

**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) Case No. 14-1297-EL-SSO
Edison Company for Authority to Provide)
a Standard Service Offer Pursuant to R.C.)
§ 4928.143 in the Form of an Electric)
Security Plan.)

**MOTION TO REJECT FIRSTENERGY'S DISTRIBUTION MODERNIZATION
RIDER TARIFFS
OR, IN THE ALTERNATIVE,
MOTION TO STAY FIRSTENERGY'S COLLECTION OF THE RIDER FROM
CUSTOMERS
OR
MOTION FOR FIRSTENERGY TO COLLECT DISTRIBUTION
MODERNIZATION RIDER SUBJECT TO REFUND
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

OCC, on behalf of FirstEnergy's¹ 1.9 million residential consumers, and the Ohio Manufacturers' Association Energy Group, ("Movants") on behalf of its members who purchase services from FirstEnergy, file this pleading to protect FirstEnergy's customers from paying a so-called "Distribution Modernization Rider" (DMR) beginning January 1, 2017. FirstEnergy has filed tariffs, seeking PUCO approval to charge customers under its Rider DMR. The PUCO Staff has reviewed the tariffs and recommended they be approved.

¹ FirstEnergy refers to Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company.

The PUCO, however, should reject FirstEnergy's tariffs² for Rider DMR because they do not satisfy the conditions precedent that the PUCO imposed in its Fifth Entry on Rehearing. In particular, FirstEnergy has not shown that it has made "sufficient progress in the implementation and deployment of grid modernization."

Alternatively, if the PUCO does not outright reject FirstEnergy's tariffs for DMR, then the PUCO should act, consistent with its authority and responsibility, to protect consumers in other ways. Specifically, the PUCO should order that the DMR rates be collected, subject to refund, pending the outcome of any appeals to the Ohio Supreme Court. Or the PUCO should stay the rates, again pending the outcome of any appeals from the PUCO. Exercising either of these options will prevent injury to the interests of the public and will prevent irreparable harm to customers.

The reasons for granting these motions are further set forth in the attached Memorandum in Support.

² See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, FirstEnergy Tariff Filing Ohio Edison at Sheet 132; Cleveland Electric Illuminating Company at Sheet 132; Toledo Edison at Sheet 132 (Nov. 3, 2016).

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Consumers face an immediate risk of substantial harm. FirstEnergy³ attempts to charge customers under its so-called DMR, which amounts to a credit support rider, beginning on January 1, 2017. And the PUCO Staff, in a one page filing, recently concluded that FirstEnergy's tariffs comply with the Fifth Entry on Rehearing, and should be approved. The PUCO Staff is mistaken.

FirstEnergy did not comply with the PUCO's Fifth Entry on Rehearing. FirstEnergy has not met at least one of the three conditions laid out in the PUCO's Fifth Entry on Rehearing. That pre-condition to collecting money from customers is that FirstEnergy must demonstrate "sufficient progress" on grid modernization and deployment. So the PUCO should protect consumers and implement its Fifth Entry on Rehearing, by preventing FirstEnergy from prematurely collecting the rider charge from customers.

³ FirstEnergy refers to Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company.

In its Fifth Entry on Rehearing⁴ the PUCO set pre-conditions that must be met before the Utility may collect Rider DMR from its customers. The PUCO “authorize[d] the Companies to implement [the DMR] as recommended by Staff, subject to modification ordered herein by the Commission. Further, we will direct the Companies to file tariffs withdrawing existing Rider RRS.”⁵ In approving the credit support rider for FirstEnergy,⁶ it identified three conditions that had to be met before FirstEnergy could begin to collect revenues from customers:

(1) continued retention of the corporate headquarters and nexus of operations of FirstEnergy in Akron, Ohio; (2) no change in "control" of the [Utilities] as that term is defined in R.C 4905.402(A)(1); and (3) *a demonstration of sufficient progress in the implementation and deployment of grid modernization programs approved by the Commission.*⁷

On November 3, 2016, FirstEnergy filed tariffs that included the DMR with an effective date of January 1, 2017.⁸ On December 6, 2016, the PUCO Staff submitted a filing recommending the tariffs be approved.

