BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of An Electric Security Plan	**)** **)** **)** **)** **)** **)**	**Case No. 14-1297-EL-SSO**

OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY'S APPLICATION FOR REHEARING

Pursuant to Section 4903.10 of the Ohio Revised Code and Rule 4901-1-35, O.A.C., Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the "Companies"), hereby apply for rehearing of the Opinion and Order issued in this proceeding on March 31, 2016 (the "Order"). As demonstrated in the attached Memorandum in Support, the Order is unreasonable and unlawful on the following grounds:

1. The Order unlawfully restricts the Companies' right to withdraw its application for an Electric Security Plan ("ESP").
2. The Order is unreasonable in that it is unclear regarding the Companies' obligation to procure 100 MWs of wind or solar resources.
3. The Order is unlawful and unreasonable by failing to find that Rider RRS is authorized under Section 4928.143(B)(2)(d) of the Ohio Revised Code because it relates to default service.
4. The Order is erroneous because it wrongly describes changes in the proposed Purchase Power Agreement as being the product of the settlement negotiations relating to the ESP.

5. The Order is unreasonable because it appears to contemplate an "unbundle" of distribution rates.

6. The Order is unreasonable because it requires the Companies to bear the burden for any capacity performance penalties.

7. The Order is unreasonable because the Commission prohibited cost recovery for Plant outages greater than 90 days.

8. The Order is unreasonable because it does not reflect the ruling by the Federal Energy Regulatory Commission Order issued on April 27, 2016 in Docket Number EL16-34-000.

As demonstrated in the attached Memorandum in Support, the Commission should grant the Companies' Application for Rehearing.

Date: May 2, 2016

Respectfully submitted,

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OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING

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I. INTRODUCTION

The Commission's Order approving the Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company's ("Companies") Stipulated Fourth Electric Security Plan ("Stipulated ESP IV") will protect retail customers against rising electric prices and volatility in the years ahead. It also affords those customers the opportunity to enjoy the benefits of market-based pricing, economic development, and prudent use of natural resources through increased energy efficiency, use of renewable power and reduced emissions from power plants. The Companies commend the Commission for acting decisively to support consumers' interests in cost-effective electric service while affirming Ohio's commitment to encourage a modernized grid and retail competition. Given the lengthy record and complex issues presented in this case, however, it should not be surprising that a limited number of elements of the March 31, 2016 Order (the "Order") are in need of clarification or correction. Moreover, the Companies have developed for the Commission's approval a modified Rider RRS that will preserve the benefits of Stipulated ESP IV through a hedge against volatile and increasing market prices. This Application for Rehearing respectfully requests the necessary corrections or clarifications set forth herein.

II. ARGUMENT

A. The Order Unlawfully Restricts The Companies' Right To Withdraw Its Application For An ESP.

Section 4928.143(C)(2)(a) of the Ohio Revised Code permits the Companies to withdraw an ESP that is modified by the Commission.[1] This is a statutory right that the Commission cannot

[1] Section 4928.143(C)(2)(a) of the Ohio Revised Code provides that "[i]f the commission modifies and approves an application under division (C)(1) of this section, the electric distribution utility may withdraw the application, thereby terminating it, and may file a new standard service offer under this section or a standard service offer under section 4928.142 of the Revised Code."

lawfully restrict. For example, in *In re Application of Ohio Power Co.*, the Ohio Supreme Court reversed and remanded the Commission's order that modified the utility's ESP and limited the utility's ability to withdraw the ESP.[2] Specifically, the court found that the Commission's order was unlawful because "[t]he modification . . . occurred after the ESP had expired, making it impossible for the utility to exercise its statutory right to withdraw the modified ESP."[3] Because "'[t]he PUCO, as a creature of statute, has no authority to act beyond its statutory powers,'" the Commission cannot infringe on the utility's right to withdraw.[4] Thus, the court held that the Commission's order violated Section 4928.143(C)(2)(a) of the Ohio Revised Code and reversed the order.[5]

In the Order, the Commission modified Stipulated ESP IV in a number of ways.[6] The Order directs the Companies to file compliance tariffs by May 1 and then states that the Commission will deem that the Companies have accepted the modifications to Stipulated ESP IV if the Companies file tariffs complying with the Order.[7] To the extent that the Order would require (or "deem") the Companies to accept a modified ESP before the exhaustion of the Companies' right of appeal, the Order is unlawful.

To be sure, the Order is inconsistent on this point. After its discussion of most of the modifications, the Commission states:

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[2] 2015-Ohio-2056, ¶ 26, 144 Ohio St. 3d 1, 8 (2015).

[3] *Id*.

[4] *Id*. at ¶32 (quoting *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360 (2007)).

[5] *Id*. at ¶¶ 26, 43.

[6] Order at 86, 96-99.

[7] *Id*. at 86, 99.

