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 and Electric Security Plan.	))))))))	Case No. 14-1297-EL-SSO

JOINT REPLY BRIEF ON REHEARING OF ENVIRONMENTAL DEFENSE FUND AND OHIO ENVIRONMENTAL COUNCIL

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I. INTRODUCTION

The Companies claim that by eliminating the PPA from the calculation, the Modified Rider RRS proposal "moots many of the concerns raised by intervenors in their application for rehearing."[1] However, after rehearing proposals and alternatives to Rider RRS, and the resulting initial briefs, it has become clear that the "concerns" and outright opposition to the Rider RRS (in any of its iterations or alternatives presented in rehearing) are far from moot. In our initial brief, OEC & EDF urged the Commission to deny Modified Rider RRS as unjust, unreasonable and inconsistent with the policy of the State of Ohio.[2] In the briefs of fellow parties opposed to the original Rider RRS construct, they too contend that the Rider cannot be legally permissible under an electric security plan,[3] and that the purported benefits to customers relies on incorrect data.[4]

What is moot, however, is any pretense that this case involves anything but the dictionary definition of a bailout[5] of the distribution companies, and a bailout of the credit-strapped unregulated utility holding company, First Energy Corp. Staff's alternative to Modified Rider RRS, proposes to "fix" the credit and other financial problems of First Energy Corp. by requiring customers to absorb hundreds of millions of dollars of cash influx to the utility holding Company. It is not the Commission's job to bailout utilities that make bad business decisions. Rather than burden its customers, FirstEnergy executives and shareholders, like any company facing hardships, should find solutions on their own. This shifting of the burden of responsibility is impermissible under Ohio law, and not reasonable or rational for customers, and should be

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[1] *See* Companies' Brief at 2.
[2] OEC/EDF Brief at 4.
[3] *See* Sierra Club Brief at 8-19.
[4] See OCC brief at 7
[5] Webster defines "bailout" as "the act of saving or rescuing something (such as a business) from money problems." Merriam-Webster (http://www.merriam-webster.com/dictionary/bailout).

rejected. Moreover, the Companies' additional request to ostensibly bailout its Akron-based headquarters to the tune of $568 Million per year, should likewise be abandoned.

Thus, pursuant to the procedural schedule established by the Attorney Examiners in this case, OEC & EDF respectfully submit the following joint reply brief on rehearing. In this Reply Brief, OEC & EDF hereby reiterate our position that Modified Rider RRS, Rider DMR, and/or any combination thereof, is wholly unjust, utterly unreasonable, and inherently inconsistent with the policy of the state of Ohio. We moreover support the enumerated legal and factual failures of the proposals raised by our fellow opponents of the Companies' bailout. Furthermore, as outlined below we respond to the assertions made by the Companies' and other parties in support of the bailout, and urge the Commission to deny the wished-for subsidies as proposed.

II. ARGUMENT

A. The Commission should deny Modified Rider RRS as unjust, unreasonable and inconsistent with the policy of the State of Ohio

1. Modified Rider RRS poses serious, and ultimately insurmountable, legal issues

OEC and EDF maintain from our initial brief on rehearing, that Modified Rider RRS would result in unlawful, anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service, or vice versa,[6] and that the Rider would result contravention of many of Ohio's important laws, rules, and energy policies.[7] These same issues were echoed throughout Staff's brief and argument against Modified RRS, a former signatory and proponent of the Stipulation. While we may vehemently oppose the Staff's alternative to

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[6] OEC/EDF Brief at 15.
[7] *Id.* at 15-19.

Rider RRS, we agree with Staff that Modified RRS should be rejected due to legal barriers.[8] Staff explained that the benefits previously anticipated for the original Rider RRS no longer exist, and "[i]n its place has come the existence of serious legal issues, calling into question whether an appeal would withstand review."[9] It remains our contention that the "benefits" of original Rider RRS were speculative, and ultimately would have resulted in cost and detriment to the people of Ohio and especially the Companies' ratepayer. Nevertheless, it is clear that the legal issues we and other recognized in the original phase of this proceeding on the original Rider remain, and are intensified under the Modified Rider.

a. Recent Ohio Supreme Court precedent could rule Modified Rider RRS as an illegal transition charge.

