission set the same termination date for both the base rate case and the ESP (if any).

Finally, we also recommend that the Commission for the bridge period set the storm rider and vegetation management deferral charges to zero and lower the ROE to reflect current market conditions.

Thank you for this opportunity to share our thoughts on behalf of our customers and our communities.

Respectfully submitted by the Northwest Ohio Aggregation Coalition,

/s/ Thomas R. Hays

Thomas R, Hays
Attorney of Record

[17] Staff exhibit 19, Direct Testimony of Staff Witness Healy, discussion of coming base rate starting at P 5.

Service by PUCO DIS automated system.