IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO *ex rel.* Dave Yost, Ohio Attorney General, Plaintiff, v. FIRSTENERGY CORP., *et al.*, Defendants.	)	Case No. 20-CV-6281 Judge Christopher M. Brown
CITY OF CINCINNATI, *et al.*, Plaintiffs, v. FIRSTENERGY CORP., *et al.*, Defendants.	)	Case No. 20-CV-7005 Judge Christopher M. Brown
STATE OF OHIO *ex rel.* Dave Yost, Ohio Attorney General, Plaintiff, v. ENERGY HARBOR CORP., *et al.*, Defendants.	)	Case No. 20-CV-7386 Judge Christopher M. Brown

MOTION BY PLAINTIFF STATE OF OHIO FOR TEMPORARY RESTRAINING ORDER & PRELIMINARY INJUNCTION AGAINST FIRSTENERGY DEFENDANTS

House Bill 6 contained something even more costly to customers than the nuclear bailout. It also enacted a perverse form of decoupling uniquely designed to allow FirstEnergy to overcharge its customers.[1] On December 30, 2020, the PUCO approved a rider under this new law that surcharges FirstEnergy customers $102 million in 2021 for the sole purpose of padding FirstEnergy's bottom-line. Thus, the State of Ohio returns to this Court seeking the second of two riffle-shot-injunctions aimed at stopping the financial backers of the H.B.6 bribery scheme from obscenely profiting therefrom at the expense of Ohioans.

Plaintiff, the State of Ohio, by and through its Attorney General, Dave Yost, (hereinafter "Ohio" or "the State") herby moves for a preliminary injunction against Defendant FirstEnergy Corp. and it wholly owned subsidiaries and business units (collectively "FirstEnergy") to stop them from collecting excess profits afforded to FirstEnergy under H.B. 6. This Motion is founded on the same facts as the December 21, 2020 injunction, which enjoined a rider created under H.B. 6 to benefit Defendant Energy Harbor Corp. and its wholly-owned subsidiaries (collectively "Energy Harbor"). This Motion simply seeks to expand the scope of the preliminary relief already afforded to also enjoin a H.B.6 created rider that benefits FirstEnergy.

The Court has already concluded that the State is likely to prevail on the merits in its claims against FirstEnergy and the other defendants when the Court issued the first preliminary injunction, which saved the ratepayers of the State from $170 million in annual rate increases intended to benefit Energy Harbor. An expanded injunction is needed to save FirstEnergy customers (specifically, residential and general customers) from a further $102 million increase levied against them alone, as a result of H.B. 6, for the sole purpose of granting FirstEnergy excessive profits.

[1] The State of Ohio does not criticize decoupling generally, or as authorized under other Ohio statutes.

Specifically, the State asks that the Court preliminarily enjoin FirstEnergy from collecting approximately $102 million in 2021[2] in excessive profits from residential, church, school, local government, and other customers (including the State of Ohio), through a preliminary injunctive order that revokes the Public Utilities Commission of Ohio's ("PUCO") approval of "First Energy Corp. Conservation Support Rider ('Rider CSR')" approved by the PUCO on December 30, 2020, under case number 19-2080-EL-ATA.[3]

In approving Rider CSR, the PUCO described Rider CSR "as a two-part decoupling mechanism" "which was enacted as a part of Am. Sub. H.B. 6."[4] The PUCO concluded the following: "The proposed tariff rates for both Rate 1 and Rate 2 of Rider CSR will result in increases for nearly all rate RS and rate GS customers within the Companies service territories."[5] Nevertheless, as required by H.B. 6, the PUCO approved (or more precisely, did not disallow) the rate tariff applications, which became effective January 1, 2021.

Accordingly, the State of Ohio requests that this Court order all of the following:

1. FirstEnergy and its subsidiaries cease collecting Rider CSR.
2. Revocation of the PUCO approval of Rider CSR;
3. FirstEnergy to file a motion for reconsideration of the approval of the tariffs in case number 19-2080-EL-ATA, withdraw its application for Rider CSR, and dismiss the application once the PUCO effectuates this Court's revocation of the prior approval;
4. Any amounts collected under Rider CSR be refunded to the customers who paid them; and,

[2] And similar amounts in subsequent years.
[3] *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a D*, Pub. Util. Comm. No. 19-2080-EL-ATA, Staff Recommendation in the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company for an update to Tariffs in Rider CSR (filed Dec. 30, 2020).
[4] *Id.*
[5] *Id.*

5. Any other preliminary injunctive relief the Court deems equitable and appropriate to protect the State of Ohio, and Ohio ratepayers.

Granting this preliminary relief restores the *status quo anti* by enjoining the effectiveness of this criminally offensive portion of H.B. 6 as collection begins, just days after Rider CSR was approved for 2021. Granting the preliminary injunction also affords the Court with the broadest possible latitude to fashion an appropriate remedy at the conclusion of the case. Failure to grant the preliminary relief may render complete relief impossible because of recent Ohio Supreme Court precedent stating that illegally collected rate tariffs are nonrefundable. No third party will be harmed by the injunction, because the injunction specifically targets FirstEnergy, the corporation that bought and paid for H.B. 6.