First, as we explained in our initial brief on rehearing, and supported in the briefs of other parties, Modified Rider RRS is an unlawful transition charge. Revised Code Section 4928.39 defines transition costs as costs unrecoverable in a competitive environment,[10] and Revised Code 4928.38 bars the commission from authorizing the "receipt of transition revenues or any equivalent revenues" after December 31, 2010.[11] Two recent Ohio Supreme Court cases concerning AEP and DP&L's SSO cases further clarify this prohibition by showing that generation-like riders similar to Modified RRS will be considered transition charges.[12] In the *AEP ESP II* case, the Commission approved the AEP-Ohio's proposal for Rider RDR, and that rider's $826 million in nonfuel generation revenues in each year of the ESP.[13] As the Court pointed out, the Commission approved this Rider against the opposition of a number of parties

[8] Staff Brief at 3.
[9] Staff Brief at 5.
[10] Ohio Rev. Code at 4928.39.
[11] Ohio Rev. Code Sec.4928.38.
[12] *See* Ohio Supreme Court Slip Opinion No. 2016-Ohio-3490 (*DP&L ESP*); S*ee* also, SLIP OPINION NO. 2016-OHIO-1608 (*AEP ESP*).
[13] *AEP ESP* Ohio Supreme Court SLIP OPINION NO. 2016-OHIO-1608 at 17.

because, AEP is not receiving transition revenues or recovering stranded costs through the RSR.[14] This conclusion was based on the fact that "AEP did not argue that the revenues received under its prior electric-transition plan were insufficient to cover costs."[15] Nevertheless, the Ohio Supreme Court ruled that "the fact that AEP did not explicitly seek transition revenues does not foreclose a finding that the company is receiving the equivalent of transition revenue."[16] The Court in *AEP* stated AEP's Rider RSR's intended effect of "provid[ing] AEP-Ohio with sufficient revenue to ensure it maintains its financial integrity as well as its ability to attract capital" did not justify its approval by the PUCO.[17]

The resemblance between the Modified Rider RRS and the other utilities'overturned Riders is uncanny, and not legally distinguishable. The Companies suggest that because the cost and revenue proxies are based on actual operational or market based characteristics of any particular generating facilities," that essentially this is not a generation rider.[18] However, as Staff testified, Modified RRS is still at its core a generation rider.[19] OCC aptly points out that while the Companies modified its Rider RRS proposal, they have "not modified the potential ultimate destination of its revenues to save its failing unregulated competitive enterprise at captive customers' expense."[20] Further, the Court observed in AEP that the Rider RSR's intended effect of "provid[ing] AEP-Ohio with sufficient revenue to ensure it maintains its financial integrity as well as its ability to attract capital" did not justify its approval by the PUCO. The same purpose, to provide the utility with sufficient revenue to ensure it maintains its financial integrity, is the core of Modified Rider RRS. It is hard to believe that the Court would find these

[14] *Id.* (citing AEP ESP III Opinion and Order at 32).
[15] Id.
[16] *Id.* at 8.
[17] Id.
[18] *See* Companies' Brief at 15.
[19] Staff Ex. 15 at 14.
[20] OCC Brief at 27.

indistinguishable riders not deserving of the same fate. We therefore suggest that the Commission heed the warning in Staff's brief, that with this strong and recent precedent in mind, it is quite foreseeable that the Court would invalidate the Companies' attempt to tie this rider to generation costs.[21]

b. The Companies fail to meet the burden under ESP Statute

Secondly, the FirstEnergy Utilities have the burden to show that the elements of the ESP are "just and reasonable and are consistent with the policy of the state as delineated in" R.C. 4928.02.[22] As we discussed in our initial rehearing brief, a major legal hurdle is how this proposal violates If the prices the Companies actually pay for power to supply customers are *higher* than the revenues the Companies collect from customers under modified Rider RRS, then the Companies would incur a loss. The only way the Companies could make up this loss would be through a rate increase. If this occurs, then anticompetitive subsidies would flow from a noncompetitive service to pay for competitive retail electric service, in violation of R.C. 4928.02(H). On the other hand, if the prices the Companies actually pay for power to supply customers are *lower* than the revenues the Companies collect from customers under modified Rider RRS, then the Companies would incur a profit. If this occurs, then anticompetitive subsidies would flow from a competitive retail electric service to pay for noncompetitive retail electric service, in violation of R.C. 4928.02(H).

