FirstEnergy®

Senate Bill 2 of the 136th Ohio General Assembly

Opponent Testimony of Torrence L. Hinton
President of FirstEnergy Ohio
Before the Ohio Senate Energy Committee
February 25, 2025

Chair Chavez, Vice Chair Landis, Ranking Member Smith, and members of the Energy Committee, my name is Torrence L. Hinton, and I am the President of FirstEnergy Ohio. I joined FirstEnergy in June 2024. FirstEnergy is headquartered in Akron, and its ten regulated distribution companies form one of the nation's largest investor-owned electric systems serving six million customers in the Midwest and Mid-Atlantic regions. FirstEnergy's distribution utilities operate more than 269,000 miles of distribution lines and are dedicated to providing customers with safe, reliable, and responsive service. Our Ohio utilities and their thousands of employees provide electric distribution service to our more than 2.1 million customers.

On behalf of FirstEnergy's three Ohio electric distribution utilities (EDUs), Ohio Edison, The Illuminating Company, and Toledo Edison, as well as FirstEnergy's transmission subsidiary serving Ohio, American Transmission Systems, Inc. (ATSI), I appreciate the opportunity to offer testimony on portions of S.B. 2.

Electricity is the lifeblood of the communities we serve. FirstEnergy shares this Committee's goal of ensuring the delivery of safe, reliable, and affordable power to our Ohio customers. S.B. 2 seems to assume that competitive market forces work for all aspects of electric service. Although competitive market forces work for electric generation service, electric service consists of not just generation, but also transmission and distribution. Only generation service is provided through competitive markets.

While Ohio policy is to promote competitive markets for electric generation service, through independent power producers (IPPs) and competitive retail electric service (CRES) providers, transmission and distribution service are provided by regulated utilities like FirstEnergy. The delivery of electricity through transmission and distribution lines is not subject to competitive market forces. Rather, Ohio's distribution and transmission utilities operate under a regulatory compact, in which the utility is obligated to serve all customers within an exclusive service territory at just and reasonable rates which give the utility an opportunity to earn a fair return on shareholders' investment, and the utility submits to full regulatory scrutiny of its costs and operations. Generation service has no similar regulatory compact, and its pricing is subject to competitive market forces.

FirstEnergy supports the General Assembly's intent to focus on competitive market solutions to address generation resource adequacy across Ohio and the surrounding region, and to provide choice for the citizens in Ohio and to power growth and development within our communities. We also appreciate that S.B. 2 includes provisions that would support improvements to utility transmission and distribution service, including the use of fully forecasted future test years in base rate cases, as well as statutory deadlines for resolving base rate cases and Ohio Power Siting Board

(OPSB) permitting and siting applications. However, some of the changes proposed in S.B. 2 do not promote competitive generation markets and would hinder regulated utilities' ability to deliver safe, reliable transmission and distribution service. S.B. 2's changes will eliminate important tools and flexibility currently available to the Public Utilities Commission of Ohio (Commission) to respond to changing circumstances that may impact the safety and reliability of electric operations and adversely affect our customers and our communities.

First, S.B. 2 would eliminate electric security plans (ESPs) and require EDUs to provide generation service to non-shopping customers exclusively through market rate offers (MROs). Eliminating ESPs will do nothing to improve competition or enhance electric generation markets. ESPs procure generation service for non-shopping customers through the competitive electric generation markets. In addition, ESPs provide the Commission and EDUs with essential flexibility to address challenges to electric distribution service, such as weather, economic trends, or new technologies. Through an ESP, the Commission can authorize provisions to respond to these challenges through cost recovery mechanisms (i.e., riders) that support distribution infrastructure investments, grid modernization, vegetation management, and storm restoration. ESPs also enable the Commission to assist customers through demand response and energy efficiency programs, through stewardship initiatives, including support for low-income customers, and through economic development and job retention programs.

Before an ESP can be approved, the Commission must find that it is more favorable in the aggregate than an MRO, meaning that ESPs are only approved if they are beneficial to customers. FirstEnergy Ohio's ESPs have allowed us to make timely, essential investments in our distribution system to ensure the delivery of safe, reliable, and affordable power to our Ohio customers in ways that MROs would not. Our Ohio utilities invest about a half a billion dollars annually in the distribution system. When combined with the work ATSI does on the transmission system, the FirstEnergy investment in Ohio is over one billion dollars each year. These important investments help maintain safe and reliable service for customers.

