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

REPLY BRIEF ON REHEARING OF NORTHEAST OHIO PUBLIC ENERGY COUNCIL

Glenn S. Krassen (Reg. No. 0007610)
Counsel of Record
BRICKER & ECKLER LLP
1001 Lakeside Avenue, Suite 1350
Cleveland, OH 44114
Telephone: (216) 523-5405
Facsimile: (216) 523-7071
gkrassen@bricker.com

Dane Stinson (Reg. No. 0019101)
Dylan F. Borchers (Reg. No. 0090690)
BRICKER & ECKLER, LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
dstinson@bricker.com
dborchers@bricker.com

COUNSEL FOR NORTHEAST OHIO
PUBLIC ENERGY COUNCIL

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I. INTRODUCTION

The Companies[1] have taken the unprecedented – and unlawful – action of proposing a new Retail Stability Rider ("New Rider RRS") for the first time on rehearing.[2] The Commission's Staff has compounded the Companies' unprecedented and unlawful action by proposing a completely different rider, the Distribution Modernization Rider ("Rider DMR"), that has no basis in the record giving rise to the March 31 Order issued in this proceeding. Rider DMR has no nexus to the intent of the original Rider RRS ("Original Rider RRS), or New Rider RRS, which allegedly was to provide a financial hedge to shield customers from price volatility. Rather, Rider DMR is designed solely to provide the Companies with more money to enhance their parent's, FirstEnergy Corp. ("FEC"), credit rating—for the benefit of its regulated **and unregulated** subsidiaries—not only in Ohio but in FEC's multi-state footprint. Tellingly, the Companies are willing to abandon their alleged goal of protecting their customers from price volatility under Rider RRS by accepting Rider DMR, but only if the Commission increases the revenues their customers are required to pay from an estimated $393 million under Staff's DMR proposal, to more than $9 **billion** under the Companies' revised Rider DMR proposal.[3]

On brief, the Companies and Staff ignore that their proposals are an effort to evade the Federal Energy Regulatory Commission's ("FERC") review of the power purchase agreement ("PPA") underlying the Original Rider RRS. As the Commission is well aware, FERC required the Companies to submit the PPA for its review before the Companies could implement it and, in its order, FERC strongly signaled that the PPA proposal would unlawfully require the Companies' captive customers to subsidize the Companies' unregulated affiliates and

[1]The "Companies" refer to FirstEnergy Corp.'s operating companies: The Cleveland Electric Illuminating Company, The Toledo Edison Company, and Ohio Edison Company.

[2] See Northeast Ohio Public Energy Council's ("NOPEC") Rehearing Initial Br. at 5-7.

[3]Companies Ex. 205, at 4 (Murley Rehearing Rebuttal); Companies Ex. 206, at 13-14 (Mikkelsen Rehearing Rebuttal/Surrebuttal).

shareholders.[4] As reflected in the NOPEC's initial brief on rehearing, and those of other intervenors, the Companies' and Staff's proposals suffer from this same infirmity.[5] It is incumbent upon this Commission to recognize that the Companies' and Staff's proposals will unlawfully subsidize the activities of FEC and its subsidiaries throughout its multistate footprint. NOPEC implores the Commission to protect the Companies' 2 million customers in northern Ohio from subsidizing FEC's subsidiaries, including FirstEnergy Solutions' ("FES") unregulated generation, to its customers' detriment.

II. ARGUMENT

A. The Commission Must Reject New Rider RRS.

The Companies attempt to support the New Rider RRS by claiming (1) that it does not modify the provisions upon which the Commission relied in approving ESP IV, and (2) that New Rider RRS offers substantial benefits to its customers and Ohio. Neither claim has merit.

1. New Rider RRS Substantially Modifies the Bases Underpinning Approval of ESP IV.

a. New Rider RSS modifies the quantitative costs of ESP IV.