> The Commission notes that, *following* the conclusion of the rehearing period, the filing of tariffs consistent with this Order and its modifications shall be deemed as acceptance of the Order and its modifications by the Companies. *Any such acceptance will be subject to rights of appeal in state courts*. The Companies shall file tariffs by May 1, 2016. With its initial filing and annually thereafter, FirstEnergy will provide to Staff customer bill impacts and proposed rate mitigation measures, if necessary.[8]

Thus, the Commission recognizes that the Companies must have the ability to apply for rehearing and appeal prior to any acceptance of a modified ESP. After all, it is only upon the completion of the rehearing and the appeal process that the ESP, as ultimately modified by the Commission and any appeal, can be known. For the Companies' statutory right of withdrawal to have any meaning, that right can only be exercised after the entire substance of the ESP is completely known.

Yet, when discussing modifications relating to Rider RRS, the Order says:

> [I]f the Companies proceed with Rider RRS by filing tariffs and finalizing a power purchase agreement with FES based upon the term sheet, we will construe such actions as the voluntary acceptance of the mechanism limiting average customer bills.[9]

Unlike the case with other modifications, the Order does not provide for the Companies' "acceptance" related to the "mechanism limiting average bills" to be subject to the Companies' right to rehearing and appeal. Further, as noted, the Order requires tariffs to be filed by May 1, one day before the statutory deadline to file applications for rehearing.[10] In addition, the Companies are required to file tariffs as a byproduct of Section 4903.15 of the Ohio Revised Code (which provides that the Order is effective immediately upon entry).

[8] *Id.* at 99 (emphasis added).

[9] *Id.* at 86.

[10] *See id.* at 99. On April 29, 2016, the Attorney Examiner issued an Entry granting an extension of time for the Companies to file their tariffs. However, this does not negate this assignment of error.

To the extent that the Order requires the Companies to accept the modifications in Stipulated ESP IV before the conclusion of the application for rehearing and appeal process, the Order unlawfully intrudes on the Companies' statutory right to withdraw a modified ESP under Section 4928.143(C)(2)(a) of the Ohio Revised Code. The General Assembly has not imposed any time limit on the Companies' statutory right to withdraw a modified ESP. The Order makes it impossible for the Companies to withdraw Stipulated ESP IV if the Commission makes additional modifications as a result of any applications for rehearing. These limitations on the Companies' statutory right to withdraw a modified ESP are unlawful.[11]

In sum, the Order's requirement that the Companies file tariffs by May 1, 2016 and its announcement that filing such tariffs will be deemed to be a "voluntary" acceptance of the modified Stipulated ESP IV are unlawful. Accordingly, the Commission should clarify the Order to state that the Companies' filing of tariffs before the conclusion of the application for rehearing and appeals process will be subject to the rehearing and appeal process and that the Companies' right to withdraw from the ESP as modified will not lapse until the conclusion of that process.

B. The Order Is Unreasonable In That It Is Unclear Regarding The Companies' Obligation To Procure 100 MWs Of Wind Or Solar Resources.

The Order is unclear regarding the Companies' obligation to seek to procure 100 MWs of wind or solar resources.[12] As part of Stipulated ESP IV, the Companies committed to procure 100 MWs of wind or solar resources if two conditions are satisfied: (1) Staff deems it helpful to comply with a future federal or state law or rule; and (2) those future statutory or rule changes do not lead to the development of new renewable resources.[13] Under the Order, the Companies' potential

[11] *See In re Application of Ohio Power Co.*, 2015-Ohio-2056 at ¶ 26.

[12] *See* Order at 96-97.

[13] Third Supp. Stip., Section V.E.4.

obligation to procure 100 MWs of wind or solar resource is unclear. The Order should be modified on rehearing to approve the conditions set forth in Stipulated ESP IV and clarify the Companies' obligations for additional Ohio renewable resource procurement.

Both of the conditions in Stipulated ESP IV are essential components of the Companies' commitment, which operates separate and apart from the Companies' responsibility to satisfy renewable energy resource targets under Section 4928.64 of the Ohio Revised Code. The Companies' renewable energy resource responsibilities under Section 4928.64 of the Ohio Revised Code assume a functioning market for resources with the Companies' costs recovered through a bypassable rider.[14] In contrast, the Companies' commitment in Stipulated ESP IV to procure wind or solar resources is conditioned on the market's failure to satisfy federal or state mandates.

Given the lack of a statutory or other independent legal obligation to procure the wind or solar resources provided in Stipulated ESP IV, these conditions are reasonable. They embody a *bona fide* commitment on the part of the Companies to seek to procure, at Staff's request and with Commission review and approval, 100 MWs of Ohio-sited renewable resources, which the Companies are otherwise under no legal obligation to make. As Company witness Mikkelsen testified at the hearing:

> In the stipulation the [C]ompanies make a firm commitment that -- to the extent that the [S]taff deems it's helpful in order to comply with a future federal or state law or rule and to the extent that such federal or state law or rule hasn't fostered the development of the new renewable energy resources, then at the staff's request, the company would move to procure 100 megawatts of new Ohio wind or solar resources.[15]

[14] *See* R.C. 4928.64(E).

[15] Tr. Vol. XXXVI at 7540:15-23 (Mikkelsen Cross).

And further: "the [C]ompanies are obligated to act at the request of [S]taff."[16] Thus, meeting these conditions would trigger a filing on the part of the Companies that would be subject to review and approval by the Commission.[17] Yet the Order, in the absence of any record support, appears to have unreasonably rejected the first condition that the procurement be related to new federal or state laws or rules.[18] No rationale or explanation for this rejection is provided. The Order also appears simply to ignore the second condition.

