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Via E-FILE

August 29, 2016

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: Case No. 14-1297-EL-SSO

Dear Sir/Madam:

Please find attached the REHEARING REPLY BRIEF OF THE OHIO ENERGY GROUP e-filed today in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,

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MLKkew
Encl.
Cc: Certificate of Service

3 BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In The Matter Of The Application Of The Ohio Edison Company, The Cleveland Electric Illuminating Company, And The Toledo Edison 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. 14-1297-EL-SSO**

REHEARING REPLY BRIEF OF THE THE OHIO ENERGY GROUP

The Ohio Energy Group ("OEG") submits this Rehearing Reply Brief in support of its recommendations to the Public Utilities Commission of Ohio ("Commission") in this proceeding. OEG's decision not to respond to other arguments raised in this proceeding should not be construed as implicit agreement with those arguments.

ARGUMENT

I. The Commission Should Adopt Staff's Recommendation That The DMR Collect $131 Million Annually. If the Commission Allows The DMR To Be Adjusted For Taxes, Then FirstEnergy's Gross-Up Methodology Is Correct.

Having reviewed the arguments raised in the initial rehearing briefs, OEG now believes that the best course of action for the Commission is to adopt Staff's recommendation that the proposed Distribution Modernization Rider ("DMR") annually recover $131 million in revenues.[1] This approach would maintain the DMR at a reasonable level while also giving the Companies much-needed credit support. If the Commission determines that the $131 million DMR should be adjusted for income taxes, however, then it should adopt FirstEnergy's proposed gross-up methodology, which is the correct approach.[2]

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[1] Post-Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio ("Staff Brief") at 7.
[2] Post-Rehearing Brief of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("FirstEnergy Brief") at 35.

Staff agrees with modifying the DMR to adjust for taxes to the extent that the Companies experience actual cash outlays for income tax in a given year.[3] But Staff's proposal to limit the gross-up to actual taxes paid by the Companies is not feasible. The Companies do not file income tax returns. Instead, FirstEnergy Corp. files a consolidated income tax return where all of its regulated and unregulated subsidiaries are combined with their parent company for tax purposes. Over time, FirstEnergy Corp. will pay the maximum tax rate despite temporary changes impacting the timing of actual taxes paid, such as bonus depreciation, operating loss carryforwards, etc. In other words, over time, the actual taxes paid by FirstEnergy Corp. plus deferred taxes will equal the maximum tax rate. Therefore, adopting FirstEnergy's recommended tax gross-up, which would increase the DMR from $131 million to $204 million, is the proper approach if the Commission wishes to adjust the level of the DMR for taxes.[4]

OEG also recommends two additional modifications to the proposed DMR:

First, if the Commission adopts FirstEnergy's proposed modification to gross-up the DMR for income taxes, then the Commission should also reserve the right to lower the level of the tax gross-up during the term of the DMR if the corporate tax rate decreases over that period. Both major party candidates for the United States Presidency are actively advocating for a reduction to the 35% maximum federal corporate income tax rate to as low as 15%. The Commission should maintain flexibility should this occur.

Second, the Commission should retain the ability, upon subsequent application by the Companies, to allow the term of the DMR to extend throughout the approved term of the ESP. The option of treating the DMR as part of the ESP package for the full ESP term is reasonable given that the benefits of the ESP to customers will extend throughout the proposed eight-year ESP term. While Staff has proposed a DMR extension of up to two years upon subsequent application of the Companies,[5] the extension should be allowed for up to five years.

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[3] Staff Brief at 15-16.
[4] *See* Company Ex. 206 at 11 ($131 million / (1-.36) = $204.7 million).
[5] Staff Ex. 13 at 7.

II. OEG's Recommendation To Allocate DMR Costs To Customers On A 50% Demand And 50% Distribution Revenue Basis Is Reasonable And Is The Only Allocation Proposal Supported By The Record.