The fatal flaw to the Companies' argument that New Rider RRS does not modify the quantitative costs upon which the Commission relied in approving ESP IV is that the Companies' claim is based upon the stale 2014 forecasts of capacity and energy prices. Upon review of recent capacity auction prices, Staff no longer agrees with the Companies' forecasts[6] or that Rider RRS (new or original) provides a quantitative benefit to customers, the key reason the March 31 Order approved the Original Rider RRS.[7]

[4] See 155 FERC ¶ 61,101 ("FERC Order").

[5] NOPEC Rehearing Initial Br., at 17-23.

[6] Rehearing Tr. IV, at 986 (Choueiki Cross).

[7] Rehearing Tr. IV, at 1250 (Choueiki Cross); Staff Initial Br., at 3.

Moreover, proffered evidence of record that was improperly excluded at hearing shows that, if current forecasts of capacity and energy prices are considered, the Companies' captive customers would be required to pay onerous amounts for New Rider RRS. Using more recent, and thus more reliable, forecasts Ohio Consumers' Counsel witness Wilson demonstrated that the Companies' proposed ESP IV under the New Rider RRS is between approximately $1.3 *billion* to $3.5 *billion* less favorable than an MRO.[8] Similarly, P3/EPSA witness Kalt, relying on recent market energy forwards, testified that customers would lose $2.7 billion under New Rider RRS;[9] and Sierra Club witness Comings testified that customers' loss would equal nearly $1.6 billion, using a recent PJM market energy price forecast and an ICF capacity price forecast.[10]

Finally, the Attorney Examiner allowed into evidence only portions of P3/EPSA witness Kalt's analysis, which portion projected prices using the Companies' projection of wholesale energy prices and the **known** capacity prices in the ATSI zone through 2018/2019. By updating only the first three years of the 8-year ESP with these known figures, Dr. Kalt showed that customers would be required to pay the Companies at least $154 million in New Rider RRS charges, a difference of $715 million from the $561 million benefits projected by the Companies under the Original Rider RRS.[11] Contrary to the Companies' assertions,[12] even considering the $51.1 million in shareholder funded projects approved in the March 31 Order, New Rider RSS would be quantitatively less favorable than an MRO by at least $100 million, and much more if the intervenors' improperly excluded evidence is admitted into the record for the Commission's consideration.

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[8] OCC/NOAC Ex. 1, at 13 (Wilson Rehearing Direct).

[9] P3/EPSA Ex. 17, at 8 (Kalt Rehearing Direct).

[10] Sierra Club Ex. 100, at 3 (Comings Rehearing Direct).

[11] Rehearing Tr. V, at 1185; P3/EPSA Initial Br. at 40-41.

[12] Companies' Rehearing Initial Br., at 9.

As NOPEC explained in its initial brief, it is inherently unfair to permit the Companies to update Original Rider RRS on rehearing to account for recent events (the FERC Order), without permitting intervenors to provide updated and more reliable capacity and energy price forecasts.[13]

b. New Rider RSS modified the alleged qualitative benefits of ESP IV.

The Companies claim that New Rider RRS does not modify the qualitative benefits of ESP IV. Its claim is based on five qualitative benefits recognized in the March 31 Order,[14] but completely ignores the Companies' other professed qualitative benefits of the ESP IV, including what are commonly referred to as the AEP Factors.[15] Indeed, by Entry of March 23, 2015 the Commission continued the hearing in this proceeding for the express purpose of assuring that the Companies' ESP IV met these factors, which included, among other things: (1) reliability of generation supply, (2) fuel/power supply diversity, (3) support to local economies, and (4) avoidance of costly transmission investment.[16] In their effort to avoid FERC scrutiny, the Companies' have jettisoned the direct linkage between the FES PPA Units and Rider RRS and, now, too easily attempt to ignore the important, integral part these factors played in the Commission's decision to approve ESP IV.[17] Indeed, Staff testified, and forcefully asserts on

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[13] NOPEC Rehearing Initial Br., at 14.