The Order thus should be clarified on rehearing as follows. On rehearing, the Commission should approve both conditions as set forth in Stipulated ESP IV. The Commission also should direct the Companies, upon satisfaction of these conditions, to seek Commission approval to attempt to procure 100 MWs of wind and solar resources through bilateral contracts not to exceed the term of Stipulated ESP IV. Once contractually secured, this output should be offered into the PJM wholesale markets, using such strategies as determined solely by the Companies. Subsequently, the resulting costs and revenues should be netted through Rider ORR, initially set at zero as a placeholder rider. As Company witness Mikkelsen testified at the hearing:

> With respect to rider ORR, the customers would receive a credit or charge only to the extent that the staff deems it necessary to move forward with the procurement, notifies the company. The companies make a filing. The Commission approves the filing, and then at that point if the company moves -- moves forward with the procurement, then the charges or credits would be recovered.[19]

The Commission additionally should clarify on rehearing that if bilateral contracts are not available, then the Companies should apply for preapproval of a wind or solar facility and recovery

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[16] *Id.* at 7543:22-24 (Mikklesen Cross).

[17] *See id.* at 7542:22-7543:10 (Mikkelsen Cross).

[18] Order at 97.

[19] Tr. Vol. XXXVI at 7650:6-13 (Mikkelsen Cross).

of all related costs as provided in Chapter 4928. Specifically, such cost recovery should occur in accordance with Commission findings of "need" for any proposed facility under Sections 4928.143(B)(2)(b) and (c) of the Ohio Revised Code.[20]

Even if the Commission does not accept the conditions for the procurement of the 100 MWs of wind or solar resources, as provided in Stipulated ESP IV, the Commission should nonetheless clarify that costs incurred and revenues obtained from the purchase and sale of these resources will be netted in Rider ORR subject to audit and review. The Commission should further clarify that if bilateral contracts are unavailable, the Companies should apply for preapproval of a wind or solar facility and recovery of costs therefrom, and that such authorization will require a finding of "need" for such a facility under Sections 4928.143(2)(b) and (c) of the Ohio Revised Code.

C. The Order Is Unlawful And Unreasonable By Failing To Find That Rider RRS Is Authorized Under Section 4928.143(B)(2)(d) of the Ohio Revised Code Because It Relates To Default Service.

In its Opinion and Order in Case No. 13-2385-EL-SSO, the Commission held that rate stability charges proposed as an ESP component under Section 4928.143(B)(2)(d) of the Ohio Revised Code must meet the following three statutory conditions: (1) the rider is "a term, condition, or charge;" (2) it "relate[s] to one of the enumerated types of terms, conditions, and charges;" and (3) it will "have the effect of stabilizing or providing certainty regarding retail electric service."[21] In the instant proceeding, the Order correctly found that Rider RRS met the

[20] Sections 4928.143(B)(2)(b) and (c) of the Ohio Revised Code both provide, in pertinent part, that there can be no such cost recovery "unless the commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility."

[21] *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, Opinion and Order at 20 (Feb. 25, 2015).

first and third statutory conditions.[22] The Order further correctly found that Rider RRS met the second statutory condition because it imposed a financial limitation on shopping.[23] The Order, however, is unlawful and unreasonable because the Order did not find that Rider RRS also meets the second statutory condition because it relates to "default service."[24]

Succinctly, Rider RRS relates to "default service," i.e., the Companies' proposed Standard Service Offer ("SSO"),[25] because it functions as a rate-stability and price mitigation mechanism to reduce the impact on SSO customers of increasing SSO pricing.[26] The design of Rider RRS provides a means to mitigate the long-term risk of wholesale market price increases that will be incorporated directly into the SSO via the competitive procurement process.[27] As explained by Company witness Strah:

> The Companies have been using a competitive procurement process of SSO load for years. In addition, customers have the ability to shop with the CRES provider of their choice. While the availability of all of these sources of competition provides choices for customers, they nevertheless expose retail customers to long-term risk if wholesale market prices rise. The Economic Stability Program provides a valuable cost-based retail rate stabilization mechanism to protect against that risk and provides a level of

[22] Order at 108-109.

[23] *Id.* at 109.

[24] R.C. 4928.143(B)(2)(d).

[25] *See* R.C. 4928.14 (stating that when a competitive supplier fails to provide retail electric generation service, shopping customers default to the SSO until they choose an alternative supplier).

[26] In similar vein, the Commission found in AEP Ohio's second ESP proceeding, Case No. 11-346-EL-SSO, that AEP Ohio's stability charge related to default service because it allowed SSO customers to have rate stability that would not have occurred absent the stability charge. *See* Case No. 11-346-EL-SSO, Entry on Rehearing at 15-16 (Jan. 30, 2013).

[27] In an appeal pending before the Ohio Supreme Court, the Commission contended in its merit brief that "default service" is not limited strictly to provider-of-last-resort service but generally includes the SSO: "A standard service offer is a default service that must be offered to current and future non-shopping customers during the entire ESP term." Supreme Court Case No. 2013-0521, Commission Second Merit Brief at 19 (Oct. 21, 2013).

