

Before  
The Ohio Senate  
Energy and Public Utilities Committee

Testimony on Senate Bill 10

Jeff Jacobson, Strategic Insight Group

On Behalf of the Office of the Ohio Consumers' Counsel

February 2, 2021

Hello Chair Peterson, Vice-Chair Schuring, Ranking Member Williams, and Committee members. I hope you and your colleagues are well. Consumers' Counsel Weston and I thank you and Senator Romanchuk for this opportunity to testify in support of Senate Bill 10. The bill is a partial repeal of tainted House Bill 6. Ohioans should receive a repeal of more issues in House Bill 6, but this bill is a good start. OCC testified seven times against House Bill 6. And we've now testified six times to repeal it.

For your information, later in this testimony we will address welcome news of a settlement between the Attorney General and FirstEnergy, with regard to decoupling charges. And we will explain the continued importance of enacting Senate Bill 10, including for requiring refunds to consumers.

Much could be said about why FirstEnergy is very undeserving of its benefits in House Bill 6, given its role in the related scandal. We will just quote from usually reserved Standard & Poor's, about FirstEnergy:

We believe these violations at the highest level of the company are demonstrative of insufficient internal controls and a cultural weakness. We view the severity of these violations as significantly outside of industry norms and, in our view, they represent a material deficiency in the company's governance.<sup>1</sup>

Specifically, House Bill 6 authorized a so-called decoupling charge for the benefit of FirstEnergy, at consumer expense. (It is codified in O.R.C. 4928.471.) We do not favor utility decoupling charges to consumers. Such charges are sometimes used to make consumers pay utilities for the money utilities don't collect as a result of reduced sales from energy efficiency programs. But this charge is the worst example of decoupling we've ever seen. It's just a giveaway of consumers' money, to make them subsidize FirstEnergy year after year to keep its revenues at the level of 2018. Not coincidentally, 2018 is when FirstEnergy had one of the highest sales levels in its history due in part to hot weather.

FirstEnergy's former CEO, who was fired in the wake of the House Bill 6 scandal, described the decoupling charge as recession-proofing for FirstEnergy. We call it corporate welfare and crony-capitalism. In reality, there are many Ohioans who need recession-proofing during the pandemic, for assistance with the cost of utilities, food, housing, health, and the like.

As of yesterday, the decoupling charge in House Bill 6 has cost consumers about \$26.8 million to enrich FirstEnergy since February 1, 2020. That's part of the present cost to consumers of the legislature's inaction to repeal House Bill 6. Another House Bill 6 charge to consumers (about \$92 million) is to subsidize coal power plants. On OCC's website home page

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<sup>1</sup> "S&P downgrades FirstEnergy following \$1.95B draw on revolving credit facility," S&P Global Market Intelligence, by U. Khalid (Nov. 25, 2020); <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/s-p-downgrades-firstenergy-following-1-95b-draw-on-revolving-credit-facility-61442506>

([www.occ.ohio.gov](http://www.occ.ohio.gov)), you can view automated subsidy calculators that continuously update what House Bill 6 has cost Ohioans since enactment. As of January 1<sup>st</sup> this year, recession-proofing (decoupling) for FirstEnergy became even more costly, with charges to consumers exceeding \$2 million per week.

Additionally, the bill will repeal the anti-consumer amendment for FirstEnergy that was slipped into the 2019 state budget bill, House Bill 166. (It is codified in O.R.C. 4928.143(F).) We wish that OCC's budget for consumers had fared as well as FirstEnergy's profits in that budget bill.

The House Bill 166 amendment allowed FirstEnergy to likely avoid making a refund to consumers for "significantly excessive" profits for one of its three utilities (Ohio Edison). This ploy was enabled by allowing FirstEnergy to average the profits of its three utilities for determining its profit level, thereby reducing through averaging the especially high profits of one of its utilities.

It is difficult to imagine that the terrible anti-consumer ratemaking in the 2008 energy law could be made worse. But FirstEnergy has achieved that dubious distinction. The 2008 legislation allows electric utilities to charge Ohioans for excessive profits. Under the 2008 law, only "significantly" excessive profits are required to be refunded to consumers. The legislature would do well for consumer justice by going a step further than repeal, to make utilities refund *all* excessive profits to consumers (and not merely refund just significantly excessive profits).

Further, Senate Bill 10 requires FirstEnergy to refund to consumers its decoupling charges collected to date. That is an important part of justice for consumers. FirstEnergy's undue influence in House Bill 6 should be penalized, not rewarded. Refunds would merely even the score, and not penalize FirstEnergy. There should be no repeat of what happened to

FirstEnergy's consumers when the Ohio Supreme Court threw out the so-called distribution modernization charge. FirstEnergy got to keep nearly a half-billion dollars for the charge collected from customers prior to the Court declaring it unlawful. That's because the PUCO earlier denied the motion by OCC and the Ohio Manufacturers' Association to make the charge subject to refund. Attached is an OCC pie chart that shows what utilities got to keep without refunds to consumers, after the Supreme Court invalidated the charges.