[14] Companies Rehearing Initial Br., at 8-10. These alleged benefits include (1) continuation of the distribution rate freeze, (2) multiple rate options, (3) a goal to reduce CO_2 emissions, (4) reactivation of energy efficiency programs, and (5) the promotion of energy efficiency programs to small business.

[15] *In Re Ohio Power*, PUCO Case No. 13-2385-EL-SSO (Order, February 25, 2015) at 24-25.

[16] OCC Ex. 44, at 12 (Kahal Rehearing Direct).

[17] The Companies claim that they will continue to comply with one AEP Ohio Factor – the ability for the Commission to review Rider RRS. This provision was made a factor because of concern that FERC's exclusive jurisdiction over wholesale rates would prevent the Commission from reviewing matters related to the PPA. Because the New Rider RRS allegedly involves only retail regulation, the Companies have no basis to deny Commission review, rending the Companies' promised compliance with this AEP Factor moot.

brief, that New Rider RRS must be rejected solely because the New Rider RRS eliminates the alleged benefits of supply diversity and support to local economies.[18] NOPEC agrees.

Considering the enormous costs New Rider RRS will place on consumers and its elimination of significant qualitative benefits that led to the Commission's approval of ESP IV, the Commission now must find that the ESP IV, as modified by New Rider RRS, renders ESP IV less favorable than an MRO and reject the New Rider RRS. The Commission must order the Companies either to accept the ESP IV as approved in the March 31 Order (resulting in FERC review of the underlying PPA), or to file a new ESP or MRO application as required by R.C. 4928.143(C)(2).

2. New Rider RRS Does Not Offer Substantial Benefits to its Customers and Ohio.

In attempting to further support the unreasonable and unlawful New Rider RRS, the Companies claim that the rider offers still further qualitative benefits, including (1) immediate implementation of all aspects of ESP IV, (2) the provision of funds that "could" be used to implement provisions of ESP IV, (3) the provision of economic development benefits, and (4) the elimination of intervenors' concerns with the Original Rider RRS.

a. Immediate implementation of all aspects of ESP IV.

The Companies claim that approval of New Rider RRS will permit all aspects of ESP IV to be implemented sooner than if the Companies were to await FERC's approval of the PPA, which is a pre-condition for implementing Original Rider RRS. The Commission must reject this argument out of hand. First, even a casual reading of the FERC Order shows that FERC is not about to approve the Companies' PPA with FES – that's why the Companies have developed the New Rider RRS to avoid FERC scrutiny and certain rejection. Second, the Commission

[18] Staff Rehearing Initial Br., at 2-3.

should not reward the Companies' efforts to avoid FERC jurisdiction by granting New Rider RRS,[19] but should join FERC in protecting the Companies' 2 million customers in northern Ohio from subsidizing FEC and its shareholders. Finally, the premise of the Companies' claim – that approval of the rider will provide timely economic value to customers - is just plain wrong. As explained above, Staff and the intervenors have shown that New Rider RRS provides no economic benefits to the Companies' customers, but is extremely detrimental to them.

b. Rider RRS funds "could" be used to implement provisions of ESP IV.

It is important that the Commission recognize how the Companies carefully parse their words in this proceeding relative to the use of New Rider RRS revenues (and even Rider DMR revenues.) The Companies have made no commitment as to how the funds will be used; rather, they continuously indicate how they "intend" how to use the funds, or how the funds "could" be used. The evidence of record shows that there is no restriction as to the purposes for which the Companies may use New Rider RRS revenues, but could be used to benefit FES, the Companies other generating affiliates, or "any other operations."[20] The Companies claim that the funds could be used to fund smart grid and other distribution expenses belies the Commission's March 31 Order, which already requires these investments be funded and, more importantly, provides a return of, and on, the investment through various riders, including Rider AMI and Rider DCR, as well as revenues from shared savings and lost distribution revenues.