The Court has already held that the Attorney General is likely to succeed on the merits in establishing that H.B. 6 was the product of a civil RICO conspiracy in violation of the Ohio Corrupt Practices Act ("OCPA"). At the end of this case, the Court is likely to conclude that the provisions for decoupling in H.B.6 were enacted as a result of public corruption designed to line a few pockets in exchange for "essentially tak[ing] about one-third of our company [FirstEnergy] and I think makes it somewhat recession-proof," as Chuck Jones, FirstEnergy's then-CEO, stated in a 2019 investors' call.[6] This was the second, and quieter of, the FirstEnergy one-two-punch in H.B. 6. First, the nuclear bailout allowed it to spin-off Energy Harbor. Then, the decoupling provision guaranteed FirstEnergy a minimum of $978 million in gross annual revenues—they highest it has ever had—into perpetuity. The preliminary injunction is necessary in order to protect the State of

[6] *See* Jeremy Pelzer, *Here's What HB6's Controversial 'Decoupling' Policy Is and Why Ohio Lawmakers Are Trying to Repeal It*, CLEVELAND.COM (Dec. 2, 2020), https://www.cleveland.com/open/2020/12/heres-what-hb6s-controversial-decoupling-policy-is-and-why-ohio-lawmakers-are-trying-to-repeal-it.html.

Ohio and other FirstEnergy's ratepayers[7], is in the public interest and will not irreparably harm anyone. A Temporary Restraining Order is necessary because of the non-refundable nature of paid rates. Accordingly, the TRO and preliminary injunction should be issued forthwith.

DATED: January 13, 2021

Respectfully submitted,
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[7] The rates are charged to customers of FirstEnergy subsidiaries Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

MEMORANDUM IN SUPPORT

In the same December 30, 2020 meeting where PUCO revoked the Clean Air Fund rider as directed by this Court, which counteracted the likely corruption that berthed H.B. 6, PUCO (nevertheless) approved the equally sinister Rider CSR. Starting on January 1, 2021, FirstEnergy is now entitled to collect an extra $102 million this year from its residential and retail customers a fee to guarantee FirstEnergy will, for years to come, earn at least as much revenue as it earned in its most lucrative year ever—2018. The Rider CSR amount will vary each year to guarantee FirstEnergy's a static income level at its highwater mark. It will be ever higher in the future if energy use decreases or ratepayers use more efficient appliances and lights.

Just as the charges to ratepayers to fund the nuclear bail provisions of H.B. 6 will be forever unrecoverable if not prevented, so too will those charges to ratepayers under decoupling. As Rider CSR is retained by the utility to whom it is paid, under *In re Application of Ohio Edison Co*., no refund is available for recovered rates unless the tariff applicable to the rate sets forth a refund mechanism, which this one does not. 157 Ohio St.3d 73, 2019-Ohio-2401, ¶ 23, construing R.C. 4905.32. This fact necessitates not just the preliminary injunction, but also a TRO.

BACKGROUND

A. Facts

The Court is well aware of the facts established at the December 21, 2020 hearing. Those facts are established in this case, and bear no repeating here. The short version is that FirstEnergy bought and paid for H.B. 6 to enact legislation grossly favorable and lucrative to FirstEnergy, and its bankruptcy filing subsidiary FirstEnergy Solutions (n/k/a Energy Harbor). Ugly methods were openly used to prevent a referendum of H.B. 6, including both bribing and/or intimidating petition

circulators. H.B. 6's nuclear fund bailed out the subsidiary/spinoff; H.B. 6's decoupling guaranteed FirstEnergy's operational profits.

In October 2019, the then FirstEnergy CEO took a victory lap--highlighting the provision of H.B. 6 that authorized Rider CSR, stating it "recession-proofed" one-third of FirstEnergy. FirstEnergy has since cleared its C-Suites of those responsible for H.B. 6. The criminal corrupt practices have been admitted by two defendants herein—including a former FirstEnergy lobbyist. Thus, FirstEnergy's greed was the heart and soul of this corrupt enterprise. It should not be permitted to profit therefrom. Rider CSR is expressly designed to guarantee FirstEnergy excess profits, and thus should be enjoined.