We will note some welcome news from the Ohio Attorney General. On February 1<sup>st</sup>, he announced his court settlement with FirstEnergy, in which FirstEnergy is to make a PUCO filing to stop charging consumers for decoupling under House Bill 6. In fact, FirstEnergy has made a tariff filing in a new PUCO case, 21-0101-EL-ATA. We will further review this filing and also review the settlement when it becomes available. Even with the good news, House Bill 6 decoupling remains bad law and should be repealed per Senate Bill 10. Further, Senate Bill 10 will require FirstEnergy to refund to consumers the millions of dollars it already charged for decoupling. In our quick review of the new FirstEnergy filing, there does not appear to be a statement that FirstEnergy will make refunds of decoupling charges it collected to date. There should be refunds. Attached is the FirstEnergy filing.

We described this bill as a good start. A good ending should include repeal of the coal and nuclear power plant subsidies in House Bill 6. And the legislature should conduct an investigation of the scandal involving House Bill 6, including the undue influence of utilities. Also, there should be repeal of a provision in House Bill 6 that could divert more federal HEAP funds to low-income weatherization instead of maintaining the main purpose of bill payment assistance. As a result of the pandemic, many Ohioans have a desperate need for money for bill payment assistance and debt relief regarding their utility bills.

As of yesterday, the House Bill 6 subsidies for the uneconomic, polluting coal plants of AEP, DP&L and Duke have cost Ohioans about \$92 million. The subsidy culture at the PUCO and in House Bill 6 for those coal plant dinosaurs has prevented the competitive market from working to provide consumers with lower electric bills and a cleaner planet. Attached is OCC's Subsidy Scorecard that shows the costly results (for consumers) of the government's intrusion into the electric market since Ohio deregulation in 1999.

So it would be good to accomplish the House Bill 6 repeals. And, with the beginning of this new legislative session, it would be time to remedy other injustices for utility consumers. Other needed consumer protections include fixing the unfair denial of utility refunds to consumers, repealing the 2008 law allowing the so-called electric security plans, reforming the PUCO's process for case settlements, and revamping the selection process for PUCO commissioners. On that last point, three of the five PUCO commissioners had worked for utilities (that the PUCO regulates) up until the recent resignation of the PUCO Chair. That needs to change, to achieve the missing balance by appointing consumer representatives to the PUCO.

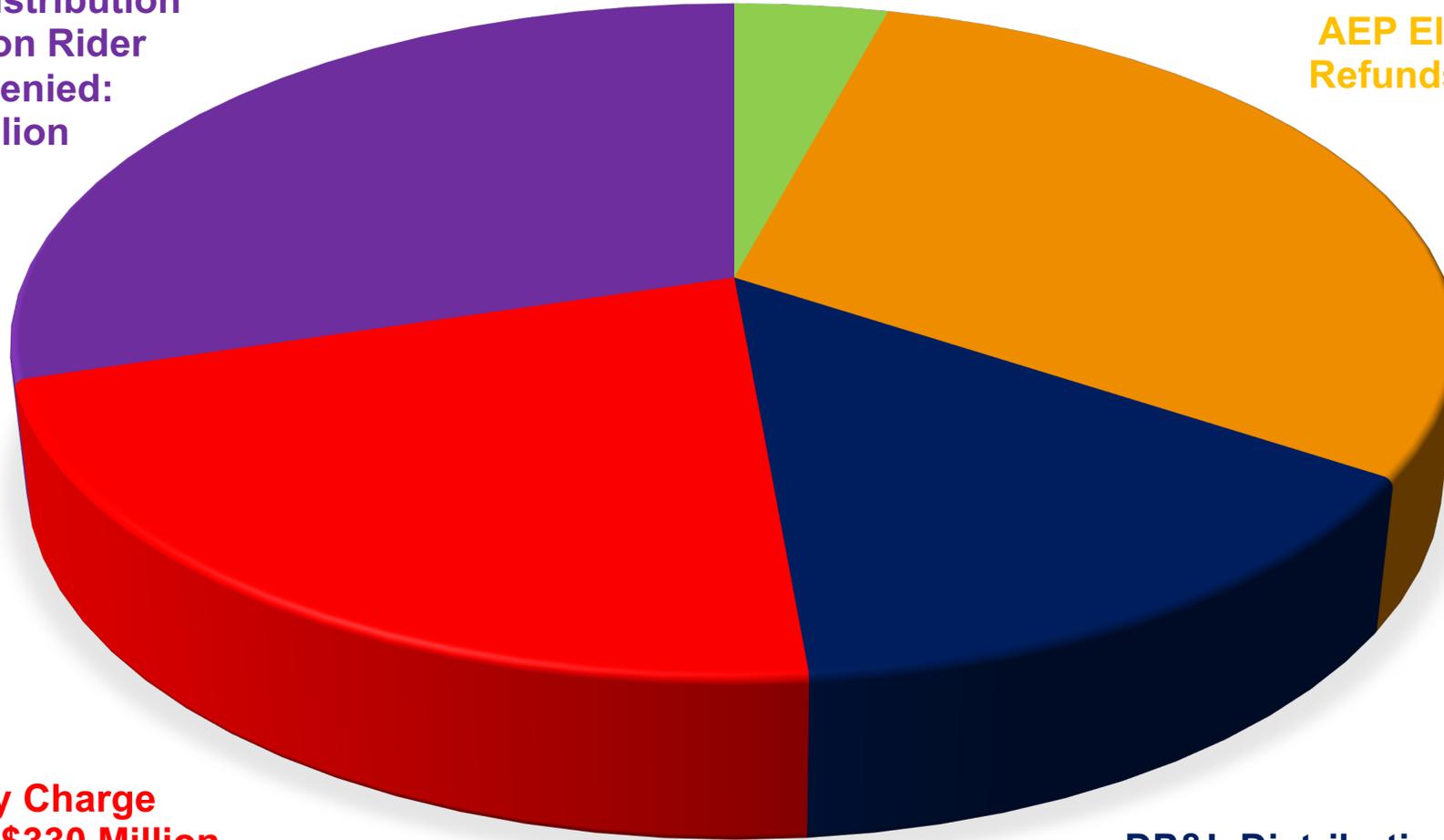
Thank you again for the opportunity to testify.

