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**

APPLICATION OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY FOR REHEARING OF FIFTH ENTRY ON REHEARING

Pursuant to Section 4903.10 of the Ohio Revised Code and Rule 4901-1-35 of the Ohio Administrative Code, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the "Companies"), request rehearing of the Fifth Entry on Rehearing issued in this proceeding on October 12, 2016. As demonstrated in the attached Memorandum in Support, the Fifth Entry on Rehearing is unreasonable and unlawful on the following grounds:

1. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission did not adopt the Companies' suggested modifications to the Staff's proposed Distribution Modernization Rider ("Rider DMR"). These failures are likely to undercut the ability of the rider to achieve its stated purposes.

    a. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission erroneously and improperly limited the term of Rider DMR to three (or potentially five) years, contrary to the record evidence and Rider DMR's purposes.

    b. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission erroneously and improperly failed to include in Rider DMR any value for the rider's requirement that FirstEnergy Corp.'s headquarters and nexus of operations remain in Akron, Ohio, contrary to unrebutted evidence that the headquarters requirement provides substantial economic benefits.

c. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission erroneously and improperly found that a cash from operations ("CFO") to debt ratio of 14.5 percent, rather than 15 percent, was appropriate to use in determining the proper amount of revenue to be generated by the rider, because 15 percent best represents the minimum support necessary to maintain investment grade credit ratings under Staff's methodology for calculating Rider DMR.

d. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission erroneously and improperly found that a four-year average of CFO to debt ratios from 2011 to 2014, rather than a three-year average from 2012 through 2014 that more accurately reflects FirstEnergy Corp.'s and the Companies' financial circumstances and Rider DMR's objectives, is appropriate in determining the amount of revenue to be generated by Rider DMR.

e. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission erroneously and improperly found that the Staff's "allocation factor" based on energy operating revenues, was appropriate to use in determining the amount of revenue that should be generated by Rider DMR because using that allocation factor understates the significance of the Companies to FirstEnergy Corp.

f. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission acted erroneously and improperly by not extending the exclusion of Rider DMR revenues from the significantly excessive earnings test ("SEET") for the potential extended term of Rider DMR, even though the Commission found that including Rider DMR revenues in SEET would be contrary to the rider's purpose.

2. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission made additional errors in the process of approving Rider DMR.

   a. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission improperly and erroneously conditioned the recovery of revenues under Rider DMR upon a demonstration of sufficient progress in the implementation and deployment of grid modernization programs approved by the Commission, an arbitrary and unnecessary condition that conflicts with one of the rider's objectives, i.e., to provide credit support.

   b. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission erroneously and improperly failed to find that Rider DMR was authorized under R.C. 4928.143(B)(2)(i), contrary to evidence that the headquarters requirement will provide economic development and job retention benefits.

   c. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission erroneously failed to find, and should clarify, as an additional reason why revenues from Rider DMR do not affect the ESP v. MRO test, that revenues from Rider DMR could be collected outside of an ESP through a distribution base rate case or other rate mechanism, or be offset by quantifiable benefits.

3. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission erroneously and improperly stayed the effective date for increases in the shared savings cap until such time as the Companies are not receiving revenues under Rider DMR. No party requested this relief or even provided evidence of any link between the shared

savings cap and Rider DMR. This was also an error because the shared savings cap and Rider DMR serve different purposes.

4. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission erroneously and improperly directed the Companies to amend their budgets for their Energy Efficiency and Peak Demand Reduction Portfolio Plans to budget for the annual mandates instead of the 800,000 MWh goal, contrary to the Third Supplemental Stipulation and the Commission's policy to encourage electric distribution utilities to exceed statutory benchmarks.
5. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission erroneously and improperly removed the 50 basis point adder to return on equity in the calculation for the Advanced Metering Infrastructure/Modern Grid Rider ("Rider AMI"), as stipulated and previously approved. The Commission's rationale for removing the adder – that the Commission had approved Rider DMR – overlooked that Rider AMI serves a different purpose than Rider DMR and that the 50 basis point adder was designed to incent the Companies to use available cash for grid modernization over competing investments.
6. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission erroneously and improperly directed the Companies to file a base distribution rate case for rates to be in effect after the expiration of ESP IV. This directive is premature, unsupported by evidence, and unnecessary because there are already adequate statutory protections for customers.
7. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission erroneously and improperly found that increases in revenue caps under the Delivery

Capital Recovery Rider ("Rider DCR") would be terminated if ESP IV was terminated prior to its currently approved eight-year term. This is contrary to the Third Supplemental Stipulation and fails to recognize that increases in Rider DCR revenue caps are necessary to accommodate the transition to another plan.

8. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission erroneously and improperly allowed for the potential expansion of participation in the Non-Market Based Rider ("Rider NMB") Opt-Out Pilot Program, contrary to the Third Supplemental Stipulation and the Commission's prior decisions and without evidentiary support. The Commission also retained the right to modify or even terminate Rider NMB. The Commission failed to identify a process for the expansion or modification of the program or of the modification or possible termination of the rider and specifically failed to include any opportunity for the Companies to be heard on those issues.

9. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission erroneously and improperly failed to adopt a placeholder retail competition incentive mechanism set at zero as described in the Competitive Market Enhancement Agreement.

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

Date: November 14, 2016

Respectfully submitted,

/s/ Carrie M. Dunn

Carrie M. Dunn (0076952)
Counsel of Record
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
Telephone: (330) 384-5861
Fax: (330) 384-8375
Email: cdunn@firstenergycorp.com

David A. Kutik (0006418)
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114
Telephone: (216) 586-3939
Fax: (216)579-0212
Email: dakutik@jonesday.com

James F. Lang (0059668)
N. Trevor Alexander (0080713)
CALFEE, HALTER & GRISWOLD LLP
The Calfee Building
1405 East Sixth Street
Cleveland, OH 44114
Telephone: (216) 622-8200
Fax: (216) 241-0816
Email: jlang@calfee.com
Email: talexander@calfee.com

ATTORNEYS FOR OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY

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**

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

TABLE OF CONTENTS

I. INTRODUCTION

The voluminous and complex record assembled over the course of this lengthy proceeding illuminates a clear fact: customers will benefit under Powering Ohio's Progress, the Fourth Electric Security Plan ("ESP IV") of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, the "Companies"). ESP IV provides customers stable, reasonably priced and reliable electric service. Customers pay market-based competitive prices for generation. Retail electric service shopping, already at the highest levels in the state, continues to flourish in the Companies' service territories. Distribution base rates are frozen. The Companies continue to improve their infrastructure to provide service that ranks among the most reliable in the state. ESP IV promotes the judicious use of resources through numerous energy efficiency and renewable resource programs. FirstEnergy Corp. has committed to significant energy savings and progress on reducing carbon emissions. Those customers who are most vulnerable and at risk are benefitting from programs designed to provide considerable assistance. Economic development in the Companies' service territories continues, enabled by various rates and programs offered under ESP IV.

As initially approved, ESP IV helped customers further stabilize rates, especially in the face of market risk, through the Retail Rate Stability Rider ("Rider RRS"). Subsequent to the Commission's order approving Rider RRS, the Federal Energy Regulatory Commission ("FERC"), in an unprecedented ruling, held that any purchased power agreement (which would be a part of the calculation of Rider RRS) would have to be approved by FERC.[1] The agency so

---

[1] *See Elec. Power Supply Ass'n v. FirstEnergy Solutions Corp.*, 155 FERC ¶ 61,101, FERC Docket No. EL16-34-000, Order Granting Complaint (Apr. 27, 2016).

ruled notwithstanding that the Companies and FirstEnergy Solutions Corp. ("FES") had already had a waiver from FERC regarding the need to review such contracts.[2] The requirement for such review would have delayed the full implementation of the ESP IV or, at the very least, put the future of ESP IV in question for an unduly long period. Consequently, for this and other reasons, the Companies requested rehearing on whether Rider RRS should be modified. The Commission appropriately granted rehearing to consider whether Rider RRS should be modified or whether there were alternatives to that rider.[3]

At the hearing on rehearing, Staff presented an alternative rider, the Distribution Modernization Rider ("Rider DMR"). That rider's purpose is to provide increased service and rate stability through a different means. Rather than attempt to hedge retail electric service generation prices as Rider RRS proposed to do, Rider DMR addressed distribution service stability. Rider DMR will jumpstart investment in grid modernization, making service more reliable and offering customers innovative technologies that will, among other things, help customers understand their energy usage and lower their bills. Rider DMR also recognized that to engage in such grid modernization projects, the Companies will need substantial capital. Yet, as the record compellingly shows, the Companies' ability to access capital is in jeopardy given: (1) the Companies' current credit ratings; and (2) announcements by certain credit ratings agencies that the Companies' credit ratings will likely be downgraded below investment status without some positive action by the Commission. Thus, Rider DMR is designed to allow the

---

[2] *Id.* at P 4 (citing *FirstEnergy Solutions Corp.*, 125 FERC ¶ 61,356, at P 13 (2008), *reh'g denied*, 128 FERC ¶ 61,119 (2009)).