Despite discovery being stayed, additional facts continue to come to light cementing the connections between FirstEnergy and H.B. 6. The most recent revelations begin to shed light on FirstEnergy's use of Sam Randazzo, who has resigned as chair of PUCO after a H.B.6 related FBI raid on his house. FirstEnergy admitted to clearing its C-suites because of a $4 million payment to an entity linked to Randazzo made immediately prior to Randazzo becoming chair of PUCO.[8] The entity is believed to be Sustain Funding Alliance of Ohio.[9] In its SEC filing, FirstEnergy itself questions the validity of the payment through a significant use of the word "purported." FirstEnergy stated the payment was "in connection with the termination of a *purported* consulting agreement."[10] FirstEnergy admits the payment happened, but implies that the "purported" basis is invalid. Who was it that FirstEnergy claims gave that purported that basis: FirstEnergy, itself,

[8] Laura A. Bischoff, *FirstEnergy Paid $4M to End a Contract with an Ohio Regulator, Company Says,* SPRINGFIELD NEWS-SUN (Nov. 19, 2020), https://www.springfieldnewssun.com/news/firstenergy-paid-4m-to-end-a-contract-with-an-ohio-regulator-company-says/I5PXVRN5UZDL5FX343OBAI2NFA/.
[9] *Id.*
[10] (Emphasis added.) FirstEnergy 10-K/A filed Nov. 19, 2020, Explanatory Note, pg. ii (filed Nov. 19, 2020), https://investors.firstenergycorp.com/sec-filings-and-reports/sec-filings/default.aspx.

when it made the payment. Thus, FirstEnergy admits to improper conduct. This, of course, begs the question of what the $4 million Randazzo payment actually paid for.

It appears to have purchased Randazzo's ongoing efforts—even while chair of the PUCO—to craft the language of H.B.6 for FirstEnergy's benefit. Months after the payment, and after Randazzo was PUCO chair, Randazzo and Sustain Funding Alliance of Ohio were lobbying the General Assembly to craft the H.B.6 language and formulating talking points. *See, e.g.*, Exhibit A, Randazzo to Tully, July 5, 2019, with proposed edits to H.B. 6 regrading wind farm certification; Exhibit B, Randazzo to Householder, July 9, 2019, providing comment on AARP's objection to H.B. 6. Thus, this shows one of the routes FirstEnergy used to shape H.B. 6.

B. Statutory Scheme

H.B. 6 enacted a new decoupling mechanism targeted to benefit FirstEnergy codified at R.C. 4928.471. The provision provides, in toto:

> 4928.471 Application to implement a decoupling mechanism.
> (A) Except as provided in division (E) of this section, not earlier than thirty days after the effective date of this section, an electric distribution utility may file an application to implement a decoupling mechanism for the 2019 calendar year and each calendar year thereafter. For an electric distribution utility that applies for a decoupling mechanism under this section, the base distribution rates for residential and commercial customers shall be decoupled to the base distribution revenue and 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. An application under this division shall not be considered an application under section 4909.18 of the Revised Code.
>
> (B) The commission shall issue an order approving an application for a decoupling mechanism filed under division (A) of this section not later than sixty days after the application is filed. In determining that an application is not unjust and unreasonable, the commission shall verify that the rate schedule or schedules are designed to recover the electric distribution utility's 2018 annual revenues as described in division (A) of this section and that the decoupling rate design is aligned with the rate design of the electric distribution utility's existing base distribution rates. The decoupling mechanism shall recover an amount equal to the base distribution revenue and 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. The decoupling mechanism shall be adjusted annually thereafter to reconcile any over recovery or under recovery from the prior year and to enable an electric distribution utility to recover the same level of revenues described in division (A) of this section in each year.
>
> (C) The commission's approval of a decoupling mechanism under this section shall not affect any other rates, riders, charges, schedules, classifications, or services previously approved by the commission. The decoupling mechanism shall remain in effect until the next time that the electric distribution utility applies for and the commission approves base distribution rates for the utility under section 4909.18 of the Revised Code.
>
> (D) If the commission determines that approving a decoupling mechanism will result in a double recovery by the electric distribution utility, the commission shall not approve the application unless the utility cures the double recovery.
>
> (E) Divisions (A), (B), and (C) of this section shall not apply to an electric distribution utility that has base distribution rates that became effective between December 31, 2018, and the effective date of this section pursuant to an application for an increase in base distribution rates filed under section 4909.18 of the Revised Code.

The H.B.6 decoupling provision was odd, and especially beneficial to FirstEnergy, because rather than allowing the PUCO to determine an appropriate profit level, H.B.6 required the PUCO to approve an application that requested a decoupling mechanism "designed to recover the electric distribution utility's 2018 annual revenues." R.C. 4928.471(B). In short, the PUCO must allow the applicant to match its 2018 annual revenues in perpetuity. Of course, 2018 was FirstEnergy's largest annual revenues ever.

In late 2020, legislation was introduced, inter alia, to end all decoupling programs in Ohio. The legislation was not enacted. However, the fiscal analysis provided by the Legislative Service Commission ("LSC") provides an official, neutral explanation of the expected financial impacts

of the legislation. The LSC fiscal analysis explained the following regarding decoupling and FirstEnergy:[11]

Revenue decoupling mechanism

H.B. 772 repeals the legal basis for all varieties of revenue decoupling charges. Revenue decoupling mechanisms preceded H.B. 6, and several EDUs gained PUCO approval for an iteration prior to the enactment of H.B. 6. The three FirstEnergy EDUs[1] jointly applied for their own decoupling mechanism in 2018, but were denied approval by PUCO.[2] Later, these three EDUs gained approval for a unique decoupling mechanism codified by H.B. 6. Table 4 summarizes the annual rider collections forecasted by EDUs in their most current filings. All of these decoupling mechanisms would be repealed under H.B. 772, and the amounts collected by the three FirstEnergy EDUs would be promptly refunded per Section 6 of the bill.

