

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

REPLY BRIEF OF WALMART INC.

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Dated: February 9, 2024

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

I. ARGUMENT

A. The Use of Shareholder Dollars for "EV Initiatives" is Not a Substitute for EV Rate Design, and the Commission Should Order the Companies to Propose Rate Design for Public-Facing DCFC.

Numerous parties address Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's (collectively, "Companies" or "FirstEnergy") proposal to allocate \$12 million for EV initiatives to "support education efforts and provide financial assistance to help customers in their decisions to adopt electric vehicles,"¹ or Staff's revisions to that proposal, which seek to limit the use of these funds to "activities...directly related to providing distribution service," including "customer education about rate options for EVSE site hosts...credits to encouraging charging during time of low localized distribution system demand, or improvements to the siting and interconnection process."² **No party**, however, responds to Walmart's evidence that EV rate design is needed for public-facing direct current fast charging

¹ Companies' Initial Brief, p. 58.

² See Staff Initial Brief, pp. 32-33; see also Retail Energy Supply Association ("RESA") Initial Brief, p. 34; Interstate Gas Supply ("IGS") Initial Brief, pp. 19-21.

("DCFC") applications. Indeed, neither the parameters proposed by the Companies for spending the \$12 million in shareholder dollars nor the Staff's revisions would involve *proposing new rate design*.

This Commission was recently tasked with the obligation of considering whether to adopt the recent revisions to the Public Utility Regulatory Policies Act ("PURPA") Rule 111(d), which, among other things, sets a "standard for electric vehicle charging programs," including asking state commissions to "consider [the] establishment of rates that promote affordable and equitable electric vehicle charging options for residential, commercial, and public electric vehicle charging infrastructure."³ While the Commission ultimately declined to adopt the PURPA standard, it nonetheless found that Ohio state policy as set forth in R.C. 4928.02 supports and incorporates the promotion of "rate standards that promote affordable and equitable electric vehicle charging options for residential, commercial, and public electric vehicle charging infrastructure" consistent with the requirements of 16 U.S.C. § 2621(d)(21)(A).⁴ The Commission further noted that its approach from a rate design perspective is on "a case-by-case basis as each provider and EDU is different."⁵

In this case, Walmart proposed public-facing DCFC rate design specific to the Companies. The type of relief requested by Walmart and the manner in which Walmart requested – namely, that the Companies adopt this rate design to promote public DCFC EV charging development – is consistent with Ohio policy and the Commission's approach to rate design. Even more importantly, this issue is uncontested by any party. Thus, the Commission should order the Companies to implement the rate design proposed by Walmart in this case. Alternatively, the Commission should

³ *In the Matter of the Commission's Investigation into the Implementation of the Federal Infrastructure Investment and Jobs Act's Electric Vehicle Charging PURPA Standard*, Finding and Order (Nov. 1, 2023) at ¶ 13.

⁴ *Id.*, ¶ 31.

⁵ *Id.*

order the Companies to propose EV rate design in the Companies' May 2024 base distribution case or six months after the Final Order in this proceeding, whichever is earlier.

B. In Lieu of Requiring the Companies to Recover ESP V Costs in Their Forthcoming Base Distribution Case, the Only Path that Balances the Interests of Ratepayers and the Companies is the Compromise Position of Staff.

This proceeding comes before the Commission at an awkward time. Due to the ongoing criminal proceedings stemming from the HB 6 scandal, the Commission's multiple efforts to scrutinize the Companies' costs – some of which are directly at issue in this proceeding like the Delivery Capital Recovery Rider ("Rider DCR") and Advanced Metering Infrastructure/Modern Grid Rider ("Rider AMI") – have been stayed.⁶ Thus, as we sit here today, the Commission has not determined the appropriateness of some of the Companies' previously incurred costs. Notwithstanding the stays, the Companies herein seek to increase their spending through these riders from levels approved in prior proceedings, *i.e.*, to increase spending from levels the Commission has not yet deemed appropriate. Inherently, the Companies' requests for increases to riders like the Rider DCR assumes that prior levels were appropriate, which simply has not been established (and cannot be assumed) in light of the stayed proceedings.

On the opposite end of the spectrum, other parties claim that sufficient evidence flowing from the HB 6 scandal already exists for the Commission to conclude that mechanisms like the

⁶ *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).