[19] Staff recognizes that, in proposing New Rider RRS, the Companies have developed a "virtual PPA" based upon the costs and energy/capacity outputs of the PPA Units that were the subject of the PPA over which FERC asserted jurisdiction in the FERC Order. The Commission's approval of such a virtual PPA would conflict with the FERC Order and, thus, violate R.C. 4928.05(A)(2), and the U.S. Constitution as detailed in NOPEC's initial brief filed in this matter. See Staff Rehearing Br. at 4.

[20] Dynegy Ex. 2, at 5-6 (Ellis Rehearing Direct), OEC/EDF Ex. 3, at 9 (Finnigan Rehearing Direct); Rehearing Tr. I, at 58, 70-75, 176-177 (Mikkelsen Cross).

c. The provision of economic development benefits.

Although the Companies admittedly will no longer provide local economic development benefits associated with the Sammis and Davis Besse plants, they claim that New Rider RRS will promote economic development by providing rate stability in their service territories. The evidence of record shows that New Rider RSS will significantly increase all consumers' (residential, commercial and industrial) electric bills. As OMAEG witness Lause testified, these increased bills will act as a barrier to economic development in northern Ohio, particularly among the manufacturing sector.[21]

d. The elimination of intervenors' concerns with the Original Rider RRS.

The Companies claim that New Rider RRS is superior to Original Rider RRS because the assumed costs and energy/capacity outputs under New Rider RRS are known, eliminating concerns that customers will bear the risk of increased generating costs, operating levels, and other operational or market performance risks. Once again, the Companies ignore that, under the recent and more reliable market forecasts, customers' concerns are validated – they will pay enormous sums to support New Rider RRS with no commensurate benefits. Concerns that changing costs and market conditions may unreasonably increase charges to ratepayers have been rendered moot by the recent capacity auction prices,[22] as well as the updated forecasts proffered in this proceeding, which confirm the unreasonable increases.

3. New Rider RRS is the Equivalent of a Transition Charge.

The Companies contend that New Rider RRS cannot be construed to be a "transition" charge because the Companies already transitioned their generating units to FES in 2005 and

[21] OMAEG Ex. 37, at 11 (Lause Rehearing Direct).

[22] Staff Rehearing Initial Br., at 3.

have been offering market-based SSO pricing since 2009.[23] The Companies miss the point. As explained in NOPEC's initial brief, R.C. 4928.38 prevents the collection of transition charges, or their "equivalent" after 2010. The Ohio Supreme Court recently found that riders are unlawful transition charges when "intended to guarantee recovery of lost revenues" in the competitive marketplace.[24] At issue in *Columbus Southern* was AEP Ohio's Retail Stability Rider ("RSR"), which was "intended to guarantee recovery of lost revenues offered to CRES providers and from expected increases in customer shopping during the ESP."[25] Similar to AEP Ohio's RSR, the Companies' New Rider RRS also seeks to recover lost revenues, in this instance because the marketplace is not providing its generating facilities with sufficient revenues to recover the costs of operating its plants. As Staff witness Choueiki testified, all of New Rider RRS's credits and charges are an explicit function of 3,257 MWs of generation represented by FES's Davis Besse and Sammis plants, along with FES's OVEC entitlement.[26] When market prices are low, the Companies' captive distribution customers will pay the Companies the difference between these plants' forecasted fixed costs and the then-prevailing market price of the plants' forecasted energy and capacity output.[27]

Transition revenues represent the recovery of generation costs that were incurred by a utility under regulation that would not be recovered in a competitive environment.[28] By seeking to recover the fixed generation costs that are not recovered in the competitive generation market,

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[23] Companies Initial Br. at 18.

[24] *In re Application of Columbus So. Power*, 2016-Ohio-1608, ¶ 23 ("*Columbus Southern*"); see, also, *In re Application of Dayton Power & Light Co*., Slip Opinion 2016-Ohio-33490 ("*DP&L*") (reversed on authority of *Columbus Southern*).

[25] *Columbus Southern*, at ¶ 23.

[26] Staff Ex. 15, at 14 (Choueiki Rehearing Direct); Rehearing Tr. IV, at 955 (Choueiki Cross).

[27] Staff Ex. 15, at 11-12.