[3] Entry on Rehearing, p. 3 (May 11, 2016); Attorney Examiner Entry, p. 4 (June 3, 2016); Third Entry on Rehearing, p. 12 (July 6, 2016).

Companies to maintain their investment grade ratings and thereby allow the Companies to access capital on reasonable terms. Simply put, without Rider DMR, the Companies' grid modernization efforts will cost more. Although both modified Rider RRS and Rider DMR will achieve price and service stability for customers and thus have merit, the Commission chose Rider DMR over the modified Rider RRS as proposed by the Companies.

The Fifth Entry on Rehearing, although properly rejecting most of the arguments by intervenors, contained several errors relating to Rider DMR and improperly modified ESP IV as initially approved. Regarding the former, the Commission unreasonably rejected the Companies' proposals to modify Staff's proposals for the term of Rider DMR and the calculation of revenue to be generated by the rider. By so doing, the Commission seriously undercut the very purpose of the rider by making it more difficult for the Companies to access capital for distribution grid modernization. Ultimately, a half-measure of credit support will make it measurably more difficult to achieve the Commission's stated objectives in adopting the rider.

The Commission also improperly modified ESP IV, in many instances on the Commission's own motion. Many of these modifications are not only improper; they have no legal or factual basis. These errors include: (1) delaying the effective date of the increased shared savings caps until the termination of Rider DMR; (2) requiring the Companies to amend their Energy Efficiency and Peak Demand Reduction Portfolio Plan budgets for the annual mandates instead of the stipulated 800,000 MWh goal; (3) removing the 50 basis point adder to return on equity under the Advanced Metering Infrastructure/Modern Grid Rider ("Rider AMI") on the basis that the Commission was adopting Rider DMR, when no party suggested that there was any link between the two and when there is no such link; (4) requiring the Companies to file a base rate case at the end of ESP IV, when there is no evidence that a rate case is or will be necessary and where the ESP statute expressly provides safeguards against the possibility that the Companies will "over-earn;" (5) providing that the annual increases in the revenue caps under the Delivery Capital Recovery Rider ("Rider DCR") to be in effect after the third year of ESP IV (as agreed to by the Signatory Parties to Stipulated ESP IV and approved by the Commission) may terminate if ESP IV is terminated under R.C. 4928.143(E), when the termination of ESP IV may require a transition to another plan that would merit keeping the agreed to and approved annual increases in place until there is a new plan; and (6) providing for the possible modification of the agreed to and approved Opt-Out Pilot Program relating to the Non-Market Based Rider ("Rider NMB"), when the Commission failed to provide any specific process by which such modification could occur, including the opportunity for the Companies to be heard.

The Commission also erred by failing to recognize certain applicable statutory sections. Specifically, the Commission should have determined that Rider DMR is authorized under R.C. 4928.143(B)(2)(i). Second, the Commission should have found that ESP IV, as modified on rehearing, is more favorable in the aggregate than the results under a market rate offer ("MRO"), for the additional reasons that Rider DMR would either: (1) have no quantitative effect because revenues that would be recovered under Rider DMR could be recovered in a distribution base rate case or other rate mechanism, i.e., outside of an ESP; or (2) provide a quantitative benefit of ESP IV because the annual economic benefit of the rider is greater than its cost.

As demonstrated below, the Commission should grant rehearing regarding the Fifth Entry on Rehearing, based on the errors discussed below, to assure that customers realize the full benefits of ESP IV.

II. ARGUMENT

A. The Fifth Entry on Rehearing is unlawful and unreasonable because the Commission did not adopt the Companies' suggested modifications to the Staff's proposed Rider DMR.

It can hardly be disputed that the Companies and their corporate parent face a challenging future. They have credit ratings at or near the bottom of the investment grade range.[4] Ratings agencies are threatening that, without sufficient relief in this case, they will lower the Companies' ratings to non-investment grade status.[5]

The consequences of such lower ratings also cannot be debated. Non-investment grade ratings, among other things, make it more difficult – i.e., more expensive – for the Companies to attract capital.[6] These increased costs will undoubtedly adversely affect customers.[7]

The potential for an increased cost of capital arising from lower credit ratings is particularly troublesome given the Companies' commitment to improve and modernize their grid. That endeavor requires capital – a lot of it.[8] Making access to capital more difficult and costly is exactly the wrong thing to do as Ohio strives to maintain its competitiveness in the global market.

---

[4] Mikkelsen Rehearing Rebuttal Test., pp. 6-7. *See also* Rehearing Tr. Vol. X, p. 1716 (Mikkelsen Rebuttal Cross).

[5] Buckley Rehearing Test., p. 4 (quoting Moody's and stating, "'[a] negative rating action could also occur if a modified ESP does not allow FE to maintain financial metrics adequate for investment grade ratings . . . ."); Buckley Rehearing Test., Att. 3, pp. 2-3 (noting that FirstEnergy Corp. and its subsidiaries have "minimal cushion at the current rating level" and citing doubts regarding the Commission's approval of ESP IV as one basis for S&P's negative outlook); Direct Ex. 1, pp. 2-3.

[6] Sierra Club Ex. 99; Mikkelsen Rehearing Rebuttal Test., p. 7; Rehearing Tr. Vol. VIII, pp. 1387-88 (Kahal Rebuttal Cross) (admitting that if the Companies' credit rating fell below investment grade, it could lead to "sharp increases" in the cost of borrowing).

[7] Mikkelsen Rehearing Rebuttal Test., pp. 7-8.

[8] Rehearing Tr. Vol. X, pp. 1622-23 (Mikkelsen Rebuttal Cross). *See also* Mikkelsen Rehearing Rebuttal Test., p. 15 (explaining that grid modernization requires significant investments over the course of many years).

For these reasons, the Commission's adoption of Rider DMR is amply supported by the record. Yet, given the Commission's stated desire to further grid modernization by shoring up the Companies' finances, and derivatively their credit ratings, the specifics of the rider as adopted not only fail to accomplish the Commission's stated objectives but, in fact, run counter to them. For example, the Commission undercuts the financial objective that it recognizes the Companies must meet – a cash from operations ("CFO") to debt ratio target set by rating agencies – by, among other things: (1) using a CFO to debt ratio that the Commission acknowledges is below the midpoint of the rating agencies' target range;[9] (2) calculating the CFO to debt ratio using an unrepresentative year when the ratio was within the target range;[10] and (3) using an improper allocation factor that does not consider the net of revenues and expenses, thus underestimating the Companies' contribution to FirstEnergy Corp.'s CFO to debt ratio.[11] Similarly, the Commission short-changes the financial support necessary by improperly limiting Rider DMR to three (or potentially five) years.[12] This is particularly erroneous given that the unrebutted evidence shows that the specific types of capital projects which Rider DMR is intended to support will extend well beyond that time frame.[13] To the same effect, although the Commission properly determined that Rider DMR revenues should be excluded from the SEET, the Commission undercut the potential support provided by the rider by failing to make

---

[9] Fifth Entry on Rehearing, p. 93.

[10] Fifth Entry on Rehearing, pp. 93-94.

[11] Fifth Entry on Rehearing, pp. 94-95.

[12] Fifth Entry on Rehearing, p. 97.

[13] Mikkelsen Rehearing Rebuttal Test., p. 15.

the SEET exemption coterminous with the rider's potential extended term.[14] These errors all stem from the Commission's rejection of the Companies' suggested modifications of Staff's methodology creating Rider DMR. The Commission should grant rehearing to make Rider DMR more effective towards achieving the purposes for which it was created. The Companies' suggested modifications should be adopted.

1. The Commission erroneously and improperly limited the term of Rider DMR to three (or potentially five) years.

The Commission's adoption of Staff's recommendation to limit Rider DMR to three years, with the opportunity for a two-year extension,[15] is unreasonable and contrary to record evidence. The Commission properly determined that Rider DMR is "necessary to assist the Companies in accessing the capital markets in order to make needed investments in their distribution systems."[16] Yet, by limiting the term of Rider DMR to three (or potentially five) years, the Commission undercut the very purpose of the rider. The uncertainty created by a short-term Rider DMR with a two-year option will make it more difficult for the Companies to access the capital markets. Rider DMR should remain in place for the entire ESP IV term. If the Commission wishes to review Rider DMR partway through ESP IV, the Commission can schedule a review most efficiently as an element of the fourth-year review under R.C. 4928.143(E).

---

[14] Fifth Entry on Rehearing, p. 98.

[15] Fifth Entry on Rehearing, p. 97.

[16] Fifth Entry on Rehearing, p. 90.

Neither a three-year nor a five-year Rider DMR will provide sufficient credit support for the Companies.[17] The Companies' grid modernization needs will not end in 2019; they will extend through at least 2026 and perhaps as far out as 2033.[18] The Companies' grid modernization business plan demonstrates that the Companies will make significant capital expenditures throughout the term of ESP IV – and beyond.[19] Staff's broader vision for grid modernization also will require additional capital outlays for investments in battery technologies, supervisory control and data acquisition ("SCADA") and a self-healing distribution systems.[20] The Companies also have pension funding obligations of $750 million to one billion dollars, with ongoing commitments in future years.[21] In addition, the Companies have $1.1 billion in debt maturing over the period of ESP IV.[22] Thus, to provide the Companies with required capital support for their multiple significant ongoing cash requirements, Rider DMR should be effective for the entire ESP IV term. If the Commission wishes to review Rider DMR, it can schedule a fourth-year review which is efficiently synchronized with the Commission's fourth-year review of the ESP under R.C. 4928.143(E).