Furthermore, and perhaps most importantly and most legally problematic, the Modified PPA does not pass the required ESP v. MRO test. The statutory standard for review of an ESP requires the Commission to determine "whether the ESP is more favorable in the aggregate than

[21] Staff Brief at 4.
[22] Ohio Adm. Code 4901:1-35-06(A).

MRO, pursuant to Section 4928.143(C)(1), Revised Code."[23] The Companies, in this case, have the burden of proof that the ESP passes this test. In defense of this burden, the Companies claim that"[b]ecause the qualitative and quantitative factors the Commission relied upon remain unchanged, it is not necessary for the Commission to reconstruct the ESP v. MRO test from whole cloth."[24] The Companies claim that there will be no need to reconcile costs included in the Rider RRS as they will not change from the projections in the record, nor will capacity revenues be necessary.[25] However, as pointed out by OCC in its initial brief, the Companies' conclusion only results if the previously approved cost projections for Rider RRS are presumed.[26] Those projections were opposed by OCC and other parties as part of approved (but otherwise still pending) applications for rehearing. Staff and intervenors have analyzed those numbers after the space of time between the Commission's March 31 Opinion and Order and now, cloud the belief that there would be a credit. According to Sierra Club, the projections of net credits that relied on those forecasts were unreliable and invalid. Since then, market conditions have become even less favorable to Rider RRS and the evidence has become even clearer that it is wholly unreasonable to continue to rely on Mr. Rose's mid-2014 market forecasts.[27]To this point, as Staff Witness Dr. Choueiki testified during rehearing, it is Staff's current belief that Rider RRS is going to be a charge, and that he does not agree with the Utilities' projections of modified Rider RRS as a credit.[28] As OCC aptly points out, reliance on the prior holdings of the PUCO on the statutory test is misplaced,[29] and thus the Companies have not fully met its ESP vs. MRO burden.

c. Like original Rider RRS, Modified RRS may run afoul of Federal law

[23] *In re Columbus S. Power Co.*, Case No. 11-346-EL-SSO, et al., Opinion and Order (Dec. 14, 2011) at 27.).
[24] Companies' Brief at 6.
[25] *Id.*
[26] OCC Brief at 7-8.
[27] Sierra Club Brief at 19-20.
[28] Tr Vol IV at
[29] OCC Brief at 8.

Lastly, it cannot be ignored that the reason why this modification of the Rider RRS is before the Commission is due to the fact that the Rider's underpinning bailout of affiliate generation was contrary to federal law. This Modified Rider RRS, is not being presented as a way to quickly provide the benefits instead of waiting for a positive FERC ruling on the PPA this modification is the Companies' attempt to fleece itself out of federal jurisdiction, As Staff recognizes, although the Commission cannot interpret federal law, state law under ORC 4928.05(A)(2) requires the Commission not act in conflict with federal law.[30] While Staff does not want to admit that this Modified RRS is just a means to work around the FERC's jurisdiction, as they aptly point out (and we agree), "a federal court might."[31]

For these risky legal hurdles, that OEC and EDF contend are insurmountable for the Companies' to pass, we urge the Commission to reject Modified Rider RRS.

2. Modified RRS will not provide the benefits purported by the Companies, but only risk further costs

Yet, not only are the attempts to overcome the legal hurdles a risky proposition, but so too is there a considerable risk for customers in the effectuation of Modified Rider RRS. The Companies suggest the Proposal "will have fewer moving parts, and thus, will present less risk to customers."[32] The Companies' claim, that if Modified RRS is approved then the Companies can support the other ESP IV initiatives, including "modernizing the Companies' distribution grid."[33] However, when taking into consideration the dire financial straits of the Companies and its parent as voluminously contended over the later part of this rehearing, that statement is false and contradictory. If the Companies need to jumpstart their grid modernization efforts with a credit

[30] Staff Brief at 4.
[31] *Id.*
[32] Companies' Brief at 2.
[33] Companies' Brief at 3.

supporting handout –the Companies cannot reasonably approach the Commission with Modified RRS and suggest that Modified Rider RRS is a beneficial alternative.