When the Commission has compared the benefits to customers of ESPs versus MROs, it has found costs recovered through ESP distribution riders are the same as the costs that would be recovered from customers through base rates under an MRO-only approach. Eliminating ESPs does not eliminate the costs associated with these ESP riders, it simply changes the recovery mechanism. Base rate cases are an important component of the regulatory compact, but requiring an MRO-only approach will remove the benefits associated with rider recovery between base rate cases. Riders that recover capital investment costs support a proactive approach to addressing distribution infrastructure. This focus on reliability is an asset to ratepayers, and thus a benefit of the ESP. Other ESP riders support utilities' critical maintenance activities such as storm restoration expense and vegetation management expense. Riders are a useful tool available under an ESP to support safe and reliable service to customers and provide important consumer protections. Riders allow for more gradual rate impacts to customers, and provide transparency to the Commission, stakeholders, and customers through frequent updates and audits to ensure customers only pay for the utility's actual costs, subject to timely regulatory review.

Should ESPs be eliminated, FirstEnergy recommends a holistic consideration of alternative ratemaking approaches that provide consumer protections while supporting utility investments needed to continue to support safe and reliable service, growth, and economic development.

FirstEnergy commits to work with this Committee, its peer EDUs, and other stakeholders to explore other options.

Second, S.B. 2 undermines the established principle that rates set by the Commission are the lawful rates until set aside by the courts. This provision, which would require EDUs to refund Commission-approved charges later found to be unlawful, would reverse the rule against retroactive ratemaking and nearly seventy years of judicial precedent. This rule, long a critical component of Ohio's regulatory framework, provides stability and predictability for both utilities and customers, by ensuring that rate changes can only be applied prospectively. The rule against retroactive ratemaking also enables EDUs to attract capital on reasonable terms to fund significant infrastructure investments. S.B. 2's refund provision would not promote competitive generation markets.

Third, S.B. 2 would require an OPSB certificate, which is currently required only for new projects, before electric utilities could make "like for like" replacements of existing equipment on "electric transmission lines and associated facilities" rated at 100kV and higher. This provision would not promote electric generation competition yet would hamper regulated utilities' ability to make timely emergency and storm repairs. For example, ATSI would need OPSB authorization before repairing a pole or conductor on a high-voltage line, tripling the number of annual applications. Since even an expedited OPSB application can take 90 days for approval, this provision jeopardizes the safe and reliable operation of the transmission system and increases customer costs.

Fourth, S.B. 2's proposal to establish supplier-consolidated billing would make unregulated CRES providers, who provide only retail generation service, responsible for customer service to utility customers, rather than the utility. CRES providers would make important decisions presently made by Ohio's regulated utilities, such as the decision to disconnect customers' distribution service for nonpayment. Yet CRES providers are not subject to the same degree of Commission oversight as utilities subject to the regulatory compact.

Finally, with respect to the challenge of electric generation resource adequacy, S.B. 2 does not provide for the development of new generation resources. S.B. 2 only prohibits regulated utilities from owning or operating generation under any circumstances. PJM forecasts indicate demand will exceed generation supply by 2030. FirstEnergy supports the development of competitive generation markets to address this resource challenge. All S.B. 2 does, however, is to prohibit utility ownership or operation of electric generation, eliminating the option under current law for a utility, with PUCO approval, to own or operate generation upon a demonstration of need. The current law positions the utility as a backstop if competitive markets cannot meet projected demand. The law does not contemplate utility ownership of generation unless competitive markets have already failed. By eliminating the utility backstop, S.B. 2 would leave the PUCO with no recourse if IPPs do not build the necessary electric generation, increasing risk of supply shortages and leading to higher prices for consumers. While utility ownership of generation is not FirstEnergy's preferred path for Ohio, S.B. 2's elimination of utility-owned generation as a backstop removes an important tool from policymakers' toolbox as they contend with the resource adequacy challenge.

We appreciate this Committee's thoughtful consideration of the proposed utility reforms currently included in S.B. 2 and your openness to our suggestions. For the reasons stated, portions of S.B.

2 would disrupt the regulatory compact that has allowed Ohio's EDUs to provide transmission and distribution service safely and reliably, without promoting competitive generation markets. While FirstEnergy recognizes that customer and generation needs are evolving, some of S.B. 2's changes would do more harm than good to customers, EDUs, and communities. I therefore respectfully ask that this Committee not recommend S.B. 2 for passage by the Senate in its current form.

Thank you for giving me the opportunity to testify about this important legislation.