---

[17] Mikkelsen Rehearing Rebuttal Test., p. 15.

[18] Mikkelsen Rehearing Rebuttal Test., p. 15.

[19] Rehearing Tr. Vol. X, p. 1623 (Mikkelsen Rebuttal Cross).

[20] Rehearing Tr. Vol. X, p. 1733 (Mikkelsen Rebuttal Cross).

[21] Rehearing Tr. Vol. X, pp. 1623, 1761 (Mikkelsen Rebuttal Cross).

[22] Rehearing Tr. Vol. X, p. 1623 (Mikkelsen Rebuttal Cross).

2. The Commission erroneously and improperly failed to include in Rider DMR any value for the rider's conditions including the requirement that FirstEnergy Corp.'s headquarters and nexus of operations remain in Akron, Ohio.

The Commission conditioned recovery of revenue under Rider DMR on: (1) the continued retention of the corporate headquarters and nexus of operations of FirstEnergy Corp. in Akron; and (2) no change in control of the Companies.[23] The Commission also found that "there is ample evidence in the record of the economic impact of maintaining FirstEnergy Corp.'s headquarters in Akron."[24] The Commission accepted the unrebutted testimony of Company witness Murley that the annual economic impact of the headquarters is $568 million.[25] The Commission erred in not including in Rider DMR, or as a new component of Rider EDR, any value for this headquarters requirement.

The annual Rider DMR revenue amount should be increased by an amount that recognizes, to an appropriate extent, the significant value of the headquarters requirement to Ohio.[26] The Commission's Rider DMR calculation did not include ***any amount*** to reflect the economic development value of the headquarters requirement. The headquarters requirement is an uncompensated economic development and job retention program that has been grafted onto an unrelated distribution modernization incentive.

---

[23] Fifth Entry on Rehearing, p. 96. A third condition is addressed below in a separate assignment of error.

[24] Fifth Entry on Rehearing, p. 111.

[25] Fifth Entry on Rehearing, pp. 111-12.

[26] Mikkelsen Rehearing Rebuttal Test., p. 14; Rehearing Tr. Vol. IX, p. 1464 (Company witness Murley testifying that "the benefit of keeping the headquarters in Akron should be accounted for in Rider DMR."). Alternatively, the Commission could recognize the economic development and job retention benefits of the headquarters condition by adding a new section to Rider EDR that takes these benefits into account.

Maintaining FirstEnergy Corp.'s headquarters in Akron unquestionably provides substantial economic benefits in the Companies' service territory. Company witness Murley testified that the headquarters has an annual economic impact of $568 million on Ohio's economy and supports over 3,400 jobs.[27] As Ms. Murley stated:

> The HQ has an estimated annual economic impact of $568.0 million on Ohio's economy, and directly and indirectly supports approximately 3,407 jobs and $244.6 million in annual payroll throughout the state. While it is not possible to isolate the taxes exclusively paid by the HQ, the local and state tax revenues from FirstEnergy Corp. HQ employees and other supported jobs are estimated at $20.0 million per year.[28]

Company witness Mikkelsen testified that there were additional economic development benefits from Rider DMR:

> There would be additional economic development benefits associated with rider DMR. There would be economic development benefits arising from the dollars being spent both, from a human resource and physical resource perspective, in terms of jobs and purchases of equipment that would provide economic development in the companies' service territories.
>
> Additionally, there would be economic development benefits that arise from grid modernization insomuch as the . . . modernization of the grid work occurs, customers will have the opportunity to select products that will help them better control and manage their energy spent, which will give rise to economic development benefits.
>
> Further, the modernized grid will reduce outages and improve reliability for our customers which, in turn, will provide economic development benefits throughout the companies' service territories.

---

[27] Fifth Entry on Rehearing, pp. 111-12. *See* Murley Rehearing Rebuttal Test., pp. 3-4.

[28] Murley Rehearing Rebuttal Test., pp. 3-4.

> So I think when I think of rider DMR, I think of all of those things as economic development and job retention benefits.[29]

The value that Rider DMR provides as an economic development and job retention program is incontestable.

Staff witness Buckley agreed that having FirstEnergy Corp.'s headquarters in Akron "provides jobs." He continued, "With a multiplier effect of, you know, money being spent, it really helps invigorate the Akron area and the State of Ohio in general."[30] Mr. Buckley noted that requiring the headquarters to remain in Akron also would support the state of Ohio through income and property taxes.[31] As Staff stated on brief, "The benefits of the headquarters are certainly very large and it is an economic boon for that area."[32]

As FirstEnergy Corp. and the Companies look for ways to shore up their respective balance sheets and credit ratings, the Commission's ruling limits their options by requiring their headquarters to remain in Akron on pain of the Companies losing up to $612 million (based on the Commission's initial three-year term, and not including any extension of Rider DMR). While the Commission acknowledges that its requirement to keep FirstEnergy Corp.'s headquarters in Akron provides economic benefits, the Commission's failure to include any value for these benefits unfairly ties management's hands without providing value for such restrictions. Therefore, the Commission should increase the annual Rider DMR revenue amount

---

[29] Rehearing Tr. Vol. X, pp. 1818-19 (Mikkelsen Rebuttal Redirect).

[30] Rehearing Tr. Vol. III, p. 694 (Buckley Cross); Rehearing Tr. Vol. V, p. 1256 (Staff witness Choueiki stating that the headquarters condition "is an economic positive").

[31] Rehearing Tr. Vol. III, p. 679 (Buckley Cross).

[32] Staff Rehearing Brief, p. 18.

by appropriately reflecting some value associated with keeping FirstEnergy Corp.'s headquarters and nexus of operations in Akron, Ohio.

3. The Commission erroneously and improperly found that a CFO to debt ratio of 14.5 percent, rather than 15 percent, was appropriate to use in determining the proper amount of revenue to be generated by the rider.

The Commission erred by adopting Staff's recommendation of a 14.5 percent CFO to debt target ratio instead of Company witness Mikkelsen's recommendation of a 15 percent CFO to debt target ratio.[33] The Commission acknowledged that the CFO to debt ratio is a key metric used by credit ratings agencies.[34] The agencies have established CFO to debt targets for firms the agencies rate.[35] For companies like FirstEnergy Corp. (i.e., companies at or near the bottom of investment grade credit ratings), these "targets" are really minimum standards for investment grade credit ratings.

In the most up to date opinion in the record, Moody's, on April 28, 2016, established a CFO to debt target range of 14 to 16 percent for FirstEnergy Corp.[36] Moody's expanded its target range from 14 to 15 percent in January to 14 to 16 percent.[37] Thus, as the year progressed, Moody's believed the low end of this range carried more risk for the Companies.

The use of a midpoint of Moody's target range appropriately provides a minimum performance to maintain investment grade status. It provides enough cushion above the low end

---

[33] Fifth Entry on Rehearing, p. 93.

[34] Fifth Entry on Rehearing, p. 93.

[35] See Fifth Entry on Rehearing, p. 93; Buckley Rehearing Test., p. 4; Mikkelsen Rehearing Rebuttal Test., p. 8.

[36] Direct Energy Ex. 1; Mikkelsen Rehearing Rebuttal Test., p. 10.

[37] Direct Ex. 1, p. 2; Mikkelsen Rehearing Rebuttal Test., p. 10.

of the range to account for other potential risks. It is also appropriate, especially if the Commission continues to limit Rider DMR to three years[38] or to use allocation factors that understate the Companies' contribution to FirstEnergy Corp.'s CFO to debt ratio.[39]

Indeed, the wisdom of using the midpoint was demonstrated by Staff Witness Buckley. As the author of the Rider DMR calculation, he selected the midpoint of the Moody's CFO to debt target range in effect when he filed his testimony.[40] Once Moody's changed the range from 14 to 15 percent to 14 to 16 percent, there was no reason to deviate from using the midpoint of the range selected by Moody's.

The midpoint of that expanded range – 15 percent – best represents the minimum amount of credit support necessary to facilitate the Companies' access to the credit markets, consistent with Staff's methodology. The Commission should use 15 percent as the CFO to debt target to be used for Rider DMR.

4. The Commission erroneously and improperly found that a four-year average of CFO to debt ratios from 2011 to 2014, rather than a three-year average from 2012 through 2014, is appropriate in determining the amount of revenue to be generated by Rider DMR.

The Commission correctly rejected Mr. Buckley's proposal to calculate Rider DMR using the historic average of CFO to debt for 2011 through September 30, 2015, but the Commission erred by including 2011 results in its calculation.[41] The credit support calculation should be based on data that represents FirstEnergy Corp.'s, and by extension the Companies',

[38] Fifth Entry on Rehearing, p. 97.

[39] *See infra* pp. 16-20.