> security to retail customers without interfering with the current retail market design.[28]

Rider RRS, as a retail-rate stabilizing hedge provided through the Economic Stability Program, thereby relates to the SSO offered to both current and future non-shopping customers, *i.e.*, "default service." Indeed, as Company witness Mikkelsen testified at hearing: "Rider RRS relates to default service insomuch as it is a retail rate stability mechanism for our standard service offer customers which provides a rate stabilization mechanism for their SSO generation supply."[29] Rider RRS thus additionally satisfies the second statutory condition in that it relates to default service. The Order should be modified on rehearing to reflect that this is the case.

D. The Order Is Erroneous Because It Wrongly Described Changes In The Proposed Purchase Power Agreement As Having Been The Product Of The Settlement Negotiations Relating To The ESP Proceeding.

The Commission correctly determined that the Stipulations were the product of serious bargaining among capable, knowledgeable parties.[30] However, the Commission mistakenly included as factual support for this finding the agreement between the Companies and non-party FirstEnergy Solutions Corp. ("FES") to reduce the return on equity ("ROE") in the Term Sheet to 10.38 percent.[31] In truth, these revisions to the Term Sheet were achieved completely separate from the bargaining among the Signatory Parties. On rehearing, the Commission should correct this factual error.

As the Companies have made clear since the first day of the hearing, the Term Sheet, and any provisions thereof, were not – and are not – before the Commission for approval. As Company

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[28] Strah Direct, p. 10.

[29] Tr. Vol. III at 598:21-599:2 (Mikkelsen Cross).

[30] Order at 43-45.

[31] Order at 44.

witness Mikkelsen testified at hearing, "The companies are not seeking approval of the Purchase Power Agreement from the Commission."[32] Intervenor witnesses admitted this as well.[33]

The reduction in the ROE in the term sheet occurred solely as a result of negotiations between the Companies and non-party FES.[34] The reduction in ROE in the Term Sheet had nothing to do with the bargaining between the parties to this proceeding that led to the Third Supplemental Stipulation (or any other stipulation). As Company witness Mikkelsen testified at the hearing, "there is no provision in the third stipulation and recommendation that addresses the ROE contained in the proposed transaction between the companies and FirstEnergy Solutions."[35] Thus, the Companies ask that the Commission grant rehearing to clarify the record on this point.

E. The Order Is Unreasonable Because It Appears To Contemplate That The Companies "Unbundle" Distribution Rates.

The Order is unreasonable because it adopts IGS witness White's proposal to unbundle SSO service costs from distribution rates[36] despite the Companies' separate agreement, reflected in the Competitive Market Enhancement Agreement ("Enhancement Agreement") between the Companies and Interstate Gas Supply, Inc. ("IGS"), to file for approval of a retail competition incentive mechanism that would achieve the same objective of incenting shopping. On rehearing, the Commission should modify the Order to provide for a process consistent with the Enhancement Agreement between IGS and the Companies.

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[32] Tr. Vol. I at 57:16-17 (Mikkelsen Cross); *see also* Tr. Vol.. I at 39:23-40:5; 61:12-16; 96:4-20 (Mikkelsen Cross).

[33] *See, e.g.*, Tr. Vol. XXIV at 5035:8-19 (Bowring Cross) (agreeing that the Commission would not be asked to determine the price of generation under the PPA); Tr. Vol. XXIV at 4877:23-4878:6 (Kahal Cross) (agreeing that Rider RRS does not set the price that the Companies would pay under the PPA)

[34] *See* P3/EPSA Ex. 8 (email exchanges between the Companies and FES); Co. Ex. 156, p. 13 (Final Term Sheet-Revised).

[35] Tr. Vol. XXXVI at 7602:9-12 (Mikkelsen Cross).

[36] Order at 98.

In pertinent part, the Enhancement Agreement provides:

> In an effort to demonstrate continued support for the competitive market, the Companies agree to make a filing that requests the Commission to establish a retail competition incentive mechanism in addition to the bypassable charges applied to non-shopping customers with the purpose of incenting shopping. Prior to such filing, the Companies and IGS will meet and determine the level of the charge to be incorporated into the Companies filing to establish a competition incentive mechanism. The first meeting shall occur no later than 60 days after a final opinion and order has been issued by the Commission in Case Number 14-1297-EL-SSO. Either party may request that Staff participate in the meetings between IGS and the Companies. IGS and the Companies shall use best efforts to reach agreement on the level of charge to be incorporated in the filing. But, the filing advocating the establishment of the mechanism shall occur no later than six months after the date of the first meeting between IGS and the Companies. If the Commission approves a retail competition incentive mechanism, and Rider RRS is in effect, then such mechanism shall be implemented and continue during the period of time in which Rider RRS remains in effect and will apply to all non-Rate GT customers. *The mechanism shall be revenue neutral to the utilities.* The retail competition incentive mechanism would be bypassable, and any revenues that may be collected through the retail competition incentive mechanism would be credited to all non-Rate GT customers in Rider RRS over the duration of Rider RRS, subject to final reconciliation. Notwithstanding the foregoing, the retail competition incentive mechanism would not apply to PIPP customers for the period that they are not permitted to select a competitive supplier or a competitive supplier is not selected on their behalf.[37]