# OHIOANS DENIED \$1.5 BILLION IN ELECTRIC REFUNDS SINCE 2009

AEP Electric Security Plan I  
Refunds Denied: \$63 Million

FirstEnergy Distribution  
Modernization Rider  
Refunds Denied:  
\$456 Million

AEP Electric Security Plan II  
Refunds Denied: \$463 Million



DP&L Stability Charge  
Refunds Denied: \$330 Million

DP&L Distribution Modernization Rider  
Refunds Denied: \$218 Million

**BEFORE**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

Application Not for an Increase in Rates  
Pursuant to Ohio Revised Code Section 4909.18

In the Matter of the Application of Ohio )  
Edison Company, The Cleveland Electric )  
Illuminating Company and The Toledo ) Case No. 21-0101-EL-ATA  
Edison Company for Approval of )  
Tariff Amendments )

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1. APPLICANTS RESPECTFULLY PROPOSE: (Check applicable proposals)

- |   |   |
|---|---|
| <input type="checkbox"/> New Service  | <input type="checkbox"/> Change in Rule or Regulation |
| <input type="checkbox"/> New Classification   | <input type="checkbox"/> Reduction in Rates           |
| <input type="checkbox"/> Change in Classification   | <input type="checkbox"/> Correction of Error          |
| <input checked="" type="checkbox"/> Other, not involving increase in rates                        |   |
| <input type="checkbox"/> Various related and unrelated textual revision, without change in intent |   |

2. DESCRIPTION OF PROPOSAL: Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "Companies") request approval to modify the Conservation Support Rider ("Rider CSR"), to set Rider CSR to zero, effective within five business days following the Commission's approval of this Application.

3. TARIFFS AFFECTED: Only the Rider CSR tariff is affected.

4. Attached hereto and made a part hereof are: (Check applicable Exhibits)

- Exhibit A - existing schedule sheets (to be superseded) if applicable
- Exhibit B - proposed schedule sheets
- Exhibit C-1

- a) if new service is proposed, describe;
- b) if new equipment is involved, describe (preferably with a picture, brochure, etc.) and where appropriate, a statement distinguishing proposed service from existing services;

c) if proposed service results from customer requests, so state, giving if available, the number and type of customers requesting proposed service.

\_\_\_\_\_ Exhibit C-2 - if a change of classification, rule or regulation is proposed, a statement explaining reason for change.

  X   Exhibit C-3 - statement explaining reason for any proposal not covered in Exhibits C-1 or C-2.

5. This application will not result in an increase in any rate, joint rate, toll, classification, charge, or rental.
6. Applicants respectfully request the Commission to approve the proposed filing attached hereto and advise the Applicants on further action.