[28] See *FirstEnergy Corp. v. Pub. Util. Comm*., 95 Ohio St.3d 401, 202 Ohio-2430, ¶ 14.

New Rider RRS would recover revenues “equivalent” to transition revenues. New Rider RRS clearly is unlawful under R.C. 4928.38, *Columbus Southern* and *DP&L.*

B. The Commission Must Reject Staff’s Proposed Rider DMR.

On brief, Staff asserts that its newly proposed Rider DMR must be approved because (1) its objective to support grid modernization satisfies the public policy concerns contained in R.C. 4928.02(A) – (E), and (2) because an ESP IV that would include Rider DMR, satisfies the ESP v. MRO test contained in R.C. 4928.143(C)(1). As a threshold matter, as stated in NOPEC’s initial brief, Staff has dispensed with all pretense that the Companies are requesting a rider in this proceeding to provide customers with a financial hedge to protect them from price volatility. Out of the blue, Staff now proposes Rider DMR solely for the benefit of the Companies’ parent, FEC, to provide it massive amounts of money to improve its credit rating. The credit support ostensibly is to be used to jump-start grid modernization – but that purpose rings hollow because there is no commitment that the funds be used for that purpose. As such, the “Distribution Modernization Rider” is a misnomer. Because it is intended to provide credit support to FEC, it should be termed the “Credit Support Rider,” which satisfies none of the criteria for inclusion in an ESP under R.C. 4928.143(B)(2).

1. Rider DMR does not satisfy the public policy concerns contained in R.C. 4928.02(A) – (E).

Staff’s argument that Rider DMR satisfies the public policy concerns of R.C. 4928.02 must fail because it assumes that the revenue from the rider will be used to fund grid modernization. The Companies’ simply have not committed to use the funds for that purpose. The evidence of record shows that there are no restrictions on how Rider DMR revenues are to be used.[29] Staff admits as much.[30] There is no requirement that any of the Rider's revenues be used to pay for any distribution or distribution-related asset, plant, property or equipment.[31]

In fact, far from promoting the public policy contained in R.C. 4928.02, Rider DMR actually violates the statute. As NOPEC explained in its initial brief on rehearing, Rider DMR violates R.C. 4928.02(H)[32] because, in providing credit support to FEC, it necessarily subsidizes the Companies' other affiliates, including unregulated generating affiliates such as FES.[33] Because the nonbypassable Rider DMR charge is considered to be a noncompetitive distribution charge, it provides an unlawful subsidy to FEC's competitive generation services. Clearly, the subsidy is anti-competitive because other competitive electric suppliers do not receive credit support from captive ratepayers.[34] The Commission should reject Rider DMR on this basis.

2. Further hearing is required if Rider DMR is incorporated in the Stipulation entered into in this proceeding.

Staff argues that an ESP that contains Rider DMR would be quantitatively more favorable that an MRO by $51.1 million, which is the amount of shareholder-funded programs the Companies offered under the Stipulation in this proceeding. Staff's argument is fatally

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[29] OMAEG Ex. 37, at 8 (Lause Rehearing Direct).

[30] Rehearing Tr. III, at 583-585 (Buckley Cross).

[31] Rehearing Tr. IV, at 956-957 (Choueiki Cross).

[32] R.C. 4928.02(H) provides that it is the policy of the state to:

> Ensure effective competition in the provision of retail electric service by avoiding **<u>anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service</u>** or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates. [Emphasis supplied.]

[33] OMAEG Ex. 39, at 4 (Lause Rehearing Rebuttal); OCC Ex. 46, at 12 (Kahal Rehearing Rebuttal); Rehearing Tr. III, at 510 (Buckley Cross).