The Office of the Ohio Consumers' Counsel and the Northwest Ohio Aggregation Coalition ("OCC/NOAC") allege that OEG's recommendation to allocate 50% of the proposed DMR costs based on distribution revenues and 50% based on demand (4 Coincident Peak) would disproportionately allocate costs to residential customers.[6] Instead of adopting OEG's recommended allocation, OCC/NOAC ask that the Commission allocate 50% of the proposed DMR costs to all customers on the basis of energy and 50% on the basis of 4 CP demand.[7] Staff also proposes to allocate DMR costs on 50/50 demand/energy basis, claiming that such an allocation would be equitable for all rate classes.[8]

Conversely, several parties support OEG's recommended approach, including Nucor Steel Marion, Material Sciences Corporation, and Industrial Energy Users-Ohio.[9] IEU-Ohio's primary recommendation is to allocate the proposed DMR entirely based on distribution revenues since such an approach: 1) is consistent with cost causation, given that the goal of the DMR is to support the modernization of FirstEnergy's distribution system; and 2) is consistent with state policy of encouraging Ohio's effectiveness in the global economy.[10] And Nucor similarly argues that an allocation based entirely upon distribution revenues may be more appropriate for the proposed DMR since the goal of that Rider is to support the modernization of FirstEnergy's distribution system.[11] Nucor also notes that the Commission has approved distribution-based allocations for the economic development Riders of Ohio utilities.[12] But Material Sciences, IEU-Ohio and Nucor all accept OEG's proposed allocation as a reasonable compromise approach to allocating DMR costs.[13] Nucor explains that "[t]*he evidence in the record*

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[6] Initial Rehearing Brief by the Office of the Ohio Consumers' Counsel and Northwest Ohio Aggregation Coalition (and its Individual Communities), Village of Holland, Lake Township Board of Trustees, Lucas County Board of Commissioners, City of Maumee, City of Northwood, Village of Ottawa Hills, City of Perrysburg, City of Sylvania, City of Toledo, and Village of Waterville ("OCC/NOAC Brief") at 44.

[7] Id. at 45.

[8] Staff Brief at 13-14.

[9] Initial Brief on Rehearing by Nucor Steel Marion, Inc. ("Nucor Brief") at 5-7; Initial Rehearing Brief by Material Sciences Corporation at 26; Initial Rehearing Brief of Industrial Energy Users-Ohio ("IEU-Ohio Brief") at 6-7.

[10] IEU-Ohio Brief at 6-7.

[11] Nucor Brief at 6.

[12] Id. at 6.

[13] Id. at 6-7; IEU-Ohio Brief at 7-8.

demonstrates that [OEG's] *proposal is simple, equitable and fair, and is a reasonable approach in light of the unique nature and purpose of Rider DMR.*"[14]

As OEG already explained, while the DMR is primarily a distribution-related Rider approvable under R.C. 4928.143(B)(2)(h), that Rider also serves an economic development purpose consistent with R.C. 4928.143(B)(2)(i) – maintaining FirstEnergy's headquarters in Akron, Ohio.[15] It is therefore appropriate to adopt a hybrid allocation to recognize the DMR's dual objectives. Nevertheless, none of the DMR costs should be allocated on the basis of energy usage. The $131 million per year (potentially grossed up for taxes) proposed to be collected through the DMR is a fixed distribution expense with no relation to the volume of energy used by any given customer. Consequently, approval of the OCC/NOAC/Staff allocation approach would be directly counter to cost causation principles. Adopting an energy-based cost allocation for any of the DMR costs would also contravene regulatory practice throughout the country and the recommendations set forth in NARUC's *Electric Utility Cost Allocation Manual* that *"there is no energy component of distribution-related costs."*[16] And an energy-based allocation would harm economic development in Ohio, contrary to the state policy set forth in R.C. 4928.02(H) as well as one of the main objectives behind the proposed DMR, by placing a disproportionate amount of DMR costs on large energy-intensive users.

None of the entities recommending that 50% of the DMR costs be allocated to all customers on an energy basis presented sufficient evidence in support of their proposals. Those proposals were not included in direct testimony that was subject to cross-examination. Additionally, absent from those cursory recommendations was any detail as to how that approach would impact customer rates. Nor was there any recommendation as to whether that allocation would apply to each FirstEnergy operating company separately or would apply uniformly to all three operating companies. Those parties ask the Commission to approve their cost allocation proposals based largely upon speculation. But the Commission recently explained that cost allocation proposals lacking

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[14] Nucor Brief at 7-8.
[15] Rehearing Brief of the Ohio Energy Group ("OEG Brief") at 5.
[16] OEG Brief at 6-7 (citing Rehearing Tr. Vol. VI (July 21, 2016) at 1318:1-1319:7 and National Association of Regulatory Utility Commissioners, Electric Utility Cost Allocation Manual (January 1992), available at https://eflle.mpsc.state.mi.us/efUe/docs/ I 76$9/0078.pdf at 89).