Under the new construct of Rider RRS, it is hard to fathom how the companies can provide and absorb the credits that they intend to provide to customers as well as invest in the modernization of the grid, and help its financial problems. As we pointed out in our initial rehearing brief, and Sierra Club (and others) examined deeper, if the claim of a net credit were to be believed, the Companies would receive $976 million nominal ($623 million NPV) less revenue from customers from 2019 through May 31, 2024.[34] No analysis, testimony, or evidence was submitted in this hearing to explain this more than significant loss under Modified Rider RRS - nor a reference to this loss by the Companies in brief. As Sierra Club points out, that the Companies admitted through the cross of Ms. Mikkelsen, they had no written analysis to support her testimony about how the Companies might offset the projected credits under Modified Rider RRS, and instead her testimony about potential offsets was "more of a mental exercise."[35]

We second the Club's conclusion that "it strains credulity that a utility would propose a rider under which it expects to lose nearly a billion dollars (nominal) in revenues without engaging in anything more than a "mental exercise" . . . unless, of course, the utility does not really think that the customer credits . . . will ever actually materialize."[36]

As mentioned above, the Companies make the claim that revenue from Modified Rider RRS will support the other ESP IV initiatives, including "modernizing the Companies' distribution grid."[37] Yet, within lines of that statement they make the assertion that they need a

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[34] Sierra Club Brief at 27.
[35] *Id.*
[36] *Id.*
[37] Companies Brief at 3.

"jumpstart" the Companies' grid modernization initiatives.[38]. Then further, on the *very next* page, the Companies suggest that the "jumpstart" cash influx is an alternative to their preferred Modified RRS.[39] These statements not only are contradictory, but spell significant risk for customers. Clearly, the ultimate request is that the Companies want free money from customers in any fashion that the Commission is willing to give them. Grid modernization or any of the other items are mere stalking horses meant to gain favorability by the Commission for Modified Rider RDR but never materialize. These stalking horses however, should stay in the barn, and the Commission should reject Modified RRS. The unfortunate grid modernization stalking horse, however, rears its ugly head even more in the proposed alternative to Modified Rider RRS, the Staff's proposed Rider DMR.

B. Rider DMR, as proposed, should be rejected not benefit ratepayers or the public interest

1. Rider DMR does not guarantee its lofty goals of grid modernization

Throughout the many iterations of the centerpiece components of the Companies' fourth ESP – the Economic Stability Plan, Rider RRS, Modified Rider RRS, and Rider DMR -- there have been a number of lofty goals, aspirations, and hopes dished out by the Companies' and their supporters. None of these goals less ambitious, aspirational, and even inspirational than the Staff's assertion that "[t]his case presents an opportunity to move the distribution systems of . . . (the companies) into the twenty-first century."[40] Many parties, including Ohio Environmental Council and Environmental Defense Fund, have been waiting on this for the past 16 years. The Staff supports' its aspiration for this case by pointing to its "grid modernization proposal" and

[38] *Id.*
[39] *Id.* at 4.
[40] Staff Brief at 1.

suggests that it will "launch a new era in economic development for northern Ohio."[41] That, too, we and countless others have been awaiting.

Here, unfortunately is where the aspirations fall flat. The Staff does not put forward a grid modernization proposal – rather an annual cash payment to the Companies as credit relief for bad bets on antiquated technology, not an investment in modern technology. The Staff does not proposal does not in itself launch a new era of economic development – the proposal merely conditions the cash handout on the commitment to keep the First Energy Corp. headquarters in Akron, not creating any new development. In order to provide a cash influx to the Companies to bail it and its unregulated parent company out of credit problems, the Staff's offers a distribution modernization rider. Yet, Staff witnesses acknowledged that this rider "is not for the provision of a distribution service by the distribution companies to the ratepayers."[42] They acknowledge that the rider is "necessary to provide credit support to the companies and to FirstEnergy Corp., **not** to modernizing the grid."[43] The proposed rider simply does not involve grid modernization or other aspects of distribution service in any way, shape, or form.