Table 4. Estimated Collections and Monthly Impact of Current Decoupling Mechanisms

EDU	Total Rider Collections in 2020, All Customer Classes	Monthly Residential Rider in 2020
AEP Ohio	$21,132,830	$1.24
Cleveland Electric Illuminating	$9,327,089	$1.01
Dayton Power and Light	$0	$0
Duke Energy Ohio	$6,281,206	67¢
Ohio Edison	$4,704,326	44¢
Toledo Edison	$3,088,997	79¢
Total	**$44,534,448**	**83¢**

Source: PUCO Case Nos. 19-2080-EL-ATA (FirstEnergy's EDUs), 20-0530-EL-RDR (AEP Ohio), and 20-0574-EL-RDR (Duke Energy Ohio)

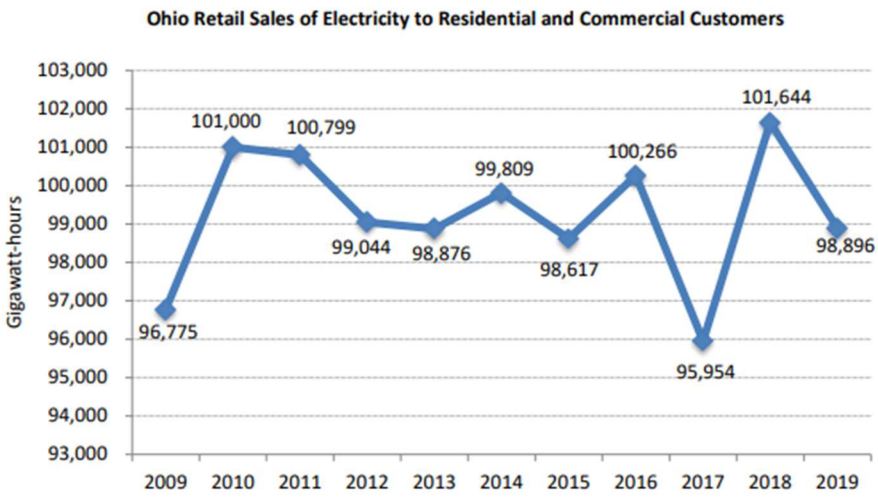
In general, a decoupling mechanism separates a utility's revenues from the volume of electricity it delivers. Consequently, a decoupling mechanism ensures that an EDU's revenue target[3] is reached, regardless of how much electricity is sold. Energy efficiency and peak demand reduction requirements began in 2009, upon the enactment of S.B. 221 of the 127th General Assembly. Decoupling riders have subsequently been implemented for EDUs' residential and commercial customer base. As seen in the chart below, Ohio's overall consumption of electricity attributable to these consumers is largely flat, if not trending slightly downward once adjusted for weather (such an adjustment is excluded from the graph). For this reason, a decoupling mechanism often manifests as a customer charge, but it could provide a credit if consumption exceeds the baseline target. In practice, all decoupling riders have only yielded charges rather than credits for residential customers since their inception.

[1] Specifically, Cleveland Electric Illuminating, Ohio Edison, and Toledo Edison.

[2] Refer to PUCO Case No. 17-0334-EL-ATA.

[3] The type of revenue target can vary, whether based on revenue per customer or an aggregate amount.

[11] Ohio Legislative Service Commission, *HB 772, 133rd General Assembly, Fiscal Note & Local Impact Statement*, https://www.legislature.ohio.gov/download?key=14639&format=pdf (Nov. 20, 2020).



As of this writing, the H.B. 6 decoupling rider (or "Conservation Support rider") only applies to the three FirstEnergy EDUs. Future receipts are measured against its 2018 base distribution revenues. AEP Ohio administers a "Pilot Throughput Balancing Adjustment Rider," which uses the 12-month period ending May 31, 2011, as the baseline year for its revenue target (on a per-customer basis). Duke Energy's customers pay a "Pilot Distribution Decoupling Rider," which also uses a revenue-per-customer basis, but instead uses a baseline year ending March 31, 2017. The decoupling riders of AEP Ohio and Duke Energy further differentiate from the H.B. 6 version because they cap cost increases. PUCO limits annual increases attributable to those riders at 3% per customer class (and potential rate decreases are uncapped). As seen in Table 4, the five EDUs project that their decoupling riders will raise $44.5 million in 2020 from residential and commercial customers.