[40] Buckley Rehearing Test., p. 4.

[41] Fifth Entry on Rehearing, pp. 93-94.

deteriorating creditworthiness, which necessarily excludes 2011.[42] As Ms. Mikkelsen explained, "A three-year range beginning in 2012 (the year when FirstEnergy Corp.'s CFO to Debt first fell below Moody's 14-16% target range) more accurately reflects FirstEnergy Corp.'s and the Companies' circumstances, and more accurately addresses the objective of facilitating the Companies' access to capital markets to jump-start distribution grid modernization initiatives."[43] Thus, the Commission should use a three-year average of the CFO to debt shortfall in years 2012 through 2014 to calculate Rider DMR.

The Commission adopted Rider DMR to address a CFO to debt ratio at FirstEnergy Corp. that was in most recent periods (i.e., beginning in 2012) below the target levels set by Moody's. The Commission justified use of the 2011 ratio because it "is still part of the historic average."[44] While it is certainly appropriate to use more than one year's CFO to debt ratio (e.g., to account for anomalous circumstances occurring in a single year), blind use of "historical" data makes little sense when the data includes a period not similar to present and likely future circumstances. It is undisputed that FirstEnergy Corp.'s CFO to debt ratio is below the bottom of Moody's target range.[45] It is also undisputed that without Commission action FirstEnergy Corp.'s CFO to debt ratio will be unlikely to meet the target range.[46] Indeed, that was certainly the expectation of Moody's and S&P when they put the investment community on notice that FirstEnergy Corp.

---

[42] Mikkelsen Rehearing Rebuttal Test., p. 10.

[43] Mikkelsen Rehearing Rebuttal Test., p. 10.

[44] Fifth Entry on Rehearing, p. 94.

[45] Mikkelsen Rehearing Rebuttal Test., p. 13; Buckley Rehearing Test., p. 4.

[46] Direct Ex. 1, p. 3 (stating that in the absence of Commission action, Moody's expects FirstEnergy Corp.'s CFO to debt ratios to be "about 12-13%" over the next two to three years).

would likely suffer a ratings downgrade.[47] Thus, including a year where the CFO to debt ratio was within the Moody's target range is unrepresentative of future performance and underestimates the level of revenues likely needed to fall within the range. As Company witness Mikkelsen explained, 2011 was a year that preceded FirstEnergy Corp.'s trend of worsening CFO to debt:

> While I agree with the use of historic data to calculate the amount of Rider DMR, Mr. Buckley's methodology looks too far into the past, and ignores a trend of worsening CFO to Debt at FirstEnergy Corp. beginning in 2012 and continuing through 2014. This is evident when viewing the table on page 4 of his testimony. Given this clearly deteriorating situation, using an average that factors in history preceding the trend ignores the purpose of the Rider DMR calculation methodology. In fact, in 2011, the first year of Mr. Buckley's five-year range, FirstEnergy Corp.'s CFO to Debt was 14%, already in Staff's target range of 14-15%. Therefore this first year should be excluded. . . . A three-year range beginning in 2012 (the year when FirstEnergy Corp.'s CFO to Debt first fell below Moody's 14-16% target range) more accurately reflects FirstEnergy Corp.'s circumstances, and more accurately addresses the objective of facilitating the Companies' access to capital markets to jump-start distribution grid modernization initiatives.[48]

By overestimating FirstEnergy Corp.'s CFO to debt level, the Commission underestimates the revenue necessary to maintain investment grade credit ratings. The Commission's action thus undercuts one of the stated goals for Rider DMR. In contrast, the Companies' recommendation to use a three-year period of 2012 through 2014 provides more representative levels for purposes of determining needed credit support. Accordingly, the Commission should grant rehearing to adopt the Companies' recommended three-year period.

---

[47] Direct Ex. 1, p. 2; Buckley Rehearing Test., Att. 3, p. 2.

[48] Mikkelsen Rehearing Rebuttal Test., p. 10.

5. The Commission erroneously and improperly found that Staff's "allocation factor" based on energy operating revenues was appropriate to use in determining the amount of revenue that should be generated by Rider DMR.

The Commission erred in adopting Staff's recommendation to use an allocation factor based upon energy operating revenue.[49] The purpose of the allocation factor is to assign a credit support percentage to the Companies vis-à-vis FirstEnergy Corp. as a whole.[50] As the Commission noted, Staff used energy operating revenue to calculate the allocation factor because using revenues "was the most consistent way."[51] Yet, it is undisputed that using energy operating revenue results in a 22 percent allocation factor which consistently and inappropriately understates the significance of the Companies to FirstEnergy Corp.[52]

To begin, CFO is a net cash flow number.[53] The "energy operating revenue" shows only gross cash inflows; it does not offset for cash outflows or expenses.[54] Thus, the Commission's chosen allocation factor does not match the metric being used to calculate appropriate credit support. Like the CFO metric, the allocation factor should recognize the expenses the Companies incur to provide service to Ohio customers. This mismatch between the allocation factor being used and the credit metric being used is unreasonable and indefensible.

---

[49] Fifth Entry on Rehearing, p. 94.

[50] Buckley Rehearing Test., p. 3; Mikkelsen Rehearing Rebuttal Test., p. 11.

[51] Fifth Entry on Rehearing, p. 94; Rehearing Tr. Vol. III, p. 554 (Buckley Cross).

[52] Buckley Rehearing Test., p. 3; Mikkelsen Rehearing Rebuttal Test., p. 11.

[53] Mikkelsen Rehearing Rebuttal Test., p. 12.

[54] Mikkelsen Rehearing Rebuttal Test., p. 12.

Moreover, energy operating revenues are heavily influenced by the level of shopping in each utility's service territory.[55] An electric distribution company with fewer shopping customers provides more generation service to its customers, and therefore has higher energy operating revenues. However, an electric distribution company with fewer shopping customers also incurs a higher cost of generation service that offsets its higher energy operating revenues. In contrast, the Companies have a high level of shopping, and therefore comparatively lower energy operating revenues. The Companies also incur less generation costs. Thus, focusing exclusively on cash inflows under the Commission's chosen allocation methodology understates the Companies' contribution to FirstEnergy Corp.'s CFO.[56] Using net income as the basis for the allocation eliminates this effect of shopping, because it accounts for how the cost of generation service incurred by utilities with fewer shopping customers offsets the higher energy operating revenues those utilities receive for the service. Because CFO is a net cash flow figure, using net income better reflects the Companies' true contribution to CFO. Other allocation factors such as employee headcount, distribution sales, or number of customers would also better reflect the Companies' contribution to FirstEnergy Corp.[57]

The Commission made three assertions to support its use of its allocation factor. None of these has merit. First, the Commission stated, "Staff witness Buckley specifically rejected use of net income as an allocation factor."[58] This is contradicted by the record. Indeed, Mr. Buckley specifically agreed that "you could definitely use net income" and net income is "something you

[55] Mikkelsen Rehearing Rebuttal Test., pp. 11-12.

[56] Mikkelsen Rehearing Rebuttal Test., p. 12.

[57] Mikkelsen Rehearing Rebuttal Test., p. 12.

[58] Fifth Entry on Rehearing, p. 94.

could definitely use as an allocator."[59] When asked whether net income and reported net operating income are viable options, he responded that "they could use those as allocators."[60] He also agreed that, unlike gross operating revenues, net income and cash flow from operations "both reflect the cost of operations, both the inflows and the outflows."[61]

Second, the Commission explained that it was relying on a statement made by Ms. Mikkelsen during cross-examination – that she "acknowledged that she had not performed the calculations to determine what share of the overall CFO to debt ratio shortfall of FirstEnergy Corp. is attributable to the Companies."[62] The Commission misread Ms. Mikkelsen's statement, however. Ms. Mikkelsen merely explained that she had not calculated the portion of FirstEnergy Corp.'s CFO to debt that "each" subsidiary may be responsible for:

> Q. Okay. And so you do not know what portion of the FirstEnergy Corp.'s CFO to debt shortfall each of the subsidiaries may be responsible for, correct?
>
> A. Yes.[63]

Not calculating each FirstEnergy Corp. subsidiary's portion of the parent's CFO to debt shortfall is not an acknowledgement that Ms. Mikkelsen had not performed the calculations to determine what share of the overall CFO to debt ratio shortfall of FirstEnergy Corp. is attributable to the Companies. To the contrary, using net income as a reasonable proxy, Ms. Mikkelsen calculated

---

[59] Rehearing Tr. Vol. III, p. 738 (Buckley Cross).

[60] Rehearing Tr. Vol. III, p. 738 (Buckley Cross).

[61] Rehearing Tr. Vol. III, pp. 736, 737 (Buckley Cross).

[62] Fifth Entry on Rehearing, pp. 94-95 (citing Rehearing Tr. Vol. X, pp. 1629-30).