2. Staff's presumed $464 Million annually from "other sources" does not exist on the record

As we reported in our initial brief, the essence of Staff's proposal is an allocation to First Energy's Ohio utility customers a share of the responsibility (ergo, the blame) for the corporate parent's fiscal problems.[44] Staff's proposal presumes that a proportionate contribution has or will come from other constituencies to help solve First Energy Corp.'s cash flow problem. This proportionate contribution, according to a quick calculation based on Staff's testimony equates to $464 Million annually from "other sources." However, where that nearly half a billion dollars

[41] *Id.*
[42] Tr. Vol III at 611.
[43] Tr. Vol IV at 960.
[44] OEC/EDF Brief at

per year will come from remains a mystery. As the record reveals, Staff did not do any evaluation of whether other subsidiaries of FirstEnergy Corp. might contribute or might have been the cause of more of the CFO shortfall for FirstEnergy Corp. than the Companies,[45] and admitted that it did not believe any additional constituents were warranted.[46] The Staff seems to buy into the idea that "FEC has taken and continues to take a number of significant steps to improve the financial position of the entire enterprise."[47] However, as we cited in our Brief, Staff's supporting Witness on this point, Ms. Mikkelsen, offers no evidence to the degree of these efforts or to the quantitative impact these efforts have made toward the credit support needed by First Energy Corp. [48] Nor did she specify that the contents or timeframe of the plan, and adds no evidence or detail as to the measures provided by shareholders.[49] Ms. Mikkelsen further asserts that the First Energy Corp. subsidiaries in New Jersey, Pennsylvania, and West Virginia have contributed to credit support through a number of regulatory cases.[50] Yet, again, as we pointed out, those enumerated cases were combinations of: base rate cases; capital recovery filings; and vegetation management cases. None of those cases were designed to recoup moneys already allocated by the Companies for other purposes or develop rate design and cost and cannot be considered as contributions to the fiscal problem. Thus, the contributions from these constituencies remain a mystery.

3. OEG misses the point with its compromise and veiled support of Rider DMR.

As a compromise offer from industrial customers to residential customers under proposed Rider DMR, OEG suggests an alternative cost allocation to "only the residential class" based on

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[45] Tr. Vol III at 541
[46] *Id.* at 648
[47] Staff Brief at 9.
[48] OEC/EDF Brief at 35.
[49] *Id.*
[50] *Id.*

50% demand and 50% on energy.[51] OEG suggests that "OEG members have load on Rates GS, GP, GSO, and GT all of which would be negatively impacted by this compromise alternative."[52] This negative impact to OEG members, presumably would be the lion's share of $15 million per year that OEG purports would be saved by residential consumers under this compromise, and pointed out in OEG's attachment to their Brief.[53] While quite magnanimous of OEG, and while we believe in OEG's sincerity, OEG does not address the ultimate question of why ANY residential or non-residential customer is responsible for ANY of the credit problems this Rider is purported to mend. The Companies even go as far as to suggest that due to shopping in their service territory that more of the percentage of responsibility (40%) should go to Ohio distribution customers.[54] As we averred in our initial brief, a customer's mere choice to live or maintain a business in the Companies' service territory does not mean he or she must take the responsibility for a utility's cash flow problems.[55]

4. The record does not support conditioning Rider DMR or otherwise compensating the Company for its headquarters

Rider DMR's most difficult deficiency to connect to reasonableness and rationality involves the retention of the utility holding company parent of the Companies. In Rider DMR, Staff conditions the upfront payment of nearly $400 million on the retention of the First Energy Corp. headquarters in Akron, and First Energy Corp. not be sold.[56] Staff suggests that the reasoning behind its "condition" on the Companies as "quite simple."[57] However, its simplicity is quite strained. First, the Staff avers that keeping the headquarters in Akron is economic

[51] OEG Brief at 8.
[52] *Id.*
[53] *See* OEG Brief at Attachment A.
[54] Companies' Brief at 36.
[55] OEC/EDF Brief at 29.
[56] Staff Ex. 13 at 7
[57] Staff Brief at 17.

development.[58] However, that is not the Staff's proposal nor is it the Staff's condition. The Companies brief, thankfully, clarifies this position, and rightfully call this "job retention."[59] The condition does not develop jobs, it retains the jobs that are directly connected with the Akron headquarters. While retention is important, it is not readily understandable that the captive distribution utility customers who must be on the hook.