proper evidentiary support should be rejected, stating that one intervenor's proposal *"would have an unknown impact on customer bills and, in the absence of any analysis, it is inappropriate to modify the Company's current cost allocation methodology."*[17]

Rather than breaking from this precedent and establishing a cost allocation upon such tenuous grounds, the Commission should adopt OEG's 50/50 demand/distribution approach, which is the only approach supported by sufficient evidence in the record. OEG's approach was presented in direct testimony that was subjected to cross-examination.[18] It is supported by a study of potential bill impacts to all rate schedules.[19] Hence, approval of that approach would make the Commission much less vulnerable to appeal, particularly since adoption of an allocation based in part on distribution revenues supports the claim that the proposed DMR is a distribution Rider authorized under R.C. 4928.143(B)(2)(h).

The Commission should also adopt OEG's recommended rate design for the proposed DMR - recovering costs within each rate schedule using a kWh charge. No parties affirmatively disputed that rate design. And although that rate design benefits low load factor customers at the expense of high load factor customers (including OEG members), it produces a balanced outcome in this instance. Finally, a uniform FirstEnergy DMR by rate schedule, as opposed to separate DMR rates for each of the three operating companies, should be adopted.

III. As A Compromise, The Commission Could Adopt An Alternative Approach To DMR Cost Allocation In Order To Lessen The Rate Impact On Residential Customers.

If the Commission wishes to balance the interests of the entities recommending various cost allocation approaches for the proposed DMR, then it could adopt an alternative compromise approach. That approach would first entail allocating DMR costs to *only* the residential class based 50% on demand and 50% on energy. Then, the remaining DMR costs would be allocated to the other rate schedules as OEG recommends above (50% on distribution revenues and 50% on demand). As OEG already demonstrated, at a DMR of $131 million, this compromise approach lessens the rate impact of the DMR on the residential class by $15.4 million per year, or

[17] Opinion and Order, Case Nos. 13-2385-EL-SSO *et al* (February 25, 2015) at 68.
[18] OEG Exs. 4 and 5C.
[19] OEG. Ex. 8.

26% from OEG's primary cost allocation recommendation.[20] The impact on non-residential rate schedules (including rate schedules under which OEG members take service) increases, but remains reasonable.

Table 1A below is a modified version of Table 1 from OEG's initial Rehearing Brief. Table 1A reflects the bill impacts of the compromise approach if the $131 million DMR is grossed-up for taxes to $204 million. Under this scenario, the rate impact on the residential class is reduced by $24 million per year.

TABLE 1A

Allocation of $204 Million OE/CEI/TE Combined
50% on Distribution Revenue/50% on 4 CP Demands
versus Compromise Alternative --
Residential Allocation per Staff 50% Energy/50% 4 CP Demand with Residual to All Other Rate Schedules per OEG Method

	OEG 50% on Dist. Rev. 50% on 4 CP Demand	Rate $/mWh	Compromise Alternative Residential per Staff Residual per OEG	Rate $/mWh
RS	90,064,424	5.20	66,112,611	3.82
GS	68,385,547	4.53	85,905,897	5.69
GP	11,311,057	2.78	13,771,081	3.39
GSU	11,364,199	2.33	12,285,411	2.52
GT	19,153,871	1.66	20,378,139	1.77
STL	2,481,352	8.37	3,765,141	12.69
POL	1,159,173	11.48	1,671,703	16.56
TRF	80,377	2.27	110,017	3.11
Total	204,000,000	3.83	204,000,000	3.83
Residential Typical Bill at 750 kWh per month		$3.90		$2.86

[20] *See* OEG Brief, Table 1.

CONCLUSION

WHEREFORE, for the foregoing reasons, if the proposed DMR is approved, the Commission should: 1) limit the annual amount recovered through the DMR to $131 million; 2) use FirstEnergy's tax gross-up methodology, if the Commission wishes to adjust the level of the DMR for taxes; and 3) adopt OEG's primary or alternative cost allocation and rate design recommendations.

Respectfully submitted,

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August 29, 2016

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 29th day of August, 2016 to the following:

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