

Northwest Ohio **Aggregation Coalition**



Written Proponent Testimony

March 4, 2025

Cities

Maumee

Northwood

Oregon

Perrysburg

Rossford

Sylvania

Toledo

Waterville

Villages

Delta

Holland

Ottawa Hills

Walbridge

Townships

Lake

Perrysburg

Counties

Lucas

SB 2

**Thomas R. Hays on behalf of the
Northwest Ohio Aggregation Coalition (NOAC)**

Chair Chavez, Vice Chair Landis, Ranking Member Smith and Members of the Energy Committee, the Northwest Ohio Aggregation Coalition (NOAC) serves 125,000 homeowners, renters, farmers and small businesses that participate in our electric aggregations. We thank you for Sub. SB 2 because it will lower electric bills and help insure adequate supply.

We represent customers in the FirstEnergy Territory. NOAC along with the OCC, OMA and many other consumer groups have repeatedly testified in favor of the reforms in SB 2. The Bill is correct to: (1) end ESPs and their wasteful spending, (2) end the crony capitalism of the OVEC subsidies, (3) require refunds when a tariff provision is found unlawful, and (4) protect aggregations that pool residential and small business buying power. But we urge Sub. SB 2 be amended to set an end date certain as soon as is practicable for both ESPs and OVEC. It is essential to immediately put a silver bullet in FirstEnergy's "Zombie ESP."

What is a Zombie ESP? It is one whose original term expired, but then the utility restores it to life by rejecting its new ESP approved by the PUCO. The essentials of the *FirstEnergy Zombie ESP* are:

- In May 2016 the PUCO approved FirstEnergy's ESP 4 for an 8-year term, the longest of any ESP ever. FirstEnergy also received far, far more lucrative terms than any other Ohio utility.
- In July 2021 FirstEnergy entered into a federal plea deal. There FirstEnergy admitted that at the ESP 4 proceedings it paid off opposing counsel (Samuel Randazzo) in exchange for his client "industrial group withdrawing its opposition to a 2014 PUCO Electric Security Plan [ESP 4] settlement package involving FirstEnergy Corp.'s Ohio electric distribution subsidiaries." This explains the loot in ESP 4 versus other utilities' ESPs.
- In May 2024 the PUCO modified and approved FirstEnergy's new ESP 5 application. The PUCO imposed terms to bring it in line with ESPs at other utilities. ESP 4 original term ended May 31 and the new ESP 5 began June 1, 2024.
- In November 2024 FirstEnergy invoked its unilateral right under the Revised Code to withdraw the modified ESP 5 and revert to the corruptly obtained ESP 4. Thus FirstEnergy's Zombie ESP4 came back to life.
- The Revised Code sets no end date for Zombie ESPs.

Further Gamesmanship by FirstEnergy:

- Soon after SB2/HB15 were introduced, FirstEnergy recognized it would eliminate the ESP window. FirstEnergy filed a new ESP 6 application that seeks provisions the PUCO denied in ESP 5.

In sum, FirstEnergy's Zombie ESP 4 and its attempt at ESP 6 are everything that SB2 is trying to reform. (An extract from the plea agreement is attached.)

NOAC and all of FirstEnergy's two million customers from Williams County through the 14 NOAC communities, Sandusky County, Cleveland, Ashtabula, and down to Portage and Mahoning Counties have suffered enough. FirstEnergy's Zombie ESP 4 original terms ended on May 31, 2024. Even one more day is one too many.

We urge the Committee to end ESPs six months after the legislation becomes effective. This will give the PUCO time to act. But certainly, the Committee should end Zombie ESP's (those ESPs whose original expirations passed) in six months and immediately end any existing ESP applications filed after SB 2 was introduced.

NOAC watched the hearings to date. The Committee members' focus and candor impressed us. We appreciate the Chair and Sponsor's willingness to consider improvements to the bill, like those we suggest, that achieve its purposes by fairly lowering electrical bills more quickly. Thank you for this opportunity to testify.

Deferred Prosecution Agreement, dated as of July 21, 2021

EX-10.1 2 ex101-8k7x22x21.htm EX-10.1 Document

Exhibit 10.1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

**ATTACHMENT A:
STATEMENT OF FACTS**

The United States and FirstEnergy Corp. stipulate and agree that if this case proceeded to trial, the United States would prove the facts set forth below beyond a reasonable doubt. They further stipulate and agree that these are not all of the facts that the United States would prove if this case had proceeded to trial.

FirstEnergy Corp.'s Consulting Agreement with Public Official B

Prior to December 2018, FirstEnergy Corp. made payments to Public Official B pursuant to agreements with Public Official B through Company 1. [These payments were to Attorney Samuel Randazzo and then continued when he became Chairman of the PUCO]. The payments were made from FirstEnergy Service to Company 1's bank account, in part, for Public Official B's benefit.

A 2013 consulting agreement was subsequently amended in 2015. The 2015 amendment [which increased the payments to \$1 million/year for ten years.] coincided with and was made in exchange for Public Official B's [then Attorney Samuel Randazzo counsel for] industrial group withdrawing

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its opposition to a 2014 PUCO Electric Security Plan settlement package involving FirstEnergy Corp.'s Ohio electric distribution subsidiaries. The amended agreement called for an increase in Public Official B's retainer and supplemental payments through 2024. Although the amended agreement does not appear to have been executed, from 2015 through June 2018, FirstEnergy Corp. paid into the Company 1 account pursuant to the terms of the agreement with Public Official B. Invoices from Company 1 were

structured to bypass FirstEnergy Corp.'s Level of Signature Authority levels for purposes of internal approval of the payments.