⁴ Fifth Entry on Rehearing.

⁵ Fifth Entry on Rehearing at 88.

⁶ The Office of the Ohio Consumers Counsel does not concede the legality of the credit support rider. See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide 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 for Rehearing by the Office of the Ohio Consumers' Counsel and the Northwest Ohio Aggregation Coalition and the NOAC Communities Individually* (Nov. 14, 2016).

⁷ Fifth Entry on Rehearing at 96 (emphasis added).

⁸ FirstEnergy Tariff Filing Ohio Edison at Sheet 132; Cleveland Electric Illuminating Company at Sheet 132; Toledo Edison at Sheet 132 (November 3, 2016).

II. THE PUCO SHOULD REJECT FIRSTENERGY'S TARIFFS THAT PERMIT IT TO COLLECT RIDER DMR FROM CUSTOMERS BEGINNING JANUARY 1, 2017.

As discussed above, the PUCO put conditions on FirstEnergy's ability to collect charges from customers under its so-called Distribution Modernization Rider.

FirstEnergy, in its recent Application for Rehearing, sought rehearing on this very issue.

FirstEnergy argued that the "sufficient progress" standard would require the PUCO to approve its grid modernization programs *after it has completed a detailed policy review of grid modernization*.⁹ It also acknowledged that "[w]hether 'sufficient progress' is being made will be a matter for those other cases, not this one."¹⁰ We agree. FirstEnergy does not meet this condition and is extremely unlikely to do so before January 1, 2017.¹¹ The PUCO should reject FirstEnergy's tariffs. They do not comply with the PUCO's Fifth Entry on Rehearing.

A. FirstEnergy has made no progress (let alone "sufficient progress") in the implementation and deployment of grid modernization programs.

The Fifth Entry on Rehearing "authorize[d] the Companies to implement [the DMR] *as recommended by Staff*, subject to modification ordered herein by the Commission."¹² The PUCO found that the credit support provided to the Companies through the DMR would provide FirstEnergy with a "needed incentive" to "focus [its] efforts on grid modernization"¹³ and required FirstEnergy to "file a grid modernization

⁹ See FirstEnergy Application for Rehearing at 23 (Nov. 14, 2016).

¹⁰ Id. at 24.

¹¹ The Office of the Ohio Consumers' Counsel does not concede that FirstEnergy has met the other two conditions imposed by the PUCO. These conditions are vague and provide no protection to consumers. See AFR at 27-29 (Nov. 14, 2016).

¹² Fifth Entry on Rehearing at 88.

¹³ Fifth Entry on Rehearing at 88.

business plan.”¹⁴ While the PUCO recognized that FirstEnergy filed an application in a grid modernization case in February 2016, importantly it noted, in the very next sentence, that “Staff witness Choueiki testified that the Companies grid modernization efforts should extend beyond this [February 2016] application.”¹⁵

FirstEnergy has not supplemented or expanded its February 2016 application “as recommended by Staff.” So it has made no progress (let alone “sufficient progress”) on the implementation and deployment of grid modernization programs. As FirstEnergy noted in its Application for Rehearing, sufficient progress cannot be made until implementation of grid modernization is ordered.¹⁶ And today we have no PUCO Order implementing grid modernization for FirstEnergy. Nor will we have a PUCO Order in place on January 1, 2017. The PUCO should protect consumers and enforce its Fifth Entry on Rehearing by not permitting FirstEnergy to collect DMR revenues unless and until all three conditions are met.

B. It is virtually impossible for FirstEnergy to demonstrate “sufficient progress” in implementation and deployment of grid modernization programs between now and January 1, 2017.

Even if FirstEnergy’s existing filing on grid modernization is viewed as a step toward implementing and deploying grid modernization programs, this falls way short of showing the “sufficient progress” required under the PUCO’s Fifth Entry on Rehearing. Indeed, the PUCO ordered that “sufficient progress will *only* be determined with respect to the implementation and deployment of grid modernization *actually approved by the*

¹⁴ Fifth Entry on Rehearing at 88.