[63] Rehearing Tr. Vol. X, p. 1630 (Mikkelsen Rebuttal Cross).

that 40% of the overall CFO to debt ratio shortfall of FirstEnergy Corp. is attributable to the Companies.[64]

Further, the type of calculation described in the above-quoted cross-examination question to Ms. Mikkelsen, which would attempt to compare each individual subsidiary's CFO to debt ratio and the parent's CFO to debt ratio, is improper. There are at least two reasons why. First, because each subsidiary has different debt, there is no common denominator, thus making direct comparisons meaningless for the purpose of allocating the CFO shortfall. Second, trying to compare a subsidiary's CFO to debt ratio to FirstEnergy Corp.'s ratio ignores the fact that FirstEnergy Corp. does not generate any revenues on its own but holds some debt separately from its subsidiaries.[65] For both of these reasons, all of the subsidiaries' company-specific CFO to debt ratios cannot be added together to reach FirstEnergy Corp.'s CFO to debt ratio. In other words, the calculation described in the question to Ms. Mikkelsen was not performed because it would not produce meaningful information and certainly not the information sought by the question.

Third, the Commission said that "use of net income as the allocation factor could cause Ohio ratepayers to improperly subsidize FirstEnergy affiliates who are either under-earning or losing money."[66] There is no record support for this. Indeed, although certain parties suggested that FES's cash flow is responsible for the CFO shortfall, FES's CFO to debt metric is currently

---

[64] Mikkelsen Rehearing Rebuttal Test., p. 12.

[65] Rehearing Tr. Vol. X, p. 1632 (Mikkelsen Rebuttal Cross).

[66] Fifth Entry on Rehearing, p. 95.

24%, with Moody's projecting it will fall to 16% by 2018.[67] Thus, FES's CFO to debt ratio is (and is projected to be) higher than FirstEnergy Corp.'s CFO to debt ratio.

Moreover, because credit support is being provided to the Companies in this proceeding (and not to other affiliates), the level of credit support must necessarily be based on the Companies' contribution (and not the contribution of other affiliates) to FirstEnergy Corp.'s cash flow. That contribution is best determined using net income. As the Companies showed, all other potential allocation factors that are representative of the Companies' credit support contribution fall in the range of 34 to 40 percent: e.g., net income (40 percent), distribution sales (36 percent), customer counts (35 percent) and distribution employee headcounts (34 percent).[68] Thus, the Commission should grant rehearing and use an allocation factor in the 34 to 40 percent range in the calculation of the annual Rider DMR revenue amount.

6. The Commission acted erroneously and improperly by not extending the exclusion of Rider DMR revenues from the significantly excessive earnings test for the potential extended term of Rider DMR.

The Commission correctly held that Rider DMR revenues should be excluded from the SEET calculation during the first three years of Rider DMR. The Commission erred, however, by stating that it would revisit this exclusion if the Companies requested an extension of Rider DMR.[69] Given that the exclusion is appropriate during the first three years, the exclusion should continue as long as Rider DMR is in effect. There is no reason to rule otherwise. The Commission's stated basis for excluding Rider DMR revenues from the SEET calculation is

---

[67] P3/EPSA Ex. 21, p. 3.

[68] Mikkelsen Rehearing Rebuttal Test., p. 12 and n.10.

[69] Fifth Entry on Rehearing, p. 98.

simple: "Including the revenue in SEET would introduce an unnecessary element of risk to the Companies and undermine the purpose of providing credit support for the Companies."[70] That reasoning applies to any year in which Rider DMR remains in effect. By limiting the SEET exclusion, the Commission is adding an unnecessary element of risk. Thus, the Commission should grant rehearing to exclude Rider DMR revenues from the SEET calculation for as long as Rider DMR is in effect.

As the Commission recognized, a possible refund of Rider DMR revenues would defeat the purpose of the rider. To state the obvious, refunded Rider DMR revenues would not improve the Companies' credit metrics. And the risk of this happening would unnecessarily cause concern among rating agencies about the ultimate availability of Rider DMR revenues.[71] Thus, it would be less likely that the rating agencies would treat Rider DMR revenues as a credit positive. These facts are as true in the first year of Rider DMR as they would be in any subsequent year of the ESP. Accordingly, the Commission acted unreasonably in not extending the exclusion of Rider DMR revenues in any SEET calculation while Rider DMR is in effect.

B. The Commission made additional errors in the process of approving Rider DMR.

There were three other errors made regarding the adoption of Rider DMR. First, the Commission erroneously conditioned the continuation of the rider on an ill-defined standard; i.e, that the Companies demonstrate "sufficient progress" on the implementation and deployment of grid modernization. This is vague, potentially arbitrary, unduly counterproductive and ultimately

---

[70] Fifth Entry on Rehearing, p. 98.

[71] Mikkelsen Rehearing Rebuttal Test., p. 22; Companies' Rehearing Brief, p. 41; *see also* Fifth Entry on Rehearing, p. 97 ("Making Rider DMR subject to refund would be counterproductive and impose additional risks on the Companies.").

unnecessary. Second, the Commission failed to find that Rider DMR would be authorized under R.C. 4928.143(B)(2)(i) given that Rider DMR will provide economic development benefits in at least two ways: (1) through the requirement that FirstEnergy Corp. maintain its headquarters and nexus of business in Akron, Ohio; and (2) through the numerous grid modernization projects that will be undertaken. Third, the Commission failed to find, as an additional reason why revenues from Rider DMR do not affect the ESP versus MRO test, that revenues from Rider DMR could be collected under an MRO as part of a distribution base rate case or other rate mechanism. For these reasons, the Commission should grant rehearing.

1. The Commission improperly and erroneously conditioned the recovery of revenues under Rider DMR upon a demonstration of sufficient progress in the implementation and deployment of grid modernization programs approved by the Commission.

The Commission directed that Rider DMR be conditioned on "a demonstration of sufficient progress in the implementation and deployment of grid modernization programs approved by the Commission."[72] What constitutes "sufficient progress" will be solely in the Commission's discretion.[73] This is misdirected, unduly vague, and would threaten the effectiveness of Rider DMR. It is also entirely unnecessary.

The "sufficient progress" review is clearly an eye-of-the-beholder test that risks arbitrary application that could violate the Companies' due process rights. Moreover, review based on "sufficient progress" is counterproductive because its vague and potentially arbitrary nature improperly inserts an element of uncertainty regarding the term of Rider DMR. Also, the Companies' implementation of grid modernization programs requires Commission approval of

[72] Fifth Entry on Rehearing, p. 96.

[73] Fifth Entry on Rehearing, p. 97.

the programs. And the Commission will not approve grid modernization programs until it has completed a detailed policy review of grid modernization.[74] The need to await Commission approval before making progress on implementation adds to the uncertainty as to whether the Companies will be deemed to have made "sufficient progress" by the time of the review. If the ratings agencies cannot count on the Companies' receipt of Rider DMR revenues, such funds would not be included in those agencies' financial metrics for the Companies.

A "sufficient progress" review also directly contradicts the necessary financial flexibility provided to the Companies by the Commission to place themselves in a position to obtain capital for grid modernization. As the Commission recognized, Rider DMR is not intended to be used as a dollar-for-dollar investment in grid modernization.[75] FirstEnergy Corp. and the Companies have numerous substantial financial obligations and challenges to sustain investment grade credit ratings. In addition to grid modernization capital outlays, there are pension obligations and maturing debt.[76] Although not directly related to grid modernization, dealing with these latter obligations will put the Companies in a better position financially. This improved financial position will enable the Companies better access to capital, including capital needed for grid modernization. Thus, by focusing solely on "sufficient progress on grid modernization" the Commission's proposed review is entirely unworkable.

The proposed "sufficient progress" review is also unnecessary. The grid modernization programs that the Companies will implement will be approved, for the most part, in separate

---

[74] Fifth Entry on Rehearing, pp. 96-97.

[75] *See* Fifth Entry on Rehearing, pp. 127-28.

[76] Rehearing Tr. Vol. X, pp. 1622-23, 1761 (Mikkelsen Rebuttal Cross) (discussing $1.1 billion in debt maturing over the period of ESP IV and $750 million to $1 billion pension obligation).

matters before the Commission. Once implementation is ordered by the Commission in those separate dockets, the Commission's oversight of the implementation and deployment of those programs will be governed by the terms of the Commission's order, including whatever review the Commission deems appropriate there. Whether "sufficient progress" is being made will be a matter for those other cases, not this one.

In contrast, the Commission's call for Staff review to assure that Rider DMR funds be reasonably related to Rider DMR provides little of the problems raised by the "sufficient progress" review. The former recognizes that Rider DMR funds may be used *directly and indirectly*. It recognizes Rider DMR's dual purpose: (1) to jumpstart grid modernization by facilitating the Companies' access to capital on more favorable terms; and (2) to reduce the Companies' future costs of providing distribution service. The Commission correctly recognizes that indirect support for grid modernization may include using Rider DMR funds to reduce outstanding pension obligations, reduce debt, or take steps to reduce long-term costs of accessing capital.[77] None of these uses fits comfortably under the "sufficient progress" review, which could be read as limited to direct uses of Rider DMR funds to deploy grid modernization programs. Thus, the Commission should abandon the "sufficient progress" review condition on rehearing.

[77] Fifth Entry on Rehearing, p. 130.