The Enhancement Agreement narrowly focuses on the creation of a "retail competition incentive mechanism" to incent shopping. As Company witness Mikkelsen testified at hearing, the purpose of such a mechanism "would potentially [be to] create greater supplier interest in participating in the competitive market for the companies and, in turn, provide…a more robust competitive environment for the customers of the companies."[38] Further, in their post-hearing briefing on this issue, IGS and the Companies certainly did not argue for, and, indeed, did not even reference, the possible unbundling of distribution rates under the Enhancement Agreement. The

[37] OMAEG Ex. 24 (emphasis added).

[38] Tr. Vol. XXXVII at 7927:24-7928:4 (Mikkelsen Cross).

retail competition incentive mechanism is a means to address IGS's concerns originally expressed in IGS witness White's testimony regarding unbundling without embarking on the extensive cost analysis that unbundling requires. Importantly, the rider value that might potentially be adopted to address those concerns must be revenue neutral to the Companies, consistent with the distribution base rate freeze and the Enhancement Agreement.

F. The Order is unreasonable because it requires the Companies to bear the burden for any capacity performance penalties which was not part of the Companies' Application or any of the Stipulations, upsets the balance of competing interests in the negotiating process, and is neither supported by the record nor explained by the Commission.

G. The Order is unreasonable because the Commission prohibited cost recovery for Plant outages greater than 90 days which was not part of the Companies' Application or any of the Stipulations, upsets the balance of competing interests in the negotiating process, and is neither supported by the record nor explained by the Commission.

H. The Order Is Unreasonable Because It Does Not Reflect The Ruling By The Federal Energy Regulatory Commission Issued On April 27, 2016 In Docket Number EL16-34-000.

The Commission aptly stated, and the Companies agree, that the centerpiece of the now Commission-approved Stipulated ESP IV is the Economic Stability Program, which includes Rider RRS. In fact, the Commission found that Rider RRS alone is projected to provide customers $256 million of net credits over the eight-year term of Stipulated ESP IV.

Rider RRS was designed to address the significant challenges that exist in Ohio's retail electric service industry. Specifically, it helps safeguard customers against rising and volatile electric prices and future market risks in the years ahead – the exact concerns that drove the 127th General Assembly to enact S.B. 221. Moreover, Stipulated ESP IV affords retail customers the opportunity to enjoy the benefits of market-based retail generation pricing, economic development, and the prudent use of natural resources through increased energy efficiency, use of renewable power and reduced emissions from power plants. In the aggregate, Stipulated ESP IV promotes

Ohio's economic future by helping to ensure retail customers have access to affordable and stable retail electric prices. As discussed below, several events threaten to prevent the benefits of Stipulated ESP IV from being realized.

The Commission modified the Stipulations to require the Companies to bear the burden for any capacity performance penalties.[39] This provision also was not part of the Companies' Application or any of the Stipulations, upsets the balance of competing interests when the negotiating process is viewed as a whole, and is neither supported by the record nor explained by the Commission. As a result, the Order is unreasonable. However, this error will be rendered moot if the Commission approves the Companies' modified proposal discussed below.

Further, the Commission modified the Stipulations to prohibit cost recovery for Plant outages greater than 90 days.[40] This provision also was not part of the Companies' Application or any of the Stipulations, upsets the balance of competing interests when the negotiating process is viewed as a whole, and is neither supported by the record nor explained by the Commission. As a result, the Order is unreasonable. However, this error also will be rendered moot if the Commission approves the Companies' modified proposal discussed below.

Finally, a recent order issued by the Federal Energy Regulatory Commission ("FERC") on April 27, 2016 has complicated the Companies' and Commission's efforts to provide customers with the stability and other retail rate benefits provided by Stipulated ESP IV,[41] which now render the Commission's March 31, 2016 Order unreasonable. Specifically, any new proceeding at FERC

[39] Order, p. 92.

[40] *Id*.

[41] *See EPSA v. FirstEnergy Solutions Corp*., 155 FERC ¶61,101, FERC Docket No. EL16-34-000, Order Granting Complaint (April 27, 2016) ("FERC Order").

under Section 205 of the Federal Power Act for the review of a power purchase agreement ("PPA") would likely require a much more lengthy time period to come to a conclusion.

Therefore, in response to the above issues, the Companies have modified how Rider RRS charges and credits will be calculated so that Rider RRS will continue to provide all the rate stabilization benefits recognized in the Order, but without reliance on or existence of a PPA or any other contractual arrangement or other involvement with FES. The benefits provided by Stipulated ESP IV are too important to the future of Ohio to be delayed. Consequently, the Companies have developed a modified Rider RRS proposal that is designed to be solely within the Commission's jurisdiction and that will rely on retail ratemaking mechanisms that do not utilize or refer to a PPA or any other contractual arrangement or other involvement of FES. Modified Rider RRS would provide even greater benefits to customers through reduced risk while maintaining Stipulated ESP IV and its many other benefits as previously approved by the Commission. This application for rehearing, if granted, will preserve the benefits of Stipulated ESP IV consistent with the intent and spirit of Section V.B.3.c. of the Third Supplemental Stipulation.