Rider DCR should be stayed⁷ and/or ESP V denied in its entirety.⁸ While the evidence that has come to light thus far, including audits by other entities, the deferred prosecution agreement and SEC filing of the Companies' parent, among others, suggests the *potential* for misspent funds, it would be pure conjecture to conclude that monies collected through the recovery mechanisms at issue here have been misspent. Quite simply, the stayed proceedings should act as both a sword and a shield by limiting the Companies' requests for more money in ESP V, and limiting other parties' abilities to claim there is sufficient evidence of further fraud.

Adding even further complexity to all of these issues, the Commission is being asked to consider this ESP V when the Companies will file their first base distribution rate case in more than 15 years in just three short months. This all begets the question: *what should the Commission do in this proceeding?* As Walmart stated in its Initial Brief, there are numerous reasons why recovery of costs through a base distribution case is more appropriate than the rider recovery proposed by the Companies.⁹ Walmart would support the Commission deferring some of these issues to the forthcoming base rate case. In the event the Commission does not desire to defer these issues to the Companies' forthcoming base rate case, then the only appropriate compromise that will balance the interests of ratepayers and the Companies is the Staff proposals, particularly with respect to Rider DCR, which provides a bridge period solution while deferring most issues to the base distribution rate case.¹⁰

In contrast to the imminently reasonable compromise position of Staff, the Companies' position, which seeks to perpetuate the prior regime of ESP cost recovery just at higher levels is

⁷ See e.g., Motion for Limited Stay of First Energy's Distribution Riders by Northwest Ohio Aggregation Coalition ("NOAC"), Ohio Manufacturers' Association Energy Group ("OMAEG"), and Ohio Consumers' Counsel ("OCC"), dated December 6, 2023.

⁸ See Initial Brief of OMAEG, p. 6.

⁹ See Walmart Initial Brief, pp. 4-7.

¹⁰ See Staff Initial Brief, pp. 2, 8-10.

inherently unreasonable and unsupported by reliable record evidence. For example, with respect to Staff's proposal to limit Rider DCR recovery to FERC Accounts 360-374 (as is done for all other utilities in Ohio), the Companies argue:

Staff's proposal would eliminate nearly 15% of the Companies' Rider DCR revenue. Such a significant reduction in the Companies' currently authorized cost recovery contradicts Rider DCR's long-established terms and conditions, discontinues recovery of costs never found to be unreasonable, and prevents the Companies from recovering these costs for the duration of the Bridge Period.¹¹

To support the above argument, the Companies point to Rider DCR's inception in 2012 and a settlement in ESP IV, the propriety of which are all under scrutiny in the aftermath of HB 6. Moreover, any claim that the Companies will be prevented from recovering these costs is directly undercut by their acknowledgment that "the Companies would have an opportunity to seek recovery of the costs of these investments in their upcoming May 2024 base distribution rate case."¹² Quite simply, arguments by the Companies that they should be able to perpetuate prior means of recovery based on actions taken during a time period that is currently under suspicion, simply should not move the needle towards approving the Companies' requests to increase Rider DCR spending levels. The Commission is being asked to play with one hand behind its back, but it must nonetheless play the hand it has been dealt. The only fair outcome in this proceeding, short of deferring all issues to the impending rate case, is to adopt the compromise position of Staff.

II. CONCLUSION

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

1. Require the Companies to adopt public-facing DCFC EV rate design as sponsored by Ms. Perry and modeled after a tariff employed by Eversource for the ESP term, or, alternatively,

¹¹ Companies' Initial Brief, p. 14.

¹² *Id.*, pp. 16-17.

order the Companies to propose comparable EV rate design in the Companies' May 2024 base distribution rate case or six months after the Final Order in this proceeding, whichever is earlier; and

2. In the event the Commission does not want to defer the issues in ESP V to the forthcoming base distribution rate case to be filed in May 2024, the Commission should reject the Companies' requests to establish and increase the rider recovery set forth in the Companies' Application and should instead approve the compromise position of Staff to permit rider recovery on a bridge period basis only and deferring final approval of riders for the duration of the ESP V term, including deciding whether ongoing rider recovery is appropriate, to the forthcoming base rate case to be filed by the Companies by May 2024; and.

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

Respectfully submitted,

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Dated: February 9, 2024

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Reply Brief of Walmart Inc. was served by electronic mail, upon the following Parties of Record on this 9th day of February, 2024.

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