2. The Commission erroneously and improperly failed to find that Rider DMR was authorized under R.C. 4928.143(B)(2)(i).

The Commission appropriately found that Rider DMR was authorized under R.C. 4928.143(B)(2)(h).[78] But the Commission erred by not holding that it also was authorized under R.C. 4928.143(B)(2)(i).

R.C. 4928.143(B)(2)(i) permits an ESP to include "[p]rovisions under which the electric distribution utility may implement economic development, job retention, and energy efficiency programs…." Here, the Commission conditioned the recovery of Rider DMR revenues upon FirstEnergy Corp. keeping its corporate headquarters and nexus of operations in Akron, Ohio.[79] Given this requirement, the rider provides economic benefits to the Companies' customers. Thus, Rider DMR is authorized for inclusion in ESP IV by R.C. 4928.143(B)(2)(i).

As the Commission noted, Company witness Murley demonstrated that maintaining FirstEnergy Corp.'s headquarters in Akron, Ohio has an estimated economic impact of $568 million on Ohio's economy and supports approximately 3,407 jobs and $244.6 million in annual payroll throughout the state of Ohio.[80] Moreover, Ms. Murley's economic analysis determined that for every $1 million of goods and services created by FirstEnergy Corp., an additional $920,000 in economic activity is generated within the state's economy.[81]

Rider DMR would also provide other notable economic development benefits. These include: (1) spending on human resources and equipment; (2) a modernized grid, which will

---

[78] *See* Fifth Entry on Rehearing, pp. 89-90.

[79] *See* Fifth Entry on Rehearing, p. 96.

[80] *See* Fifth Entry on Rehearing, p. 77.

[81] *See* Fifth Entry on Rehearing, p. 77.

help customers better control and manage their energy expenses; and (3) reduced outages and improved reliability.[82]

For these reasons, the Commission should grant rehearing and find that Rider DMR is authorized under R.C. 4928.143(B)(2)(i).

3. The Commission erroneously failed to find, and should clarify, as an additional reason why revenues from Rider DMR do not affect the ESP v. MRO test, that revenues from Rider DMR could be collected under an MRO as part of a distribution base rate case or other mechanism, or be offset by quantifiable benefits.

The Commission correctly determined that Rider DMR, as a distribution rider, is essentially "a wash" for purposes of the ESP v. MRO test.[83] The Commission based this finding on the likelihood that the Commission would grant relief in response to a hypothetical application in an MRO proceeding under R.C. 4928.142(D).[84] The Commission also should specify the additional bases for concluding that Rider DMR has no quantitative effect on the ESP v. MRO test.

First, the Companies could receive Rider DMR revenues outside of an ESP, in a base distribution rate case or other rate mechanism. As Ms. Mikkelsen testified, Rider DMR funds will likely be used for credit support for distribution grid modernization or other distribution infrastructure improvements, debt refinancing or pension funding.[85] All of these uses represent legitimate, distribution-related outlays that would otherwise be recoverable in a base rate case or

---

[82] Rehearing Tr. Vol. X, pp. 1818-19 (Mikkelsen Rebuttal Redirect).

[83] Fifth Entry on Rehearing, pp. 161-63.

[84] Fifth Entry on Rehearing, p. 163.

[85] Mikkelsen Rehearing Rebuttal Test., p. 9; Rehearing Tr. Vol. X, p. 1607 (Mikkelsen Rebuttal Cross).

in the Companies' existing Rider AMI or some similar rider.[86] As such, grid modernization-related expenses are recoverable outside of an ESP. Given state policy, Staff's support for grid modernization and progress made to date on smart grid-related technologies, the Companies likely would move forward with grid modernization outside of any ESP.[87] The Commission should find on rehearing that the Companies could recover Rider DMR-type revenues through a base rate case or the implementation of some other rate mechanism outside of an ESP to provide credit support for grid modernization, thus providing an alternative basis for determining that Rider DMR would have no quantitative effect on the ESP v. MRO test.

Second, even if Rider DMR's annual costs to customers were included only on the ESP side of the test, the Commission should find that any such costs are more than offset by the annual value to the state of Ohio of Rider DMR's headquarters condition. Company witness Murley's unrebutted testimony demonstrated that the annual economic impact of the headquarters is $568 million.[88] Compared to an MRO, a properly constructed Rider DMR as proposed by the Companies "will be quantitatively neutral at worse because the net of Rider DMR costs and the quantitative benefit of the commitment to maintain FirstEnergy Corp.'s headquarters and nexus of operation in Akron will be greater than or equal to zero."[89] Thus, the

---

[86] For example, in a distribution base rate case, the Commission could make adjustments, as it deems appropriate, to test-year expense, or normalize test-year expenses, or provide an incentive rate of return on equity. *E.g., In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices and for Tariff Approvals*, Case No. 07-551-EL-AIR, Opinion and Order, pp. 13-14 (Jan. 21, 2009) (adjusting labor expense).

[87] Mikkelsen Rehearing Rebuttal Test., p. 19.

[88] Fifth Entry on Rehearing, pp. 111-12.

[89] Mikkelsen Rehearing Rebuttal Test., p. 20.

Commission should find on rehearing that the annual economic impact of Rider DMR's headquarters condition more than offsets the annual cost of Rider DMR.

C. The Commission erroneously and improperly stayed the effective date for increases in the shared savings cap until such time as the Companies are not receiving revenues under Rider DMR.

The Commission stated that it would stay the effective date of the increase in the shared savings cap until such time as the Companies are no longer receiving revenue under Rider DMR.[90] The Commission erred by inappropriately linking two unrelated and independent concepts (i.e., Rider DMR and the shared savings cap). No party – not even those addressing the level of the shared savings cap – ever made a link between the shared savings cap and Rider DMR. No party ever asked the Commission to stay the effective date of increases in the shared savings cap until after Rider DMR's expiration. And no party ever offered, much less successfully got admitted, any record evidence to support the Commission's decision. Instead, the Commission determined on its own initiative (after already approving the increased shared savings level for the entire term of ESP IV) that it would change the approved effective date of the shared savings cap and tie it to the expiration of Rider DMR. In so doing, the Commission unilaterally thrust aside the shared savings provisions in the bargain struck by the parties who signed the Third Supplemental Stipulation which the Commission already thoroughly reviewed and approved in its Order. Now the Commission seeks to undo a bargain it already approved without any party so urging and without any evidentiary support. This risks violating R.C.

[90] *See* Fifth Entry on Rehearing, p. 147.

4903.09.[91] Therefore, it was improper for the Commission to reverse course by unilaterally injecting a brand new issue into its Fifth Entry on Rehearing.

Rider DMR and the shared savings cap increase are independent concepts. The purpose of Rider DMR is to provide credit support to the Companies, and allow the Companies to invest in distribution grid modernization. Increasing the shared savings cap, on the other hand, promotes energy efficiency by encouraging the Companies to provide additional energy savings opportunities to customers. The shared savings cap and Rider DMR are two very different concepts that should not be tied together. Each stands on its own, and each has independent value. As such, the Commission erred when it imposed limitations on the effective date of the shared savings cap by conditioning it upon Rider DMR's expiration.

D. The Commission erred in directing the Companies to amend their budgets for their Energy Efficiency and Peak Demand Reduction Portfolio Plans to budget for the annual mandates instead of the 800,000 MWh goal.

If the Commission grants rehearing to authorize the increase in the shared savings cap to $25 million annually, the Commission also should affirm its March 31 Order approving the 800,000 MWh goal for purposes of the Companies' 2017-19 EE/PDR portfolio program.

The Commission found in its March 31 Order that one qualitative benefit of ESP IV was the reactivation and expansion of energy efficiency programs previously suspended by the Companies, with a goal of saving 800,000 MWh of energy annually. The Signatory Parties supported this goal because "robust" energy efficiency offerings will provide additional savings

[91] *See, e.g.*, *Interstate Gas Supply, Inc. v. Pub. Util. Comm.*, 2016-Ohio-7535, 2016 Ohio LEXIS 2693 (Nov. 1, 2016).

to customers.[92] Indeed, the 800,000 MWh goal goes hand in hand with the increase of the shared savings cap from $10 million to $25 million. To the extent the 800,000 MWh goal generates cost-effective savings for customers, both customers and the Companies will share in these increased savings.

Inexplicably, the Commission retreated from its commitment to these increased energy efficiency savings in its Fifth Entry on Rehearing when the Commission directed the Companies to budget in their portfolio plans "for the annual statutory energy efficiency mandate rather than the goal."[93] The Commission could not have determined that the benchmarks effectively are a cap on energy efficiency efforts, since this would defeat the purpose of shared savings programs to encourage utilities to exceed statutory benchmarks. In fact, in the Companies' last EE/PDR portfolio plan proceeding, the Commission rejected arguments against using shared savings to incent the Companies to exceed the statutory benchmarks.[94] The Commission has recognized that encouraging utilities to exceed the benchmarks benefits customers.[95] In its March 31 Order, the Commission explained, "To the extent the Companies accelerate the delivery of cost-effective energy savings opportunities to their customers, they will also accelerate the net cost

---

[92] *See* Third Supp. Stip., Section V.E.3.

[93] Fifth Entry on Rehearing, p. 147.