The Commission should continue to recognize the extraordinary accomplishment achieved through the filing and approval of Stipulated ESP IV, and its comprehensive benefits should not be allowed to evaporate. The Companies collaborated with the Commission Staff and sixteen diverse Signatory Parties to create a plan that provides numerous wide-ranging quantitative and qualitative benefits for the Companies' customers including:

- retail electric service rate stability, including fair and open competitive bid processes using staggered and laddered procurements and a risk sharing element that assures at least $100 million in credits to customers in Rider RRS;

- a commitment to freeze base distribution rates through the entire eight-year term of Stipulated ESP IV, except in case of emergency conditions under Section 4909.16 or if the Companies, with Staff agreement, file for a base distribution rate case that would go into effect prior to June 1, 2024;

- continued investment in the delivery system in support of system enhancement and reliability;
- numerous economic development programs and credits;
- federal advocacy for a longer-term capacity product and other market improvements;
- a commitment to present an innovative plan to the Commission proposing the acceleration of state-of-the-art advancements in the distribution delivery business;
- a significant commitment to implement resource diversification initiatives, including an unprecedented commitment to establish a goal to reduce CO_2 emissions by at least 90% below 2005 levels by 2045, plus commitments to evaluate battery technology and to pursue further development of 800,000 MWh per year of energy efficiency and renewable resources in Ohio;
- a commitment to file a case to transition to decoupled residential base distribution rates;
- retail market enhancements; and
- several provisions that provide support to low-income customers.[42]

In addition to those benefits, Stipulated ESP IV's Rider RRS provides for a hedging mechanism that will help safeguard customers from rising market prices and retail rate volatility.

Over the course of 18 months, including an extraordinarily lengthy, thorough and exhaustive evidentiary process with more than 4,100 discovery requests and 41 days of hearing, the Companies demonstrated, and the Commission agreed, that the Stipulated ESP IV, including Rider RRS, benefits customers, is in the public interest and will protect consumers against rate volatility, price fluctuations, and long-term retail price increases by promoting rate stability for all retail customers in this state, modernize the grid through the deployment of advanced technology and procurement of renewable energy resources, and promote competition by enabling competitive providers to offer

[42] *See, generally,* Third Supp. Stip.; Mikkelsen Fifth Supp., pp. 3-6, 13; Supplemental Testimony of Eileen M. Mikkelsen ("Mikkelsen Supp."), pp. 11-12.

innovative products to serve customers' needs. That record need not, and should not, be revisited on rehearing. And now, based on this existing and extensive record, the Companies are proposing a narrow change for a modified Rider RRS structure, based on cost and generation information that is already part of the litigated record, which will continue the benefits outlined above.

The Companies continue to stand behind their commitments in Stipulated ESP IV, which provides electric service at more predictable prices regardless of external forces and numerous other benefits, including the Companies' innovative plan to accelerate state-of-the art advancements in the distribution delivery business. With modified Rider RRS, the Companies would be able to accomplish that goal. Conversely, without the modified Rider RRS proposal, the Companies would no longer be permitted to implement Rider RRS in a timely fashion and maintain the value of the approved Stipulated ESP IV. Therefore, the Companies seek rehearing to address a modification that is necessary to achieve the aforementioned benefits. For all of those reasons, the Commission should grant rehearing.

1. Original Rider RRS

In Stipulated ESP IV, the Companies proposed that retail rate stability benefits would be derived from Rider RRS, which would flow through costs of a PPA to be entered into by the Companies and FES, netted against revenues from selling the output received under the PPA. However, the Commission's Order is unreasonable based on the modifications made to the capacity performance penalties, the disallowance for recovery of outages past 90 days, and the FERC Order regarding the requirement in 18 C.F.R. § 35.39(b) to obtain prior approval of the PPA, and the rescission of FES's affiliate waiver with respect to the PPA, all of which place at risk the ability of the Companies and the Commission to achieve the comprehensive benefits of Stipulated ESP IV in a timely fashion. To preserve these benefits of the Stipulated ESP IV, the Companies have developed an effective alternative, using retail rate mechanisms solely within the Commission's

jurisdiction. The alternative affords customers the same retail rate stabilization benefits the Commission previously found, and unanimously approved, in its Order,[43] but does so without a PPA or any other contractual arrangement or other involvement of FES.

2. Benefits of Modified Rider RRS

Under this alternative mechanism, the Companies will provide an improved version of Rider RRS that will continue to act as a "hedge" and reduce risk for customers, all without reliance on a PPA or any other contractual arrangement or other involvement of FES. As mentioned above, the Commission previously found that Rider RRS would have performed a valuable function for customers.[44] The Companies believe that, through this alternative approach, Rider RRS will continue to serve as an effective hedge against volatile and increasing market prices, and will maintain the risk-sharing provision as set forth in the Third Supplemental Stipulation. However, because the hedging function would be provided by the Companies without a PPA or other involvement of FES, Rider RRS charges would flow to the Companies and, in the early years, could be used to help support the Companies' aforementioned state-of-the art advancements such as the grid modernization initiative. Because the modified Rider RRS will function in a very similar manner for customers, the underlying record in this case is already replete with supporting evidence and need only be supplemented to describe the differences in modified Rider RRS. And, importantly, all the benefits of this Stipulated ESP IV as compared to the MRO that the Commission previously found will remain intact, and will actually be improved from a customer perspective.