FirstEnergy

The three FirstEnergy utilities operate under the same base distribution rates imposed in 2009, and this rate freeze will continue through May 31, 2024. Whereas PUCO previously required these EDUs to file an application for new base distribution rates by that date, the Commission later commented in November 2019 that such a requirement is "no longer necessary or appropriate." Although PUCO made this pronouncement in a separate regulatory matter, the declaration has implications for the decoupling mechanism authorized by H.B. 6. The rider only expires once a utility gains PUCO approval for its "next" application of base distribution rates.

Given the other characteristics of the H.B. 6 decoupling rider, FirstEnergy lacks financial incentive to file such an application, as the rider will likely collect larger amounts after 2020. The Ohio Manufacturers' Association submitted testimony to the House Select Committee on Energy Policy and Oversight suggesting ratepayers in the three FirstEnergy territories will collectively pay between $76 million and $83 million per year in decoupling charges. The anticipated collections for 2020 are suppressed by the presence of the energy efficiency and peak demand reduction (EE/PDR) rider, which separately recovers certain lost distribution revenues. Once this EE/PDR charge expires, a portion of its proceeds will instead be recovered through the decoupling rider.

As seen on the above LSC chart, 2018 was the *highest* electrical usage year of the analyzed decade – not an average, not a mid-point.

The total charge of Rider CSR in 2021 to FirstEnergy customers will be $102 million, which is itself a $85 million increase over the 2020 Rider CSR levels.[12] This is because 2020 was a lower energy use year, and so FirstEnergy is permitted to charge its customers even more in 2021.[13] *Id.*

Critically necessitating this injunction, under existing Ohio law, no refund is available for recovered rates unless the tariff applicable to the rate sets forth a refund mechanism. *See In re Application of Ohio Edison Co*., 157 Ohio St.3d 73, 2019-Ohio-2401, ¶ 23, construing R.C. 4905.32. Accordingly, FirstEnergy Rider CSR must be enjoined.

LEGAL STANDARD FOR ISSUANCE OF A PRELIMINARY INJUNCTION

Generally, when weighing whether to grant a preliminary injunction, the Court must consider the following: (1) there is a substantial likelihood that the plaintiff will prevail on the merits, (2) the plaintiff will suffer irreparable injury, (3) whether the preliminary injunction could harm third parties, (4) the public interest would be served. *See, e.g.*, *Vineyard Christian Fellowship of Columbus v. Anderson*, 2015-Ohio-5083, 53 N.E.3d 910, ¶ 11 (10th Dist.). These are "factors to be balanced, not prerequisites to be met." *Southern Glazer's Distribs. of Ohio, LLC v. Great Lakes Brewing Co.*, 860 F.3d 844, 849 (6th Cir.2017). "How strong a claim on the merits is enough depends on the balance of harms: the more net harm an injunction can prevent, the weaker the plaintiff's claim on the merits can be while still supporting some preliminary relief." *Hoosier Energy Rural Elec. Coop., Inc. v. John Hancock Life Ins. Co.*, 582 F.3d 721, 725 (7th Cir.2009).

Moreover, the Court is granted even broad authority to grant a preliminary injunction to stop and rectify corrupt enterprises under R.C. 2923.34. Under R.C. 2923.34(B), this Court "may

[12] *See* Report of John Seryak, PE and Ryan Schuessler (dated Nov. 30, 2020) attached hereto as Exhibit C.
[13] *Id.*

grant relief by entering any appropriate orders to ensure that the violation will not continue or be repeated." In this case, "the court may grant injunctive relief ***without a showing of special or irreparable injury***." (Emphasis added.) R.C. 2923.34(D). A preliminary injunction should issue where the Court finds "the possibility that any judgment for money damages might be difficult to execute." *Id*. Thus, the mere difficulty of collecting a future monetary award is sufficient to cause to grant an injunction herein.

Several forms of injunctive relief under R.C. 2923.34(B) are available only to the Attorney General, the plaintiff herein. For example, only the Attorney General may seek "the dissolution or reorganization of any enterprise;" "the suspension or revocation of a license, permit, or prior approval granted to any enterprise by any department or agency of the state;" or "the dissolution of a corporation." *See* R.C. 2923.34(B)(3)-(5). In its First Amended Complaint, the State sought "[t]hat, pursuant to R.C. 2923.34(B)(2), each and every Defendant named herein, along with its predecessors, parents, associates, subsidiaries, successors and assigns be enjoined from receiving any monetary benefit, supplement, credit or offset created by or through H.B. 6 of the 133rd Ohio General Assembly." (First Amended Complaint, pg. 32.)

The Attorney General has special standing to bring claims under R.C. 2923.34 when "in the attorney general's opinion, the proceeding is of general public interest." R.C. 2923.34(C). As averred in the Complaint, it is the opinion of the Attorney General that this proceeding and the Primary Action are of general public interest because, inter alia, this matter involves a bevy of multibillion-dollar corporations conspiring to use illegal means to install and bribe a corrupt Speaker of the Ohio House and enact H.B. 6 in order to fleece FirstEnergy customers out of $102 million in 2021 alone, and untold millions in years to come.