[94] *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Plans for 2013 through 2015*, Case No. 12-2190-EL-POR *et al.*, Finding and Order, p. 16 (Nov. 20, 2014).

[95] *Id.*

savings which customers enjoy."[96] The Commission's decision here puts those customer benefits at risk.

The Commission's decision is even more inexplicable given that the only objection to the 800,000 MWh goal was that robust energy efficiency programs violate the two-year freeze in S.B. 310.[97] Yet the Commission easily disposed of this argument in its Fifth Entry on Rehearing.[98] As a result, the Commission lacks a sound basis for requiring the Companies to budget to the energy efficiency benchmarks instead of the 800,000 MWh goal supported by the Signatory Parties. If the Commission grants rehearing to authorize the increase in the shared savings cap to $25 million annually, the Commission also should affirm its March 31 Order approving the 800,000 MWh goal for purposes of the Companies' 2017-19 EE/PDR portfolio program.

E. The Commission erroneously and improperly removed the 50 basis point adder to return on equity in the calculation for the Advanced Metering Infrastructure/Modern Grid Rider ("Rider AMI").

The Commission erred by eliminating the 50 basis point adder to the return on equity ("ROE") for plant included in Rider AMI.[99] The Commission found that "the purpose of the 50 basis point adder has been supplanted by Rider DMR."[100] This is wrong. Although both Rider DMR, in part, and the 50 basis point adder in Rider AMI generally serve as incentives related to

---

[96] March 31 Order, p. 95 (quoting *In re Application of FirstEnergy*, Case No. 09-1947-EL-POR, *et al.*, Entry on Rehearing, p. 6 (Sept. 7, 2011)).

[97] OCC/NOAC AFR, pp. 47-48. NOPEC objected that the 800,000 MWh goal could not be counted as a qualitative benefit because it was not a firm commitment, which does not justify the Commission's decision here. *See* NOPEC AFR, p. 36.

[98] *See* Fifth Entry on Rehearing, p. 146.

[99] Fifth Entry on Rehearing, p. 108.

[100] Fifth Entry on Rehearing, p. 108.

grid modernization, neither supplants the need for the other. The Commission should grant rehearing to reinstate the 50 basis point adder.

Rider DMR serves the dual purposes of jumpstarting grid modernization through credit support and reducing the Companies' future costs of providing distribution service. As a distribution modernization incentive,[101] Rider DMR provides up-front revenues to the Companies to put them in a more favorable position to improve their financial status (including their credit ratings), to gain better access to capital, and thus ultimately to implement whatever grid modernization initiatives the Commission may order. As Staff witness Turkenton testified, by being able to access the capital markets more efficiently and effectively, the Companies will "have the money to actually invest in the distribution modernization."[102] Thus, the Commission correctly found that Rider DMR serves as a distribution modernization incentive for the Companies.[103]

The 50 basis point adder in Rider AMI serves a different purpose. Whereas Rider DMR will provide up-front cash to improve the Companies' ability to access capital for grid modernization, the 50 basis point adder ensures that grid modernization projects earn a more favorable return than other competing investments, including investments in the transmission system, over the lives of the grid modernization investments. This will serve to incentivize the use of available cash for grid modernization. This distinction is consistent with Chairman

---

[101] *See* Fifth Entry on Rehearing, p. 90.

[102] Rehearing Tr. Vol. II, p. 463 (Turkenton Cross).

[103] Fifth Entry on Rehearing, p. 90. *See also* Rehearing Tr. Vol. II, p. 426 (Turkenton Cross).

Haque's discussion of Rider DMR's and Rider AMI's different purposes in his Concurring Opinion:

> Typical public utility regulation functions to provide utilities with recovery and a return for expenditures made in constructing/maintaining service. Rider DMR, however, will serve to provide FirstEnergy with an infusion of capital so that it will be healthy enough to make these modernization investments when called upon. After this initial infusion, again, Rider AMI will function as the corresponding traditional regulatory mechanism, providing a return for monies expended to construct/maintain service.[104]

Accordingly, the Commission erred in finding that the purpose of the ROE adder was supplanted by Rider DMR.

Grid modernization is but one of the numerous demands on capital available to the Companies.[105] As such, grid modernization projects potentially compete with other projects for planning and funding.[106] The opportunity to earn more favorable returns on certain grid modernization projects will likely prove a highly influential factor favoring planning and funding grid modernization projects.[107] Thus, the 50 basis point adder, as initially approved by the Commission, provides an incentive to direct those investment dollars to grid modernization in Ohio. Notably, all Signatory Parties agreed that this ROE formula is appropriate to incent grid

---

[104] Concurring Opinion of Chairman Asim Z. Haque, p. 2.

[105] *See* Mikkelsen Rehearing Test., p. 12 (discussing many potential investment initiatives that the Companies can pursue with collected funds).

[106] *See* Rehearing Tr. Vol. VIII, p. 1405-06 (Kahal Rebuttal Cross) (admitting that there is a potential for competition for the same funds among subsidiaries within a corporate structure).

[107] Hearing Tr. Vol. XXXVII, p. 7775 (Mikkelsen Cross) (explaining that the grid modernization ROE, including the 50 basis point adder, was specifically "designed to incent the investment in grid modernization vis-a-vis other potential investments.").

modernization investment in Ohio over other potential investments.[108] Further, customers will benefit from any operational savings that are produced by the investment, *e.g.*, reduced meter reading expenses.[109]

There was no testimony that contradicted the obvious logic of the 50 basis point adder for Rider AMI. There was also no testimony that supports the view that Rider DMR would supplant the purpose of the 50 basis point adder. Thus, the Commission should reinstate the 50 basis point adder.

F. The Commission erroneously and improperly directed the Companies to file a base distribution rate case for rates to be in effect after the expiration of ESP IV.

The Commission erred in directing the Companies to file a distribution rate case at the end of ESP IV.[110] It is premature and arbitrary to decide in 2016 that a distribution rate case is or will be required for distribution rates effective sometime after June 2024. Indeed, the Commission has no evidence before it that would justify such an order. The more prudent and reasonable course would be to allow the Companies to file their next SSO application in due course and to determine, as part of the review of that application, whether a distribution rate case is appropriate at that time.

Indeed, in that next proceeding, the parties may agree to continue the existing distribution rate freeze. As the Commission found, elimination of the distribution rate freeze "exposes customers to known expenses which will be recovered, such as rate case expense, and

[108] Hearing Tr. Vol. XXXVII, p. 7775 (Mikkelsen Cross).

[109] Third Supp. Stip., Section V.D.3 ("Any operational savings that are produced by the investment and accrue to the Companies, such as reduced meter reading expense, will be credited against the costs during the quarterly update and reconciliation process.").

[110] Fifth Entry on Rehearing, p. 116.

unquantifiable risks that the rate base, rate of return and expenses may be greater than in the current revenue requirement."[111] This same finding may hold true in 2024 as well.

Further, there is no need to order the Companies to file a distribution rate case. In S.B. 221, the General Assembly established the SEET as a means to assure that electric distribution utilities did not earn significantly more than similarly situated companies.[112] The Commission has established its SEET process which has been reviewed by the Ohio Supreme Court.[113] Thus, to the extent that there could be any legitimate concern about the proper level of the Companies' rates and revenues, per the direction of the General Assembly, such concerns should be addressed in SEET proceedings.

The Commission should not prejudge the outcome of a potential future ESP proceeding by requiring a distribution base rate case now. Given that the Commission lacked any evidence supporting its order and the existence of statutory protections for customers regarding the level of earnings by electric utilities, the Commission should grant rehearing to withdraw its directive to file a distribution rate case at the end of ESP IV.

G. The Commission erroneously and improperly found that increases in revenue caps under the Delivery Capital Recovery Rider ("Rider DCR") would be terminated if ESP IV was terminated prior to its currently approved eight-year term.

The Third Supplemental Stipulation provided that the Commission's termination of ESP IV under the process in R.C. 4928.143(E) – *i.e.*, the review of an ESP in its fourth year – "shall

[111] Fifth Entry on Rehearing, p. 115.

[112] R.C. 4928.143(F) ("[T]he commission shall consider . . . if any [provisions included in an ESP] resulted in excessive earnings as measured by whether the earned return on common equity of the electric distribution utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies, including utilities, that face comparable business and financial risk . . . .").

[113] *See generally In re Columbus Southern Power Co.*, 134 Ohio St. 3d 392 (2012).

not affect the continued cost recovery" of Rider DCR.[114] That cost recovery includes increases in annual revenue caps of $20 million during ESP IV years four, five and six and of $15 million during ESP IV years seven and eight. After approving this provision in its March 31 Order, the Commission directed on rehearing that annual increases in revenue caps under Rider DCR will be terminated if the Commission terminates ESP IV under R.C. 4928.143(E).[115] However, the Commission would allow Rider DCR to remain in place to permit the recovery of and on past distribution investments already included in the rider.[116] Given the possibility that the fourth-year review process could result in a lengthy transition period before a new plan is in place, the Commission should grant rehearing to make clear that revenue cap increases would continue until rendered moot by a replacement plan.