Staff makes the statement that it "makes little sense to invest into growing Ohio's economy but also allow the headquarters operation to leave the state."[60] While a very heartfelt sentiment, the Staff's statement makes some presumptions that are not evident in the record or actually contradicted by the record. First Energy has been headquartered in Akron for a long time, and according to admissions in this case, have a lease signed to keep them in Akron for at least the term of the ESP.[61] Also, by the Staff's juxtaposition of smart grid investment and the loss of Akron headquarters, despite the evidence to the contrary, suggests a latent argument that without the condition, investment in grid modernization will cause First Energy Corp. to leave Akron, or somehow hemorrhage jobs. The record does not support this.

Secondly, as we explained in OEC & EDF's initial brief, the Staff provides no evidence to support these conditions as adequate consideration for the customers' payment of hundreds of millions of dollars.[62] No analysis that the customers receive any benefit from the Akron headquarters. The record reflects no analysis as to the financial impact of moving the headquarters to another Ohio location, or out of state, nor any analysis of whether selling the

[58] *Id.*
[59] Companies Brief at 38.
[60] *Id.*
[61] Tr. Vol. 3 at 1531.
[62] OEC/EDF Brief at 31

Company would have a net positive or negative impact on the customers.[63] The only "analysis" done on the subject was by the Companies' Witness Murley, and for that matter, Staff readily admits, or at least admits that it is an obvious criticism to be lodged by others, that the supporting testimony of Companies' Witness Murley is flawed.[64]

5. Ultimately, the PUCO should not fall into the Moral Hazard presented by Rider DMR

Moral Hazards, or the idea that a party that is protected in some way from risk will act differently than if they didn't have that protection, is a term usually reserved for the insurance industry. In the case of insurance policies, there is an everpresent concern that if insurance companies offer big insurance payouts then the insured will engage in ultra risky-behavior. As was discussed, albeit briefly, during hearing, it is "not a term of art frequently used in utility matters."[65] However, since the Commission's March 31, 2016 Opinion and Order in this case directly equates Rider RRS with a form of rate insurance,[66] it has become quite relevant and appropriate -- at least in *this* utility matter. Staff Witness Dr. Choueiki testified that "[i]t wouldn't have been recommended if we [Staff] felt it was a moral hazard,"[67] but the truth is that the very real potential is quite present. It has been risky bets on antiquated, dirty energy that got the company into dire straits, and there is no guarantee that those risky behaviors will not continue if given $131 million to $1.126 Billion/ year. In fact, the incentive would be solidified to continue its bad bets and risky behavior as long as it has this credit support precedence to fall back.

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[63] *See* Id.
[64] Staff Brief at 18.
[65] Tr. Vol IV at 1028.
[66] Opinion and Order (March 31, 2016) at p.80 ("Rider RRS will operate as a form of rate insurance.")
[67] Tr. Vol IV at 1029.

The Companies claim that, by improving the First Energy Corp.'s credit metrics, the Companies would have better access to capital markets on more favorable terms, which would benefit customers.[68] This, however, presents a quandary as there was no evidence or data presented providing a quantitative value of the benefit to customers as compared with the costs of less favorable terms. The Commission should be provided the full information on the panoply of costs and benefits of determining whether, and/or to how much, and for how long (if at all) it allows customers to fund a credit support Rider. The Companies claim that "obtaining more favorable terms from vendors and suppliers associated with grid modernization, which could reduce Rider AMI dollars collected."[69] This reduction in Rider AMI costs may be true, but if that value is less that the amount required of customers under Rider DMR, then the issue is moot. If customers would be paying more for Rider AMI plus Rider DMR, that for Rider AMI, then clearly, the scheme would not provide a net benefit to customers.