ARGUMENT

A. The State Is Likely to Succeed on the Merits.

The Court has already concluded that the Attorney General is likely to succeed on the merits. (Entry and Order, pg. 2, Dec. 21, 2020.)

B. Plaintiff and Others Will Be Irreparably Harmed Without a Preliminary Injunction.

The arcane regulatory structures at play require preliminary injunctive relief be granted under existing Ohio law, no refund is available for recovered rates unless the tariff applicable to the rate sets forth a refund mechanism. *See In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401, ¶ 23, construing R.C. 4905.32. There is no refund mechanism under Rider CSR. FirstEnergy argued at the last hearing, "We've got the filed-rate doctrine defense which precludes these challenges." (Tr. of Motions & Preliminary Injunction Hearing, pg. 36: 8-10, Dec 21, 2020, Mr. Gladman). Thus, it is clear that absent relief under OCPA, FirstEnergy intends to use Byzantine utility laws to keep its ill-gotten gains.

Thus, Ohio, as a ratepayer, and all other FirstEnergy ratepayers are likely to be irreparably harmed should an injunction not issue because recent Ohio Supreme Court precedent precludes a refund of Rider CSR proceeds once FirstEnergy collects them.

As this Court previously stated, "[t]he injury is to ratepayers throughout the State of Ohio, to electric consumers to have to pay a surcharge or a rider that at least preliminarily appears obtained through public corruption." (Tr. of Motions & Preliminary Injunction Hearing, pg. 84, Dec. 21, 2020.) What is true of Rider CAF, is true of Rider CSR.

C. No Third Party Will Be Harmed by the Issuance of the Preliminary Injunction.

No third-party will be injured. In fact, FirstEnergy ratepayers will *benefit* by not having to pay this windfall created by conspiracy means.

D. The Public Interest Will Be Served by the Issuance of the Preliminary Injunction.

As the Court has already stated:

> The Court finds that there is no harm to third parties and the Court finds that the injunction is in the public interest. The Attorney General's Office and the Cities have an interest in preventing official corruption within the State of Ohio. They have an interest in preventing and discouraging racketeering and money laundering and bribery within the state.
>
> To not impose an injunction would be to allow certain parties to prevail, to -- to – it would give the okay that bribery is allowed in the State of Ohio and that, you know, any ill-gotten gains can be received. All you've got to do is find the right legislator, find the right Speaker of the House, at least based on the information before the Court as of today. It is in the public interest to avoid that sentiment throughout the state.

(Tr. of Motions & Preliminary Injunction Hearing, pg. 84, Dec. 21, 2020.) The public interest in stopping the FirstEnergy excess profits Rider CSR is as great as that in stopping the nuclear bailout Rider CAF.

CONCLUSION

The Court should restrain and preliminarily enjoin the collection of Rider CSR through orders that:

1. FirstEnergy and its subsidiaries cease collecting Rider CSR.
2. Revokes the PUCO approval of Rider CSR;
3. FirstEnergy to file a motion for reconsideration, withdraw its application for Rider CSR, and dismiss case number 19-2080-EL-ATA once the prior approval is revoked;
4. Any amounts collected under Rider CSR be refunded to the customers who paid them; and,
5. Any other preliminary injunctive relief the Court deems equitable and appropriate to protect the State of Ohio, and Ohio ratepayers.

The balancing of the equities strongly favors granting this Motion.

DATED: January 13, 2021

Respectfully submitted,
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Counsel for the State of Ohio

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was submitted to the Clerk's electronic filing system for distribution to all parties registered as users with that system this 13th day of January, 2021.

/s/ Charles M. Miller
CHARLES M. MILLER
Counsel for the State of Ohio

Gmail

Pat Tully <ptullyosu@gmail.com>

Re: Alternative to Wind Referendum

1 message

Pat Tully <ptullyosu@gmail.com> Fri, Jul 5, 2019 at 8:10 AM
To: Sam Randazzo <sam@sustain-ohio.com>

Thanks Sam. I have lsc drafting it up. Wonder if senate will go along bc they might see the adjacent issue as a poison pill. I love it though.

I have lsc getting me language back today on your rps idea.

Sent from my iPhone

On Jul 5, 2019, at 6:30 AM, Sam Randazzo <sam@sustain-ohio.com> wrote:

> Good morning Pat:
>
> If the House language establishing a referendum option to void OPSB certificates for wind farms is not viable going forward, there are alternative means to give local interests more control.
>
> In the attached MS Word file, I have included modifications to 4906.20 and 4906.201 which contain the minimum setback requirements and establish the right of adjoining property owners to waiver the minimum setback requirement. In the appeal by the citizens in and around Greenwich, Ohio, the Ohio Supreme Court recently "interpreted" (rewrote) these sections to limit their application to wind farms and reduce the ability of non-participating property owners to protect their interests. The changes suggested in the attached file make it clear that any change or amendment to a certificate triggers the newer minimum setback requirements and also better defines the population of property owners that must execute a minimum setback waiver. The definition of wind farm property that I have inserted is the same definition that OPSB uses to define the "project area".
>
> With these changes, all owners or property adjoining the wind farm project area would need to waiver application of the minimum setback violation(s) before the wind farm could evade the minimum setbacks (the result which I believe was intended by the GA).
>
> I hope this is useful.
>
> Sam