[43] Order, pp. 78-79.

[44] Order, pp. 78-79.

By making these proposed modifications to the calculation of Rider RRS, the Companies should achieve similar outcomes to that which would have been achieved under the Stipulated ESP IV as proposed by the Companies and addressed by the Commission in its Order. As originally proposed, the charge or credit to be flowed through Rider RRS was based on the costs of the Davis-Besse and Sammis plants, and FES's share of OVEC ("Plants"), and market revenues received by selling the output of the Plants into PJM markets. As modified, the cost and revenue proxies are not dependent on FES's actual operational or market performance, or otherwise connected in any way to any particular generation facilities, thereby making many intervenors' concerns moot.[45] Indeed, because Rider RRS will use assumed levels of MWs, MWhs and costs included in the record, which will not be adjusted to reflect actual conditions or operations, the modified Rider RRS will not be subject to the operational performance of any particular generation facilities, which results in greater stability benefits and less risk for customers. Moreover, because the modified Rider RRS will be based on assumed cleared capacity and energy, customers are relieved of any market performance risk that Plant capacity and energy does not clear in PJM's markets.[46] The Commission's concern regarding bilateral affiliate transactions that may have existed between the Companies and FES also is eliminated.[47] And the Commission will continue to retain the authority to reevaluate and modify Rider RRS under certain specified circumstances.

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[45] For example, parties' concerns that are now moot include, but are not limited to allegations that: 1) the projected costs of the Plants are unsupported and do not include inevitable environmental compliance costs; 2) plant costs will likely be higher than projected; 3) customers will be exposed to additional financial risks based on FES's behavior regarding the Plants and alleged lack of incentive to manage the cost of the Plants; and 4) certain costs are not subject to Commission review. These concerns no longer exist under the modified Rider RRS proposal.

[46] Because the hedging function is no longer tied to the performance of the Plants and because there will be no underlying PPA between FES and Companies, no energy or capacity will be sold into the marketplace by the Companies. While the Companies strongly believe that hyperbole is the most flattering way to describe certain of the Parties' statements in this case, any smoke and mirrors that they used to support their positions are gone.

[47] Order, p. 90.

Because Rider RRS charges will flow to the Companies, they will be better positioned in the near-term to carry out the commitments otherwise included in Stipulated ESP IV, such as modernizing distribution infrastructure. As an additional benefit of the modified Rider RRS, this simplified hedging mechanism will reduce the time and expense of the rigorous review proposed in the Third Supplemental Stipulation and approved in the Order.[48] Operational and market performance for any particular generation facilities would be rendered irrelevant for purposes of the modified Rider RRS. Staff will continue to have an opportunity to perform a rigorous review of modified Rider RRS, but the nature of the review will be different in order to align with the modified Rider RRS. Annual and quarterly filings will still be made by the Companies. Therefore, Commission Staff and interested stakeholders may conduct a typical review of rider filings for mathematical accuracy based on publicly-available information and compliance with the Commission's Order.

3. Modified Rider RRS Mechanism

Modified Rider RRS will provide a more reliable hedge against increasing market prices by using proxy costs and generation capacity and output for diverse generation in the marketplace without reference to any particular generating facilities, based upon the Plant's forecasted costs included in the record. The modification can be accomplished by using proxy costs and generation capacity and output, based upon the levels in the record that were relied upon by the Commission. The Companies conducted extensive due diligence on these costs and determined them to be reasonable as compared to industry standards,[49] and the Commission likewise accepted them in the Order as a reasonable component of the Rider RRS hedge, over the eight-year term of

[48] *See* Order, pp. 88-91.

[49] Ruberto Testimony, pp. 4-5.

Stipulated ESP IV.[50] Under the proposal, rather than updating the actual Plant costs, the modified Rider RRS will be based upon the fixed proxy costs and generation output included in the record, and therefore, will not rely on or be affected by actual Plant costs of any particular generation facilities.

The Companies propose a few modest modifications to the calculation of the costs and revenues that will be reflected in Rider RRS. The only changes to the Rider RRS calculation are 1) actual costs will be replaced with the costs which are already evidence of record and relied upon by the Commission in this case; 2) actual generation output will be replaced with the generation output which is already evidence of record and relied upon by the Commission in this case; and 3) actual MWs cleared in the PJM capacity market will be replaced with the MWs projected to clear which is already evidence of record and relied upon by the Commission in this case and still updated for actual base residual auction ("BRA") prices as originally contemplated. Similar to the Companies' original proposal, modified Rider RRS will be filed annually based on forecasted forward energy prices and known capacity prices. Modified Rider RRS will be trued-up quarterly pursuant to the Commission's Order, but will reflect actual day ahead locational marginal price ("LMPs") at the AEP-Dayton ("AD") Hub. These proxy revenues would be based upon actual energy and capacity clearing prices, but would not require that any particular generation facilities actually clear in any particular capacity or energy market.