Respectfully submitted,

/s/ Brian J. Knipe  
Brian J. Knipe (0090299)  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308  
(330) 384-5795  
[bknipe@firstenergycorp.com](mailto:bknipe@firstenergycorp.com)

Attorney for Applicants, Ohio Edison Company,  
The Cleveland Electric Illuminating Company, and  
The Toledo Edison Company

**Rider CSR**  
**Conservation Support Rider**

**APPLICABILITY:**

Applicable to any customer who receives electric service under the Company's rate schedules Residential Service ("Rate RS") and General Service – Secondary ("Rate GS"). This Conservation Support Rider (CSR) will be effective for service rendered beginning January 1, 2021. This Rider is not avoidable for customers who take electric generation service from a certified supplier.

**RATE 1:**

RS (all kWhs, per kWh): 0.1715¢

GS (For each kW over 5 kW of billing demand): \$0.6735

**RATE 2:**

RS (all kWhs, per kWh): 0.3703¢

GS (all kWhs, per kWh): 0.0862¢

**PROVISIONS:**

1. The credits or charges set forth in RATE 1 decouple the annual base distribution revenue for the rate schedules above to the base distribution revenue as of the twelve-month period ending on December 31, 2018, per section 4928.471 of the Revised Code.
2. The credits or charges set forth in RATE 2 decouple the annual revenue resulting from implementation of section 4928.66 of the Revised Code, excluding program costs and shared savings, and recovered pursuant to an approved electric security plan under section 4928.143 of the Revised Code as of the twelve-month period ending on December 31, 2018, per section 4928.471 of the Revised Code.

**RIDER UPDATES:**

The credits or charges contained in this Rider shall be updated and reconciled on an annual basis. This Rider is subject to reconciliation including, but not limited to, increases or refunds. Such reconciliation shall be based solely upon the results of audits ordered by the Commission of Rider CSR or Rider DSE. No later than November 1st of each year, the Company will file with the PUCO to update the Rider credits or charges which, unless otherwise ordered by the PUCO, shall become effective on a service rendered basis on January 1st of each year.

**Rider CSR**  
**Conservation Support Rider**

**APPLICABILITY:**

Applicable to any customer who receives electric service under the Company's rate schedules Residential Service ("Rate RS") and General Service – Secondary ("Rate GS"). This Conservation Support Rider (CSR) will be effective for service rendered beginning January 1, 2021. This Rider is not avoidable for customers who take electric generation service from a certified supplier.

**RATE 1:**

RS (all kWhs, per kWh):	0.1544¢
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GS (For each kW over 5 kW of billing demand):	\$0.6270
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**RATE 2:**

RS (all kWhs, per kWh):	0.2702¢
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GS (all kWhs, per kWh):	0.0664¢
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**Rider CSR**  
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**APPLICABILITY:**

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**RATE 1:**

RS (all kWhs, per kWh):	0.0729¢
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GS (For each kW over 5 kW of billing demand):	\$0.8875
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**RATE 2:**

RS (all kWhs, per kWh):	0.4447¢
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GS (all kWhs, per kWh):	0.0838¢
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**Conservation Support Rider**

**APPLICABILITY:**

Applicable to any customer who receives electric service under the Company's rate schedules Residential Service ("Rate RS") and General Service – Secondary ("Rate GS"). This Conservation Support Rider (CSR) will be effective for ~~service bills~~ rendered beginning ~~January 1~~ February X, 2021. This Rider is not avoidable for customers who take electric generation service from a certified supplier.

**RATE 1:**

RS (all kWhs, per kWh): 0.~~17150000~~0000¢

GS (For each kW over 5 kW of billing demand): \$0.~~67350000~~

**RATE 2:**

RS (all kWhs, per kWh): 0.~~37030000~~0000¢

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Filed pursuant to Orders dated January 15, 2020 and June 17, 2020, in Case No. 19-2080-EL-ATA, and Order dated February X, 2021 in Case No. 21-0101-EL-ATA before

The Public Utilities Commission of Ohio

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**RATE 1:**

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GS (For each kW over 5 kW of billing demand): \$0.~~62700000~~0000

**RATE 2:**

RS (all kWhs, per kWh): 0.~~27020000~~0000¢

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The Public Utilities Commission of Ohio

Issued by: Samuel L Belcher, President

Effective: ~~January 1~~ February X, 2021

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The Public Utilities Commission of Ohio

Issued by: Samuel L Belcher, President

Effective: ~~January 1~~February X, 2021

Reason for Proposal

Pursuant to ORC 4909.18, the Companies propose to modify Rider CSR, to set Rider CSR to zero, effective within five business days following the Commission's approval of this Application.

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**2/1/2021 3:30:32 PM**

**in**

**Case No(s). 21-0101-EL-ATA**

Summary: Application for Approval of Tariff Amendments electronically filed by Karen A Sweeney on behalf of Knipe, Brian J. Mr. and The Cleveland Electric Illuminating Company and Ohio Edison Company and The Toledo Edison Company