¹⁵ Fifth Entry on Rehearing at 89. See Staff Ex. 15 at 15-16; Rehearing Tr. Vol. IV at 1007-08, 1021-22; Rehearing Tr. Vol. IV at 1015; Rehearing Tr. Vol. V at 1221-23.”

¹⁶ FirstEnergy Application for Rehearing at 24.

Commission.”¹⁷ The PUCO makes clear that “*nothing in [the Fifth Entry on Rehearing] should be construed as approving any of the grid modernization programs referenced above.*”¹⁸ Because none of FirstEnergy’s grid modernization plans have been approved by the PUCO, FirstEnergy cannot possibly have made “sufficient progress in the implementation and deployment of grid modernization programs.” FirstEnergy should not collect charges from customers for credit support under the DMR until this condition is met, consistent with the PUCO’s Fifth Entry on Rehearing.

Chairman Haque, in his concurring opinion, described in “plain language” when to expect a PUCO order approving FirstEnergy’s grid modernization plan, i.e., the earliest that the third condition could be met. Chairman Haque made it clear that “[a]s a condition to receiving revenues under Rider DMR, FirstEnergy must comply with what the *Commission orders* in [FirstEnergy’s] grid modernization filing (in tandem with maintaining FirstEnergy Corp.’s headquarters in Akron and not selling the company).”¹⁹ The PUCO will only begin to evaluate (let alone issue an order on) FirstEnergy’s grid modernization plan after having a “very robust conversation about the future of the grid and the electric industry” that Chairman Haque has called for “on a number of occasions now, in a number of different venues.”²⁰ It is inconceivable that such a “very robust conversation,” a subsequent evaluation of FirstEnergy’s grid modernization plans (that have yet to be proposed or debated (litigated) in accordance with Staff’s recommendation

¹⁷ Fifth Entry on Rehearing at 97 (emphasis added).

¹⁸ Fifth Entry on Rehearing at 97.

¹⁹ Fifth Entry on Rehearing Concurring Opinion of Chairman Asim Z. Haque at 2.

²⁰ Fifth Entry on Rehearing Concurring Opinion of Chairman Asim Z. Haque at 2.

as described above), and an order approving such plans *all* can occur before January 1, 2017.

There is no evidence that any progress has been made in this regard. And if there has been information that is being relied on as showing "sufficient progress," that information is extra-record information that has not been shared with the parties. Such extra-record information cannot be the basis for a PUCO Order approving the tariffs. See, e.g., *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 706 N.E.2d 1255 (1998) (finding that the PUCO violates R.C. 4903.09 when it relies upon PUCO staff recommendations based on information outside the record). The PUCO should reject FirstEnergy's tariff filings that would permit it to collect revenues under the DMR before all of the necessary pre-conditions are met. Otherwise, the PUCO's Fifth Entry on Rehearing is being circumvented.

III. THE PUCO SHOULD PROTECT CONSUMERS FROM PAYING THE DMR.

In order to prevent injury to the public and avoid irreparable harm to customers, the Movants request the PUCO to exercise its discretionary power under Title 49 of the Revised Code to protect the customers of FirstEnergy. The PUCO's authority to take action to protect customers can be found under various statutes and case precedent.²¹ If the PUCO approves the DMR tariffs, FirstEnergy's customers will be required to pay this unlawful charge for credit support and will be hard pressed to get a refund in the event it is found unlawful.

²¹ See for example, *In re Columbus & Southern Ohio Electric Co.*, Case No. 83-1058-EL-AIR, Entry (November 17, 1982); *Cinnamon Lake Utilities Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 259 (1975), where the Ohio Supreme Court noted that R.C. 4909.16 exists to protect the public interest as well as the interests of the public utility.

