Opposition Testimony—Sub. HB 79
Senate Energy and Public Utilities Committee

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On Behalf of the Northwest Ohio Aggregation Coalition
And its 15 Member Communities
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Chair Reineke, Vice Chair McColley, Ranking Member Kent and members of the Energy and Public Utilities Committee, my name is Tom Hays. The Northwest Ohio Aggregation Coalition (NOAC) and our 125,000 household, small business, and family farm customers thank you for this opportunity to present testimony to oppose Sub. HB 79.

Sub. HB 79 will increase utility bills and is a very bad deal for customers. Proponents claim there is a \$1.50/month (residential) and \$7.50/month (commercial) "cost-cap" on customers' bills. This is simply false. The legislation codifies the right for utilities to charge customers "lost distribution revenue", "utility incentives", and "PUCO oversight costs" – that are not included in the "cost cap".

How much will these programs actually cost your constituents? We don't know. We do know that previous EE programs that included these types of recovery mechanisms – justifiably eliminated by the General Assembly a few years ago – were staggering, resulting in hundreds of millions of dollars tacked on to customer bills.

Sub. HB 79 is simply not necessary. Current law already allows utility companies to apply to the PUCO to create EE programs. In fact, the PUCO approved low-income assistance, consumer education, and smart thermostat EE programs for each investor-owned electric utility. As an example, the attached extract from a recent PUCO order shows FirstEnergy applied for a whopping \$350 million EE/PDR program over five years. The PUCO "right sized" this to \$70 million (\$60 million for low income and education, \$10 million for smart thermostats), consistent with programs already approved for AEP, AES and Duke. The PUCO stripped out \$290 million from the FirstEnergy proposal finding it unaffordable and unnecessary because the goods and services are widely available in the marketplace.

<u>Under HB 79, the PUCO would be forced to rubber stamp the whole utility company proposal and impose the corporate windfalls. FirstEnergy did not apply for or even ask for them, and the PUCO did not authorize "lost distribution revenue", "utility incentives" or other profit plus costs that would be mandated</u>

by this legislation. But, under Sub H.B. 79's rubber stamp and with its windfalls, FirstEnergy's $350 million boondoggle could double in cost to $700 million imposed on customers.

The scheme is pretty clear to detect.

The promised financial benefits of lowering their bill if customers participate in these utility run programs will evaporate because they will also have to pay for "lost distribution revenue", "utility incentives", and "oversight costs". When customers don't participate in the program, they still must pay for their neighbor's "rebate" and the massive mandated corporate windfalls. Customers pay for everything. Every cent. Heads the utilities win, tails the customers lose. All of this for potential energy savings of less than one half of one percent. Either way, electric bills will go up.

Despite repeated proponent claims, Sub. HB 79 is in no meaningful sense a voluntary program. Customers get two notices and one chance to affirmatively opt out. If they miss this one chance, they will be held captive for the length of the program. They cannot opt out at any time whether they participate in a program or not. Large companies must opt-in – it is truly voluntary for them. But regular folks who are our families, farms, and small businesses are disrespected.

NOAC was grateful—and greatly relieved— to hear recently reported overtures from the Senate that a clean and comprehensive look at electric rates and energy needs would be part of the upcoming GA's agenda. So much good can come of this approach. NOAC looks forward to helping with common sense cost saving suggestions for your constituents, and we respectfully ask that you vote no on Sub. HB 79.

ENERGY EFFICIENCY EXTRACT

PUCO ORDER AND OPINION IN FIRSTENRGY ESP5 CASE DATED 5/15/2034 CASE NO. 23-301

{¶ 229} The Commission finds that the Companies' proposed energy efficiency programs should be modified and approved. We will approve the proposed Low-Income Energy Efficiency program and the proposed Energy Education program as recommended by Staff (Staff Ex. 3 at 8). As noted by the Companies, the Energy Education program will educate residential customers about energy efficiency and conservation, including a component aimed to provide classroom-based education focused on energy education and awareness to encourage conservation at home. FirstEnergy witness Miller testified to projected benefits of the Energy Education program, noting the program is expected to provide 32,952 MWh in average incremental annual energy savings, 5.8 MW in average incremental annual demand savings, and $1.1 million in average annual incentives to customers, at an average annual total cost of $3.6 million. (Co. Ex. 5 at 14-16, Attach. ECM2.) FirstEnergy's proposed Low-Income Energy Efficiency program likewise provides significant benefits and represents a continuation and expansion of the existing Community Connections program. Through this program, qualifying low-income customers39 will have the opportunity to receive energy efficiency and weatherization measures, upgrades, and education at no additional cost, as well as be able to undergo energy audits designed to promote a comprehensive approach to energy efficiency. The Low-Income Energy Efficiency program is projected to provide 5,382 MWh in average incremental annual energy savings, 0.8 MW in average incremental annual demand savings, and $7.4 million in average annual incentives to customers, at an average annual total cost of $8.6 million over the 4- year term of the EE/PDR Plan. This amount represents an increase of approximately $2 million annually to provide program services to additional income qualified customers, estimating a total of 14,800 income qualified customers being able to participate. (Co. Ex. 5 at 17-19, Attach. ECM-2.) CUB and OPAE, two parties who represent the interests of low39 This program will be available to customers up to 200 percent of the federal poverty level (Co. Ex. 5 at 17). 23-301-EL-SSO -130 - income residential customers, note their support of these programs, arguing that low income customers have disproportionately high energy