[34] OMAEG Ex. 39, at 7 (Lause Rehearing Rebuttal).

flawed because no party has agreed to incorporate Rider DMR into ESP IV.[35] Thus, the quantitative—and qualitative—benefits of the Stipulation in this proceeding cannot be relied on to support a quantitative or qualitative analysis of an ESP IV with Rider DMR versus an MRO. Notably, if a stipulation were later entered incorporating Rider DMR into the Stipulation in this proceeding, further rehearing would be required to assure the new stipulation satisfies the Commission's three prong test articulated in *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 592 N.E.2d 1370 (1992).

The record in this proceeding shows that Rider DMR will cost the Companies' captive customers $131 million per year, which is $393 million dollars over three years or potentially $655 million or more if Rider DMR is extended an additional 2 years, as Staff contemplates. The only qualitative benefit supported by the stand-alone DMR proposal is the benefit that grid modernization will provide customers. However, those benefits are illusory because the Companies are not committed to use Rider DMR revenues for grid modernization. The funds are to be collected from customers only to provide FEC with credit support. Considering the effects of Rider DMR alone, which is all the record allows, the Commission must conclude that its cost of up to $655 million, without any demonstrated concomitant qualitative benefits, does not satisfy the ESP v. MRO test.

3. Staff's criticism of OCC witness Kahal and OMAEG witness Lause are unwarranted.

To support its unfounded positions, Staff criticizes the testimony of OCC witness Kahal and OMAEG witness Lause, who opposed Rider DMR in their rebuttal testimony. Staff's criticism is unwarranted and misguided.

[35] Assuming that Rider DMR can be considered with the other provisions of the Stipulation approved in this proceeding, NOPEC has shown that an ESP IV with Rider DMR is not more favorable than an MRO. See NOPEC Rehearing Initial Br., at 21-22.

First, Staff faults OCC witness Kahal's position that FEC's financial difficulties were attributable to its support of unregulated generation activities and that revenues from regulated operations should not be used to bail out FEC and its unregulated generation affiliates. Staff contends that it doesn't matter what caused the Companies' financial weakness.[36] But it does matter. As stated above, the intent of Rider DMR is to provide credit support to FEC, including for the benefit of its generation subsidiaries. This benefit is an anti-competitive subsidy prohibited by R.C. 4928.02(H), as explained above.

Second, Staff criticizes OCC witness Kahal's testimony that Rider DMR is unreasonable because only Ohio's captive customers will be providing FEC with credit support, without the assistance of customers in other states, or shareholders. Staff recites actions that FEC has taken or will take to improve its financial condition. For instance, Staff cites that FEC's operating companies in other states are pursuing base rate cases to increase revenues.[37] Staff's position is without merit. First, this Commission has no jurisdiction to compel ratepayers in other states (or shareholders) to provide an equal share of assistance to shore up FEC's financial health. Moreover, Ohio customers are paying the same type of rate support to FEC through distribution rates, Rider AMI and Rider DCR, as customers in other jurisdictions are paying through base distribution rates. The requirement to provide credit support to FEC through Rider DMR, in addition to these revenues, is lacking in other states. Ohio customers should not be required, on their own, to support FEC's financial health, and no evidence of record demonstrates that ratepayers in other jurisdictions, or shareholders, are doing their fair share.

[36] Staff Rehearing Initial Br., at 9.

[37] Staff Rehearing Initial Br., at 9-10.

Third, Staff criticizes Mr. Kahal's assertion that the Company's existing authorized rate of return in its last distribution rate case should be sufficient to provide credit support for FEC.[38] Staff's criticism contradicts its own position that rate proceedings in other jurisdictions are sufficient to provide a fair share of credit support to FEC. Staff's position ignores that the Companies, instead of proposing a rate freeze in this proceeding, could have elected to have all of their revenues, expenses and rate of return properly adjusted in a base distribution rate case, as in other jurisdictions. In any event, the enormous sums that the Companies are permitted to recover through Rider DCR in this proceeding, place Ohio customers on equal footing with customers experiencing rate increases in other jurisdictions. Ohio customers should not be alone in contributing additional amounts for FEC's credit support.