Sam Randazzo

sam@sustain-ohio.com 614.395.4268

<4906.20 Suggestion.docx>

STATE'S EXHIBIT
20 CV 006281
Ex. A

From: Sam Randazzo <randazzosc@yahoo.com>
Date: April 25, 2019 at 6:09:49 PM EDT
To: Householder Speaker Larry <speakerhouseholder@yahoo.com>
Subject: Comment on AARP's position

AARP

Our position is simply this: any legislation that would impose a tax or surcharge paid by utility customers—including residential, commercial and industrial customers—would raise prices for your constituents while citizens of other states that receive power generated by Ohio's nuclear plants pay lower rates for their electricity," Barbara Sykes, AARP Ohio director said in an April 11 letter to House Speaker Larry Householder and others.

"That is patently unfair — why should Ohio customers supplement the electricity bills for those living in other states?" Sykes added.

Comment

Any benefits created by Ohio's current mandates flow to customers in at least the entire PJM footprint. The cost of the current mandates falls uniquely on Ohio retail customers served by investor owned utilities. In fact, within Ohio any benefit of the mandates flows to customers of muni and coop utilities who also don't pay for the cost of the mandates.

Regardless of the clean air benefits of H.B. 6, H.B. 6 reduces the current mandate cost burden on customers and is better for Ohio customers than the status quo.

Sam Randazzo's iPhone
614.395.4268

RUNNERSTONE
INFORMATION IS POWER

MEMORANDUM

Date: November 30, 2020

To: The Ohio Manufacturers' Association

From: John Seryak, PE and Ryan Schuessler (RunnerStone, LLC)

RE: H.B. 6 Decoupling Provision Update – An $85 Million Increase Beginning Jan. 1, 2021

H.B. 6's abstruse decoupling provision will increase some Ohioans' electricity bills by $85 million beginning January 1, 2021. The cost increase will be fully borne by residential and small commercial and industrial customers in FirstEnergy's electric distribution territories in Ohio, unlike other H.B. 6 provisions that impact customers across the state. FirstEnergy filed the so-called decoupling rate increase on November 3, 2020 with the Public Utilities Commission of Ohio, increasing the collection of its Rider CSR from $17 million in 2020, to $102 million in 2021, as shown in Table 1.[1]

Collection Year	Base Distribution Revenue Decoupling	Lost Revenue Decoupling	Total Decoupling
2020	$ 21,916,065	$ (4,795,659)	$ 17,120,406
2021	$ 35,382,840	$ 66,495,247	$ 101,878,087
Year-over-Year Increase	**$ 13,466,776**	**$ 71,290,905**	**$ 84,757,681**

Table 1. FirstEnergy Decoupling Year-Over-Year Rate Increase

The rate increase is fully borne by residential customers and small commercial and industrial customers, including small-to-mid-sized manufacturers, small businesses like restaurants and lodging, but also churches and schools. Table 2 shows typical costs these customers will pay for H.B. 6's decoupling provision in 2021. Electricity users with higher voltage service are exempt from the decoupling charges.

	2021 Decoupling Cost ($/year)
Small Manufacturer	$ 2,500
Lodging	$ 1,350
School	$ 1,320
Restaurant	$ 420
Small Retail	$ 400
Church	$ 160
Residential	$ 40

Table 2. H.B. 6 Decoupling Customer Impact

[1] In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a Decoupling Mechanism, Case No. 19-2080-EL-ATA

FirstEnergy's decoupling rider provides no benefits to customers and offsets no costs. Thus, it will accrue to FirstEnergy as bottom-line profit. House Bill 772, which is currently before Ohio's General Assembly, could halt the cost collection if it is passed with an emergency clause yet this year.

The decoupling rate increase is about $15 million greater than we previously estimated in our memo of August 20, 2020.[2] In this memo we estimated H.B. 6's decoupling provision to cost customers $355 million from 2020 – 2024. The 2021 increase in one component of decoupling, "lost revenue", was expected and accurately estimated in our previous memorandum. However, the increase in the base distribution revenue component of the decoupling rider was much greater than we had estimated, likely due to decreased electricity sales from milder weather and from the COVID-19 pandemic.

H.B. 6's decoupling provision is a distortion of a complex electric policy concept. Our September 17, 2020 memorandum provides an overview of a typical decoupling policy and how H.B. 6's version deviates from standard practices.[3]

Customers and policymakers may find interesting a broader view of H.B. 6's decoupling provision, with the context of a prior law change from 2014's controversial Senate Bill 310 (S.B. 310), and a post-H.B. 6 *sua sponte* action of Ohio's public utility Commissioners.