burdens compared to non-low income householders (OPAE Ex. 1 at 4). Furthermore, we agree that the approval of the Low-Income Energy Efficiency program is consistent with the state policy of protecting at risk populations, as codified in R.C. 4928.02(L). As such, we believe these two programs represent cost-effective energy efficiency measures that would not otherwise be available to FirstEnergy's residential customers.

¶ 230} We also will adopt Staff's recommendation for the elimination of the Residential Rebate program and the Energy Solutions for Business program (Staff Ex. 3 at 8). Instead, and consistent with recent precedent, we agree with several of the points raised by NRG, OELC, OMAEG, Kroger, Nucor, RESA, NOAC, OCC, and IGS in opposition to these programs and find they are better suited for the competitive market, where both residential and non-residential customers will be able to obtain products and services to meet their individual needs. See, e.g., In re the Commission's Investigation into the Implementation of the Federal Infrastructure Investment and Jobs Act's Demand Response PURPA Standard, Case No. 22-1024-AU-COI, Finding and Order (Nov. 1, 2023) at ¶28; Columbia Rate Case, Opinion & Order (Jan. 26, 2023) at ¶56; DEO Alternative Rate Plan Case, Opinion & Order (Oct. 4, 2023) at ¶49; In re the Application of Duke Energy Ohio, Inc., Case Nos. 20-1013- EL-POR, et al., Entry (June 17, 2020); 2021 Duke Rate Case, Opinion and Order (Dec. 14, 2022) at ¶¶71–72, 173); In re the

Application of Duke Energy Ohio, Inc., Case Nos. 16-576-EL-POR, et al., Entry (Dec. 30, 2020) at ¶9. This is especially true for non-residential customers, as these customers already have multiple options available to undertake energy efficiency or demand reduction initiatives that suit their individual needs (Co. Ex. 5 at 7-8; Tr. Vol. IV at 823-24). Further, as to the affordability of such programs, we find that the annual budget of $56,465,014 proposed for these programs represents an excessive cost to ratepayers, especially given comparable programs are readily available in the competitive market (Co. Ex. 5 at Attach. ECM-2). DEO Alternative Rate Plan Case, Opinion and Order (Oct. 4, 2023) at ¶49. 23-301-EL-SSO -131 –

{¶ 231} Ultimately, we agree with Staff witness Braun that the approach adopted in this Opinion and Order, which relies more heavily on the competitive market than utility programs to offer

energy efficiency products, is consistent with the approach the Commission has adopted in recent cases while still offering low-income customers the opportunity to participate in energy efficiency programs that the competitive market may not provide (Staff Ex. 3 at 8-9). Columbia Rate Case, Opinion and Order (Jan. 26, 2023) at ¶56; AEP Ohio Rate Case, Opinion and Order (Nov. 17, 2021) at ¶¶128, 173; DEO Alternative Rate Plan Case, Opinion and Order (Oct. 4, 2023) at ¶49. Additionally, we find that Energy Education and Low-Income Energy Efficiency programs should remain in place for the full five-year term of ESP V, as suggested by OCC and OPAE.

{¶ 232} Staff also recommends approval of the Demand Response for Residential program. We do not find that this program should be adopted. Instead, we direct the Companies to develop and propose a smart thermostat rebate program with an annual budget of $2,000,000 for the entire five-year term of ESP V, which represents a program of appropriate size and scale to be offered to FirstEnergy's residential customers at this time.[40] The evidence in the record demonstrates that smart thermostats are an essential tool which can facilitate market-based solutions for energy efficiency (Tr. Vol. IV at 906, 910; Tr. Vol. V at 1034-36, 1043-44; Tr. Vol. X at 1800-02, 1818-19, 1841-42). Further, the Commission has recently found such programs to strike a balance between the various objectives outlined in R.C. 4928.02, including the promotion of effective competition and ensuring all Ohioans maintain access to reliable electric service. See AEP Ohio ESP V Case, Opinion and Order (Apr. 3, 2024) at ¶153. Moreover, this cost-effective alternative to the Demand Response for Residential program[41] will assist with the purchase of smart thermostats, thus providing participating residential customers another tool to better manage their electric usage and potentially reduce their electric bills and risk of disconnection. As noted above, improvements in affordability have been a factor the Commission has considered when evaluating proposed energy efficiency programs and it remains an important factor in our consideration of the Companies' Application. DEO Alternative Rate Plan Case, Opinion and Order (Oct. 4, 2023) at ¶49. A smart thermostat rebate program will encourage innovation and market access to demand-side management while at the same time provide FirstEnergy with the ability to take actions that will improve the distribution grid, promoting several principles outlined in R.C. 4928.02, including enhanced reliability performance.