Fourth, Staff criticizes Mr. Kahal's analysis that, even if Staff's proposal were successful in raising FEC's credit rating by one notch, and the Companies issue $1 billion in new debt, the Companies would realize an interest rate expense savings of approximately $2 million per year – a tiny fraction of the $ 131 million (or more) that customers would pay for Rider DMR.[39] Staff ignores OCC witness Kahal's overarching point, which is that Staff has failed to provide any evidence or make any analysis to show that the enormous cost of Rider DMS provides a concomitant benefit to consumers. No evidence shows that Rider DMS will prevent higher rates to consumers in the future by reason of the Companies' increased borrowing costs – or even that increased borrowing costs are a certainty. Staff's failure to provide such an analysis makes it fail in its burden to show that Rider DMR is just and reasonable.

Staff's criticisms of OMAEG witness Lause are equally without merit. First, Staff criticizes witness Lause's characterization of Rider DMR as an unlawful subsidy of FEC's

[38] Staff Rehearing Initial Br., at 10-11.

[39] OCC Ex. 44, at 9 (Kahal Rehearing Direct).

unregulated generation.[40] As NOPEC explained in its initial brief on rehearing, and above, such subsidy is very real and unlawful under R.C. 4928.02(H).

Staff also criticizes OMAEG witness Lause's showing that Rider DMR will not encourage a diversity of supplies or suppliers in the state.[41] As shown above, Rider DMR is anti-competitive. The financial support that FEC and its generation affiliates will receive from Rider DMR will serve as a barrier to entry by other suppliers wishing to enter the state, but who do not have guaranteed captive ratepayer funds to support them.[42]

C. The Companies' Proposed Revisions to Rider DMR Must be Rejected.

The Companies intimate that they could accept Rider DMR if certain revisions were made to it. The revision would have the effect of increasing the revenues recovered under Rider DMR from $393 million to over $9 billion. That alone should give the Commission more than pause before considering the Companies' revisions. In any event, and as stated in NOPEC's initial brief on rehearing, Rider DMR as revised by the Companies suffers the same infirmities that befall Staff's version of the rider and should be denied for those reasons. However, if Staff's version Rider DMR was approved in some form (which it should not), the Companies' revisions should be disallowed for the reasons submitted in Staff's initial brief on rehearing at 14-17.

NOPEC strenuously disagrees with Staff's changing positions on whether Rider DMR could recover the costs of keeping FEC's headquarters in Akron. On one hand, Staff assumes that Rider DMR will supplant Rider RRS in the ESP IV approved by the March 31 Order. The March 31 Order approves a Stipulation in which the Companies already voluntarily agreed to

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[40] Staff Rehearing Initial Br., at 12.

[41] Staff Rehearing Initial Br., 13.

[42] OMAEG Ex. 39, at 7 (Lause Rehearing Rebuttal).

keep their Akron headquarters. On the other hand, Staff ignores this promise on brief and would permit the Commission to provide the Companies with additional revenues associated with keeping their headquarters in Akron. The Companies must be held to their promise if the ESP IV is modified with the substitution of Rider DMR, particularly considering that Rider DMR will provide revenues of up to $655 million under Staff's proposal, versus the $561 million credit the Companies will pay under Original Rider RRS. Staff is correct in its assessment that the Companies are being adequately compensated for maintaining and Akron headquarters.[43]

D. The Ohio Energy Group's Proposed Rate Design Must be Rejected.

On brief, the Ohio Energy Group ("OEG") offers two alternative rate designs to implement Rider DMS if it is approved (which it should not be). The first is to allocate the costs on the basis of 50% distribution and 50% demand revenues. The obvious effect of the rate design is to impose a disproportionate share of costs on residential and small commercial customers.[44] The Commission should reject this proposal as unreasonable.

As an alternative, OEG proposes that Rider DMR costs first be allocated to residential customers on the basis of 50% demand and 50% energy, after which allocations be made of the remaining costs to the remaining customer classes on the basis of 50% distribution and 50% demand revenues. Again, small commercial customers would bear a disproportionate share of these remaining costs.