In addition, proxy ancillary services and environmental attributes revenue will be based on the information contained in the record thereby eliminating many concerns based on speculation on what future events may or may not transpire. The net of the proxy costs and proxy revenues described above will be included in the annual Rider RRS calculation for the upcoming year for

[50] Order, pp. 80-81, 119.

each planning year of the Stipulated ESP IV, commencing June 1, 2016, and then reconciled on a quarterly basis as required by the Commission.[51]

All of this information is either already in the record or will be publicly available as Rider RRS is reconciled.

4. Proposed Process

Except for the specific modifications proposed herein and/or described in testimony, the Stipulated ESP IV shall remain unchanged. Rider RRS still has no impact on customers' physical generation supply. In fact, no substantive benefits are being altered – only the structure of one component. But because of that change, certain other provisions are no longer needed.[52] The record need not, and in fact, should not be reopened except as necessary for the limited purpose to explain the modified Rider RRS. Under this proposal, the Companies remain obligated to fulfill the remaining terms, conditions, and commitments set forth in the Stipulated ESP IV. Therefore, the Companies seek to move forward expeditiously with modified Rider RRS, as previously approved by the Commission with the modifications described herein and in the contemporaneously filed testimony.[53]

Due to the fact that Stipulated ESP IV is scheduled to commence on June 1, 2016, along with the corresponding customer benefits, an expedited hearing schedule is warranted and will not

[51] Order, p. 90.

[52] For example, provisions in the Commission's Order and Stipulations that are no longer needed include the Commission's reservation of its right to re-evaluate and modify the Stipulations if there is a change to PJM's tariff or rules which prohibits the Plants from being bid into PJM auctions, and the full sharing of FES fleet information.

[53] Because the Companies' proposal herein continues to provide rate stability and rate certainty regarding retail electric service, the Commission has authority to approve the proposal under Section 4928.143(B)(2)(d) of the Ohio Revised Code related to "bypassability" and as a financial limitation on shopping, as the Commission previously determined in the Order. (*See* Order, pp. 108-109.) As stated above, Rider RRS also relates to default service.

cause an undue burden on any party. The Companies have discussed this proposal with the Signatory Parties to the last stipulation, including Commission Staff, and many have already expressed support for the proposal and remain supportive of Stipulated ESP IV. Others expressed no concerns but have requested time to review the filing. The Companies are proposing only a modification to one rider in Stipulated ESP IV, a modification that itself rests largely on the existing record. For this schedule to succeed, the Companies respectfully ask that the Commission grant rehearing now with respect to this one Rider RRS issue, with rehearing on all other issues continuing in the ordinary course.

In order to provide evidence in support of these slight modifications to the Rider RRS calculation, the Companies are filing the testimony of Eileen M. Mikkelsen on May 2, 2016, and, in lieu of written discovery, will make her available for deposition between May 4-7, 2016. To give the parties to the proceeding a reasonable opportunity to address the Companies' narrow proposal, the Companies recommend that the Commission adopt the procedural schedule as set forth below:

- May 9, 2016 – Intervenor Pre-filed Testimony;
- May 11, 2016 – Hearing;
- May 16, 2016 – Oral Arguments held or Brief filing date;
- May 25, 2016 – Opinion and Order issued by the Commission; and
- May 26, 2016 – File Rider RRS with effective date of June 1, 2016.

The proposed procedural schedule will permit Rider RRS to go into effect on June 1, 2016, as originally approved by the Commission.

Stipulated ESP IV as approved by the Commission provides numerous benefits to the Companies' customers and the State of Ohio that should not be delayed as a result of certain

unreasonable Commission findings and intervening events. The Companies are committed to providing retail rate stability through a long-term hedge against market risks and all the other comprehensive benefits included in the Stipulated ESP IV and approved by the Commission. The modifications to Rider RRS as proposed herein by the Companies are an alternative vehicle to effectively achieve the same goals and provide the same or greater benefits as the originally approved Stipulated ESP IV and will cure certain other errors identified herein.

The Order is unreasonable to the extent it does not alter the provisions that would need to be changed in order to accommodate the new structure supporting Rider RRS. The vast majority of the many provisions of Stipulated ESP IV and the Commission Order approving it remain undisturbed. The errors related to the Commission's modifications regarding capacity performance penalties, the potential disallowance of recovery for outages longer than 90 days, and the recent FERC Order, render the Commission's Order unreasonable. Therefore, rehearing should be granted in order to give the Companies the opportunity to modify Rider RRS so as to maintain the goals and benefits of Stipulated ESP IV.

III. CONCLUSION

For the foregoing reasons, the Companies respectfully request that the Commission grant rehearing, correct the errors discussed in this Application for Rehearing, and establish a schedule that will permit Stipulated ESP IV to take effect on June 1, 2016, including modified Rider RRS.

Date: May 2, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Application for Rehearing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 2nd day of May, 2016. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties. Further, a courtesy copy has been served upon the parties via electronic mail.

/s/ *N. Trevor Alexander*
One of Attorneys for the Companies

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