Indeed, the Court recognized there is an apparent unfairness when a decision is determined to be unlawful yet customers get no refund of charges unlawfully collected.²² However, if the PUCO directs that the DMR be collected subject to refund, the PUCO can avoid these unfair and unjust results. Alternatively, the PUCO could stay the collection of the DMR, as discussed below.

A. The PUCO should stay the collection of the DMR pending the outcome of any appeals associated with the charge.

The PUCO has noted that there is no controlling precedent in Ohio setting forth the conditions under which the PUCO will stay one of its own orders.²³ The PUCO, however, has favored the four-factor test governing a stay that was supported in a dissenting opinion by Justice Douglas,²⁴ and which has been deemed appropriate by courts when determining whether to stay an administrative order pending judicial review.²⁵ This test involves examining:

- (a) Whether there has been a strong showing that movant is likely to prevail on the merits;
- (b) Whether the party seeking the stay has shown that it would suffer irreparable harm absent the stay;
- (c) Where lies the public interest? and
- (d) Whether the stay would cause substantial harm to other parties.²⁶

The OCC meets this test.

²² See *In re: Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788 ¶15-21.

²³ See *In the Matter of the Commission's Investigation Into the Modification of Intrastate Access Charges*, Case No. 00-127-TP-COI, Entry on Rehearing (February 20, 2003) ("Access Charge Decision") at 5.

²⁴ See *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 31 Ohio St.3d 604.

²⁵ *Access Charge Decision* at 5.

²⁶ *Id.*

1. There is a strong likelihood that OCC will prevail on the merits

The PUCO's Fifth Entry on Rehearing clearly and unambiguously put three conditions on FirstEnergy's ability to begin collecting under the DMR. As discussed above, FirstEnergy has made no progress (and no "sufficient progress") on the implementation and deployment of grid modernization programs. FirstEnergy has not supplemented or expanded its February 2016 application "as recommended by Staff." Nor has the PUCO begun to evaluate, let alone approve, FirstEnergy's grid modernization plan. Further, the PUCO has not even started the "very robust conversation about the future of the grid and the electric industry" as called for by Chairman Haque.²⁷ The PUCO's Fifth Entry on Rehearing is clear: before FirstEnergy can begin collecting revenues for credit support under the DMR, all of these dominoes must fall. They have not.

2. Allowing the DMR to be unlawfully collected would cause irreparable harm to FirstEnergy's customers.

Harm is irreparable "when there could be no plain, adequate and complete remedy at law for its occurrence and when any attempt at monetary restitution would be 'impossible, difficult, or incomplete.'"²⁸ In the context of judicial orders, the Supreme Court of Ohio traditionally looks to whether there is an effective legal remedy if the order takes effect, to determine whether to stay the proceedings.²⁹

²⁷ Fifth Entry on Rehearing Concurring Opinion of Chairman Haque at 2.

²⁸ *FOP v. City of Cleveland* (8th Dist. 2001), 141 Ohio App.3d 63, 81, citing *Cleveland v. Cleveland Elec. Illuminating Co.* (8th Dist. 1996), 115 Ohio App.3d 1, 12, appeal dismissed, 78 Ohio St.3d 1419 (1997).

²⁹ See, e.g., *Tilberry v. Body* (1986), 24 Ohio St. 3d 117; *Sinnott v. Aqua-Chem, Inc.* (2007), 116 Ohio St. 3d 158, 161.

In *Tilberry v. Body*, the Ohio Supreme Court found that the effect of a court order calling for the dissolution of a business partnership would cause “irreparable harm” to the partners because “a reversal ... on appeal would require the trial court to undo the entire accounting and to return all of the asset distributions” – a set of circumstances that would be “virtually impossible to accomplish.”³⁰ In *Sinnott v. Aqua-Chem, Inc.*, the Ohio Supreme Court found that a lower court’s pre-trial findings could be appealed at the point they were issued because the findings allowed the case to proceed to trial.³¹ The majority reasoned that “the incurrence of unnecessary trial expenses is an injury that cannot be remedied by an appeal from a final judgment,”³² and so concluded that “[i]n some instances, ‘[t]he proverbial bell cannot be unrung and an appeal after final * * * judgment on the merits will not rectify the damage’ suffered by the appealing party.”³³ Here, the bell is ringing loudly that Ohio customers need the PUCO to protect their interests.