NOPEC agrees with Staff and OCC that it is more reasonable to allocate Rider DMR costs, if approved (which it should not be), for all customer classes on the basis of 50% demand and 50% energy.[45]

[43] Staff Rehearing Initial Br., at 18.

[44] See OEG Rehearing Initial Br. at 9, Table 1.

[45] OCC Rehearing Initial Br., at 45; Staff Rehearing Initial Br., at 14; Rehearing Tr. II, at 431 (Turkenton Cross).

III. CONCLUSION

For the above reasons and those provided in its initial brief on rehearing, NOPEC respectfully requests that the Commission reject the Companies' New Rider RRS proposal, Staff's Rider DMR proposal and the Companies' proposed revisions to Staff's Rider DMR proposal, and grant NOPEC's pending application for rehearing on the merits.

Respectfully submitted,

Glenn S. Krassen (Reg. No. 0007610)
Counsel of Record
BRICKER & ECKLER LLP
1001 Lakeside Avenue, Suite 1350
Cleveland, OH 44114
Telephone: (216) 523-5405
Facsimile: (216) 523-7071
gkrassen@bricker.com

Dane Stinson (Reg. No. 0019101)
Dylan F. Borchers (Reg. No. 0090690)
BRICKER & ECKLER, LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
dstinson@bricker.com
dborchers@bricker.com

COUNSEL FOR NORTHEAST OHIO
PUBLIC ENERGY COUNCIL

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply Brief on Rehearing was served *via electronic mail* upon the parties of record this 29th day of August, 2016.

Glenn S. Krassen

burkj@firstenergycorp.com
cdunn@firstenergycorp.com
dakutik@jonesday.com
jlang@calfee.com
talexander@calfee.com
mkurtz@BKLlawfirm.com
kboehm@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
stnourse@aep.com
mjsatterwhite@aep.com
yalami@aep.com
Jennifer.spinosi@directenergy.com
ghull@eckertseamans.com
myurick@taftlaw.com
dparram@taftlaw.com
Schmidt@sppgrp.com
ricks@ohanet.org
tobrien@bricker.com
mkl@bbrslaw.com
gas@smxblaw.com
wttpmlc@aol.com
lhawrot@spilmanlaw.com
dwilliamson@spilmanlaw.com
blanghenry@city.cleveland.oh.us
hmadorsky@city.cleveland.oh.us
kryan@city.cleveland.oh.us
mdortch@kravitzllc.com
rparsons@kravitzllc.com
mitch.dutton@fpl.com
DFolk@akronohio.gov
sechler@carpenterlipps.com
gpoulos@enernoc.com
twilliams@snhslaw.com
larry.sauer@occ.ohio.gov
maureen.willis@occ.ohio.gov
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com

cmooney@ohiopartners.org
callwein@keglerbrown.com
joliker@igsenergy.com
mswhite@igsenergy.com
Bojko@carpenterlipps.com
barthroyer@aol.com
athompson@taftlaw.com
Christopher.miller@icemiller.com
Gregory.dunn@icemiller.com
Jeremy.grayem@icemiller.com
blanghenry@city.cleveland.oh.us
hmadorsky@city.cleveland.oh.us
kryan@city.cleveland.oh.us
tdougherty@theOEC.org
jfinnigan@edf.org
Marilyn@wflawfirm.com
todonnell@dickinsonwright.com
matt@matthewcoxlaw.com
mfleisher@elpc.org
rkelter@elpc.org
drinebolt@ohiopartners.org
meissnerjoseph@yahoo.com
LeslieKovacik@toledo.oh.gov
trhayslaw@gmail.com
Jeffrey.mayes@monitoringanalytics.com
mjsettineri@vorys.com
glpetrucci@vorys.com
msoules@earthjustice.org
sfisk@earthjustice.org
Thomas.mcnamee@puc.state.oh.us
Thomas.lindgren@puc.state.oh.us
Steven.beeler@puc.state.oh.us
dwolff@crowell.com
rlehfeldt@crowell.com