There is nothing unreasonable about extending revenue cap increases provided in the Rider DCR provisions of Stipulated ESP IV beyond the premature termination of ESP IV. R.C. 4928.143(E) allows the Commission to impose conditions on the termination of an electric security plan to accommodate the transition to another plan.[117] Continuing the schedule of increases in the Rider DCR revenue caps during such a transition is reasonable, given that Rider DCR helps promote reliable electric service and stable rates for customers. Indeed, Rider DCR's

---

[114] Third Supp. Stip., p. 18.

[115] Fifth Entry on Rehearing, p. 132.

[116] Fifth Entry on Rehearing, pp. 132-33.

[117] R.C. 4928.143(E) ("The commission may impose such conditions on the plan's termination as it considers reasonable and necessary to accommodate the transition from an approved plan to the more advantageous alternative.").

benefits have been recognized from its inception in ESP II.[118] There is no serious dispute that the revenue caps, as initially proposed by the Companies, are well supported by the Companies' historical capital expenditure trends.[119] As a result, the reasonableness of continuing the schedule of Rider DCR revenue caps was recognized by the Signatory Parties to Stipulated ESP IV. Thus, the Commission should grant rehearing and find that Rider DCR revenue cap increases will continue as provided in Stipulated ESP IV during the R.C. 4928.143(E) transition period.

H. The Commission erroneously and improperly failed to provide a specific process, which would include participation by the Companies, for any modification of the Rider NMB Opt-Out Pilot Program.

In its March 31 Order, the Commission approved a Pilot Program to study the administrative burden and costs of allowing customers the option to have their Competitive Retail Electric Service ("CRES") providers provide services otherwise provided by the Companies under Rider NMB, as well as whether such a program would result in benefits to both participating and nonparticipating customers.[120] As part of the Stipulated ESP IV, which the Commission approved, the Signatory Parties agreed that "[p]articipation in the small scale

---

[118] *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan,* Case No. 10-388-EL-SSO, Opinion and Order, p. 36 (Aug. 25, 2010); *In the Matter 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 Section 4928.143, Revised Code, In the Form of an Electric Security Plan.* Case No. 12-1230-EL-SSO, Opinion and Order, p. 56 (July 18, 2012) ("ESP 3 . . . supports reliable service through the continuation of the DCR mechanism . . . .").

[119] Fanelli Direct, pp. 3-4 (discussing that the revenue caps originally proposed by the Companies were based on the *actual* average annual Rider DCR revenue requirement increase since the Companies' last base rate case); Hearing Tr. Vol. XX, pp. 3955-58 (Fanelli Cross) (same).

[120] Supp. Stip., pp. 3-5; Mikkelsen Third Supp., p. 2; Hearing Tr. Vol. II, p. 470 (Mikkelsen Cross).

pilot program . . . will be expanded to include up to five additional Rate GT customers who otherwise would not be eligible for participation."[121]

On rehearing, the Commission allowed for potential modifications to the Pilot Program in two ways. First, the Commission directed that "[c]ustomers who may benefit from participation in the Rider NMB pilot program should work with Staff and the Companies to determine if the customers' participation is appropriate, and the customer may then file an application with the Commission under R.C. 4905.31 for permission to participate in the Rider NMB Opt-Out Pilot Program ("Pilot Program"), and the Commission will determine if such participation is in the public interest."[122] Second, the Commission reserved the right to terminate or otherwise modify the program without specifying the process by which such decisions would be made.[123] Both of these parts of the Entry were wrong.

As to the first issue, the Commission acted improperly by potentially expanding the Pilot Program to *any* customer, without input from the Companies or other interested parties and without identifying any specific process or procedure for how the Commission will determine if the customer's participation in the program is in the "public interest." As a result, the Commission's decision to modify the Pilot Program is unreasonable.

In its prior Order approving the Pilot Program, the Commission rejected intervenor arguments that the Pilot Program was discriminatory because it only allowed for participation from a limited number of customers. Specifically, the Commission stated, "The nature of any

---

[121] Third Supp. Stip., p. 17.

[122] Fifth Entry on Rehearing, p. 139.

[123] Fifth Entry on Rehearing, p. 140.

pilot program is to keep the number of participants manageable in order to make some determination of the efficacy of the program being tested."[124] The Commission also acknowledged the Companies' legitimate efforts and willingness to further expand the number of potential participants in the Pilot Program as part of the Stipulation.[125]

Nevertheless, without explanation, the Commission reversed course, finding, "Although the Stipulations provide one avenue for customer participation in the Rider NMB pilot program, the Stipulations do not provide the only avenue."[126] The Commission then proceeded to allow the Pilot Program to be potentially available to *any* customer who could potentially benefit from it.[127] More troublingly, the Commission went on to provide an ill-defined and unfair process for reviewing applications for potential inclusion in the program. The Commission directed interested customers to file applications under R.C. 4905.31 for permission to participate, after which the Commission would decide, potentially without any input from the Companies, program participants or anyone else, whether the applicant's inclusion in the program would serve the "public interest."[128]

The Companies remain committed to a Rider NMB Pilot Program that is sensible, fair and manageable in size. For that program to remain manageable, and to maintain the ability to compare the results of customers consistently in and outside the program, the size of the Pilot Program should remain as agreed by the Signatory Parties.

---

[124] March 31 Order, p. 112.

[125] March 31 Order, p. 112.

[126] *See* Fifth Entry on Rehearing, p. 139.

[127] *See* Fifth Entry on Rehearing, p. 139.

[128] *See* Fifth Entry on Rehearing, p. 139.

If the Commission retains its new process for opting into the Pilot Program via R.C. 4905.31, it should provide a clearly defined, inclusive, and transparent process for processing applications. Specifically, the approval process must be contingent upon the input and consent of the Companies, which shall not be unreasonably withheld. Each application should be reviewed either in a new case for each applicant or a defined docket with notice to all parties to allow any interested party to submit comments for the Commission's consideration. By setting forth a clearly articulated, specific process for processing customer applications, the Pilot Program will be transparent, fair, manageable in size, and reasonable to all interested stakeholders, not just the Companies.

Similarly, the Commission erred when it failed to specify a process by which it would otherwise modify or even terminate the program or the Rider NMB itself. In the Fifth Entry on Rehearing, the Commission directed Staff to review the program periodically and specified certain facts that Staff should investigate. The Commission observed, "This review is necessary for the Commission to determine whether Rider NMB should be continued with the ability for customers to opt out, whether Rider NMB should be continued without the ability for customers to opt out, and whether Rider NMB should be terminated."[129] The Companies have no issue with periodic review of the program by Staff. To be sure, the Commission also has authority to modify or terminate the program or the rider. Yet, the Commission should allow for a process by which the Companies and other interested parties may participate before either the program or the rider is modified or terminated.

---

[129] Fifth Entry on Rehearing, p. 140.

Accordingly, the Commission erred when it deviated from its prior Order by potentially broadening the Pilot Program to *any* customer or by potentially modifying or terminating the program or the rider, irrespective of the Companies' approval or other interested parties' comments. The Commission also erred by failing to propose an identifiable, transparent, and inclusive process for considering customer applications or a modification or termination of the program or the rider.

I. The Commission acted erroneously and improperly by failing to adopt a placeholder retail competition incentive mechanism, set at zero pending a future filing by the Companies.

The Commission properly granted rehearing and eliminated IGS's "unbundling" proposal.[130] However, the Commission also needs to approve a placeholder for the retail competition incentive mechanism described in the Competitive Market Enhancement Agreement.[131] The rider would be set at zero, pending a future filing by the Companies.[132] At hearing, Ms. Mikkelsen testified to the benefits of a retail competition incentive mechanism, explaining that it "would potentially 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."[133] Accordingly, it would be reasonable for the Commission to adopt at zero placeholder rider, pending the future filing by the Companies as described in the Competitive Market Enhancement Agreement.

---

[130] Fifth Entry on Rehearing, p. 135.

[131] OMAEG Ex. 24.

[132] OMAEG Ex. 24.

[133] Hearing Tr. Vol. XXXVII, pp. 7927-28.

III. CONCLUSION

For the foregoing reasons, the Companies respectfully request that the Commission grant rehearing and correct the errors discussed in this Application for Rehearing.

Date: November 14, 2016

Respectfully submitted,

/s/ Carrie M. Dunn

Carrie M. Dunn (0076952)
Counsel of Record
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
Telephone: (330) 384-5861
Fax: (330) 384-8375
Email: cdunn@firstenergycorp.com

David A. Kutik (0006418)
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114
Telephone: (216) 586-3939
Fax: (216)579-0212
Email: dakutik@jonesday.com

James F. Lang (0059668)
N. Trevor Alexander (0080713)
CALFEE, HALTER & GRISWOLD LLP
The Calfee Building
1405 East Sixth Street
Cleveland, OH 44114
Telephone: (216) 622-8200
Fax: (216) 241-0816
Email: jlang@calfee.com
Email: talexander@calfee.com

ATTORNEYS FOR OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY

CERTIFICATE OF SERVICE

I certify that the above was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 14th day of November, 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 parties via electronic mail.

/s/ James F. Lang
One of the Attorneys for the Companies