If the state moves away from the free market construct we have moved toward over the past decade and a half, it must start with the General Assembly. The Commission, in the meantime must continue down that path of free markets, and free markets suggest that each company is on its own to fail or succeed. When there is a bailout, however, there is clearly a lack of incentive to guard against risk. If the Companies' squander their bailout money, there is no repercussions – they are not required to pay it back to rate payers under the proposals. The only requirement is that the Companies do not sell and do not move out of Akron – conditions that are not likely in the least actually may cause more risky behavior. The Commission should

C. **The Commission should develop alternative means to require immediate investment in actual grid modernization**

[68] Companies' Brief at 32.
[69] *Id.*

Grid modernization is an important piece in Ohio's codified energy policies. As Staff alludes[70], grid modernization supports five of the State's policies, including:

> (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;
>
> (B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;
>
> (C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;
>
> (D) Encourage innovation and market access for cost effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure;
>
> (E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language.[71]

It should not go without saying that OEC and EDF are consummate proponents of grid modernization. We see the grid of tomorrow breaking ties from the one-way, manual methods of the current grid, and allow for multi-way flow of energy and energy data and that people can control how and when their home or business uses energy. This is ultimately good for the environment, good for consumers, and good for Ohio's economy. In fact, since the beginning of this proceeding, OEC & EDF urged that the Commission must, in order for the Companies ESP IV to meet and achieve these goals, to require robust grid modernization efforts. OEC/EDF Witness Cheryl Roberto, in the early stages of this proceeding recommend that the Companies

[70] Staff Brief at 5.
[71] R.C. 4928.01(A)-(E).

should implement all cost-effective Integrated Volt/VAR Control ("IVCC") before the Commission considered the original Rider RRS.[72]

Customers can benefit directly from managed, lower system voltage levels without the need to take any action on their part – translating into potentially lower fuel costs and lower bills. In addition, Volt / VAR optimization can provide value that goes beyond energy savings associated with Conservation Voltage Reduction , including the ability to reduce overall voltage levels, while ensuring these voltages remain within acceptable standards for electric distribution. As Former Commissioner Roberto pointed out, reductions in distribution system voltage have been demonstrated to result in reductions in energy consumption across the electric circuits on which these are applied. She cited, then, two examples of Ohio utilities' experience with VVO, and its resulting 3% reduction in energy consumption and a 2%-3% reduction in peak demand that can be obtained on those circuits on which the technology is deployed. *Id.*

Yet, despite the rhetoric in this rehearing, the policy of this state vis-a-vis grid modernization is not being advanced in this case. There is no grid modernization proposal by Staff; there is instead a proposal for a Rider to provide cash to First Energy Corp. – an unregulated utility holding Company – to help its diminishing credit rating. There is no guarantee that if Modified RRS is approved, that the Companies would be able to fund grid modernization. The Staff, actually, has merely named the credit-support rider proposal, Distribution Modernization Rider, and has laid it on the Commission to figure out the details of what First Energy actually must do to provide the grid modernization benefit as consideration for the customers' annual $131 million investment.

[72] OEC/EDF Ex. 2 at 10-12.

The Commission, ultimately, should take the lead in providing a framework with goals and enumerations of benefits to be seen by customers, and a reasonable and responsible *return* on the utilities' investment. The Commission, however, need not (and should not), as the Rider DMR suggests, require customers to pay up front, hundreds of millions of dollars for the hope of future grid modernization. As Staff's Witness testified, Rider DMR is not sufficient to achieve the objectives of grid modernization of the entire FE distribution system.[73] The Commission should , instead of rewarding poor past behavior with Rider DMR, the Commission should set the table for future benefits for customers by requiring that full investment. An illusory "jumpstart" with the remaining customer-funded cash influx that the Companies did not spend on other operational debts and expenses is not a plan for the future. A well thought out plan, either through a full vetting of the Companies' smart grid business plan filing (PUCO Case No. 16-0481-EL-UNC) or other mechanism, requiring reasonable cost recovery, and quarterly filings and true-ups will pay dividends to all (not just to First Energy Corp.).

III. CONCLUSION

The Companies have failed to carry the burden to demonstrate that the proposed Modified Rider RRS or an alternative is reasonable to merit Commission approval.

For the reasons enumerated in this brief, each of the "alternatives" to approved Rider RRS would harm customers and/or violate Ohio law and policy. Thus, the Commission should reject Modified Rider RRS and proposed Rider DMR in their entirety as unjust unreasonable and inconsistent with the policy of the state.

[73] Tr. Vol V at 1254.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the parties referenced on the service list of this docket by electronic mail this 29th day of August, 2016.

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