FOOT NOTE 40: We note that the Companies recently proposed a smart thermostat program in a stipulation in the Grid Mod II Case, which is currently set for hearing in June of this year. Grid Mod II Case, Joint Stipulation (Apr. 12, 2024). If the Commission were to approve this stipulation, nothing in this Opinion and Order precludes the

Companies from combining the two programs provided that spending does not exceed the combined cap of the two programs. Parties will be able to opine on that issue during the hearing.

{¶ 233} Given the directive to implement a smart thermostat rebate program, the Commission also accepts the suggestion of NRG, RESA, and IGS to create a working group for FirstEnergy, Staff, CRES providers, and other interested stakeholders (such as smart thermostat vendors) to collaborate to discuss implementation and ways to maximize the benefits associated with the program (RESA/IGS Ex. 1 at 15-18). The Commission also advises the working group that the smart thermostat rebate program contemplated by this Opinion and Order should consider the terms of the program adopted in AEP Ohio's latest ESP. AEP Ohio ESP V Case, Opinion and Order (Apr. 3, 2024) at 36-38. The working group should also discuss and implement any reasonable and cost-effective measures necessary to preserve CRES providers' communication channels with their CRES customers relative to programming initiated pursuant to market-based activities, and will further explore a reasonable and cost-effective solution for any potential limitations to CRES provider offered programs that could be impacted or limited due to physical or technology capabilities with smart thermostats and the vendors running the smart thermostat demand response operations, mitigating the concerns raised by RESA, IGS, and OELC (RESA/IGS Ex. 1 at 15; RESA Ex. 16 at 13-14; Tr. Vol. X at 1826-27).
FOOT NOTE 41: The adopted smart thermostat rebate program will be capped at $2,000,000, which is $1,456,539 less costly than the Demand Response for Residential program initially proposed by the Companies (Co. Ex. 5 at Attach. ECM-2).
{¶ 234} Finally, we address several recommendations made by Staff and others related to the Rider EEC mechanism. Initially, Staff suggests that the Companies only be allowed to recover

expenses that are already incurred, known, and measurable, and should not be permitted to utilize projected expenses in the calculation of the rider (Tr. Vol. XIV at 2435-2436). Consistent with our findings pertaining to other riders, we agree that actual expenses would be more appropriate than utilizing projected expenses. Additionally, to the extent further clarification is needed, we agree with Staff's suggestion that only expenses incurred during the five-year approved term of the EE/PDR plan will be recoverable through Rider EEC. Further, Companies will not be authorized to accrue carrying charges for deferring recovery of expenses that could have been recovered in a prior EEC filing (Staff Ex. 8 at 23). We also agree with Staff that the annual Rider EEC filing should be docketed at least 60 days prior to its effective date, consistent with our adoption of this requirement for other rider mechanisms in ESP V (Staff Ex. 3 at 24). Further, consistent with our findings related to Riders SCR and VMC, we direct FirstEnergy to include the language "to the extent permitted by law" in the Rider EEC tariff language providing that Rider EEC be subject to reconciliation, including refunds, as the result of audits conducted by Staff. Finally, we adopt OCC's proposal to require competitive bidding for any outside implementation vendors, to ensure capable and cost-effective vendors are utilized for the duration of the approved programs.

{¶ 235} As modified by the Commission, the annual program budget for the EE/PDR plan should be $14,206,663 per year, compared to the $72.1 million annual budget proposed by the Companies (Co. Ex. 5 at ECM-2; Staff Ex. 3 at 4).42 Accordingly, the adopted EE/PDR plan is annually $57,921,552 less costly than that proposed by the Companies in its Application, or

approximately $289,607,760 less costly over the adopted five-year term of ESP V. While OEC cautions against approving only a portion of the plan, we believe our decision is aligned with recently approved energy efficiency programs, and also takes into account programs that are appropriate in size and scale to allow the Companies to provide customers with energy efficiency and demand response services (Staff Ex. 3 at 5; Tr. Vol. IX at 1705, 1710; Tr. Vol. XIII at 2308).

FOOT NOTE 242: The total annual program budget for the EE/PDR plan can be broken up, as follows: $3,592,681 projected for Energy Education program, $8,613,982 for the

Low-Income Energy Efficiency program, and $2,000,000 for the smart thermostat