A significant component of the H.B. 6 decoupling provision is that it allows "revenue resulting from implementation of 4928.66 of the Revised Code, excluding program costs and shared savings" in select cases.[4] In effect, this opaque language allows FirstEnergy to collect $66 million per year in revenue from "lost distribution" sales associated with FirstEnergy's energy efficiency programs, in addition to the decoupled base distribution revenue. What readers should know is that this $66 million is itself unusual. It is likely FirstEnergy can collect this much lost distribution revenue due to a series of law changes to how energy-efficiency was "counted" by the electric utilities. The changes occurred in the controversial Senate Bill 310, signed into law on June 13, 2014. The law changes benefitted electric utilities at the cost of customers, by allowing the electric utilities to receive credit for customer efficiency investments of which the utility was not involved, and charge customers back for "lost distribution revenue". At the time, these "counting provisions" were billed by proponents as cost saving actions. The OMA rightly warned that these provisions could be used to create new costs to customers.

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[2] Seryak, J. and Worley, P., "H.B. 6 Decoupling Provision – $355 Million for FirstEnergy through 2024, Possibly Millions More", Memorandum to the Ohio Manufacturers' Association, August 20, 2020, https://ohiomfg.informz.net/ohiomfg/data/images/-%20OMA%20MEMO%20-%20HB%206%20Decoupling%20-%20FINAL%20(Aug.%2014,%202020).pdf

[3] Seryak, J. and Worley, P., "H.B. 6's Decoupling Provision – A Primer on Decoupling and How H.B. 6 Decoupling Benefits FirstEnergy by Deviating from Best Practices", Memorandum to the Ohio Manufacturers' Association, September 17, 2020, https://ohiomfg.informz.net/ohiomfg/data/images/-%20HB%206%20Decoupling%20101%20Memo%20-%209.17.2020%20-%20FINAL.pdf

[4] Ohio Revised Code, Section 4928.471 Application to implement a decoupling mechanism.

After the passage of H.B. 6, the Commission acted in its own accord in a manner that stands to greatly benefit FirstEnergy, and only FirstEnergy. H.B. 6 limited the duration of this decoupling, stating, "the decoupling mechanism shall remain in effect until the next time that the electric distribution utility applies for and the commission approves base distribution rates for the utility." At the time, for FirstEnergy, this would have taken place in late 2024. After the passage of H.B. 6 however, the PUCO lifted the requirement that FirstEnergy file a base distribution rate case until such time as FirstEnergy decides to. In effect, this will allow FirstEnergy to collect millions of dollars in unearned revenue via decoupling in perpetuity. It is unusual for the PUCO to act in this manner. This change was not formally requested by FirstEnergy in a filing, received no hearing, required no presentation of evidence, and allowed for no customer intervention. The Commission did not appear to act on a recommendation from their own staff. Instead, this financial windfall to FirstEnergy appears to be the initiated by the five Commissioners of the PUCO.

Typical Decoupling Costs

Table 3 presents assumptions for typical customer types that will pay FirstEnergy's decoupling charge, Rider CSR. For non-residential customers charged Rider CSR, much of the charge is allocated to monthly demand, but only that exceeding five kilowatts (kW). We used a ballpark load factor[5] for these customer types to estimate monthly demand. Since specific rates vary between the three Ohio FirstEnergy Distribution Companies (Ohio Edison, Cleveland Electric Illuminating, and Toledo Edison), we average these rates to calculate the impact to a typical FirstEnergy customer. For example, the costs to an example small manufacturer would be:

1,000,000 kWh/year x $0.000788 /kWh + (285 kW – 5 kW) x 12 months x $0.5083 /kW-month = $2,498 /year

	Load Factor (%)	Example Typical Energy Use (kWh/year)	Example Typical Demand (kW)	2021 Decoupling Rate ($/kWh)	2021 Decoupling Rate ($/kW)	2021 Decoupling Cost ($/year)
Small Manufacturer	40%	1,000,000	285	$ 0.000788	$ 0.5083	$ 2,498
Lodging	60%	708,400	135	$ 0.000788	$ 0.5083	$ 1,350
School	35%	487,790	159	$ 0.000788	$ 0.5083	$ 1,324
Restaurant	50%	206,544	47	$ 0.000788	$ 0.5083	$ 420
Small Retail	35%	156,332	51	$ 0.000788	$ 0.5083	$ 404
Church	20%	45,245	26	$ 0.000788	$ 0.5083	$ 163
Residential		8,751		$ 0.004947	$ -	$ 43

Table 3. H.B. 6 Decoupling Customer Impact Assumptions

Example energy use for each commercial customer type was derived from US Department of Energy's Commercial Building Energy Consumption Survey (CBECS) and residential energy use is the average FirstEnergy residential customer energy use according to the US Energy Information Administration. Small manufacturer energy use varies widely, and our example small manufacturer is for illustrative purposes.

[5] Load factor is the relationship between energy use and demand, expressed as Load Factor (%) = annual energy use (kWh/year) / (peak load (kW) x 8,760 hours/year)