Although, as Justice Rehnquist observed, “the temporary loss of income, *ultimately to be recovered*, does not usually constitute irreparable injury,”³⁴ *Tilberry* and *Sinnott* illustrate that economic harm does become irreparable where the loss cannot be recovered. Here, FirstEnergy’s customers who pay the credit support per the DMR will face arguments that they cannot be refunded the unlawful charges they have already paid. So as the DMR is collected, that is more money that consumers will not have the chance

³⁰ *Tilberry* (1986), 24 Ohio St. 3d at 121.

³¹ *Sinnott* (2007), 116 Ohio St. 3d at 164.

³² *Id.* at 163.

³³ *Id.* at 162 (quoting *Gibson-Myers & Assocs. v. Pearce* (9th Dist.), 1999 Ohio App. LEXIS 5010, *7-*8 (compelled disclosure of a trade secret would “surely cause irreparable harm”).

³⁴ *Sampson v. Murray* (1974), 415 U.S. 61, 90 (Emphasis added).

to get back. By granting a stay pending final resolution of this issue (through appeal) the PUCO can protect FirstEnergy's Ohio customers from this harm.

3. A stay would further the public interest.

In the dissent in the Supreme Court case in which Justice Douglas recommended standards for a stay of a PUCO decision, he noted that PUCO Orders “have effect on everyone in this state -- individuals, business and industry.”³⁵ Justice Douglas emphasized that the most important consideration is “above all in these types of cases, where lies the interest of the public” and that “the public interest [] is the ultimate important consideration for this court in these types of cases.”³⁶ That effect on customers is all the more pronounced when charges collected from Ohioans cannot be returned to Ohioans.

As discussed above, the stay sought by Movants would prevent irreparable harm to FirstEnergy's Ohio customers, with no substantial harm to the utility, as discussed below. The public interest, therefore, would be furthered by a stay of the collection of the DMR pending the resolution of this issue (by appeal).

FirstEnergy will not suffer substantial harm pending final resolution of this issue through the appellate process. If the Court finds that Rider DMR is lawful, then FirstEnergy will face a mere delay in collecting the rider revenues. A delay in collecting money does not constitute harm to the utility. FirstEnergy must only wait before getting its money. Matters of mere timing do not amount to substantial harm.

³⁵ *MCI*, 31 Ohio St.3d at 606.

³⁶ *Id.*

B. If the PUCO approves the tariffs, over OCC's objections, and denies OCC's motion to stay, the PUCO should protect consumers by making the collection of the DMR subject to refund.

The PUCO has acted to prevent harm from occurring by ordering utilities, on an ongoing basis, to collect an existing rate increase subject to refund and subject to appropriate interest charges. The PUCO has used this approach to permit it to explore the reasonableness of rates in light of events that occurred after the issuance of its orders. For instance, the Commission granted rehearing and ordered rates to be collected subject to refund in a rate case filed by the Columbus & Southern Ohio Electric Company.³⁷ In that rate case, one week after the issuance of the PUCO's rate order, the Nuclear Regulatory Commission issued an Order that suspended construction at the Zimmer Nuclear Power Plant ("Zimmer"). The original Opinion and Order included a rate base allowance for construction work in progress ("CWIP") for Zimmer.³⁸

In its order setting the rehearing, the PUCO approved the utility's filed tariffs but expressly found the portion of the increase granted attributable to Zimmer CWIP "should be made subject to refund, pending a rehearing on the CWIP issue."³⁹ A rehearing was held and the PUCO ordered that all of the Zimmer costs should be excluded from CWIP. The PUCO ordered the utility to file tariffs reducing the total revenue requirements by approximately \$13 million.⁴⁰ The utility appealed and sought a stay of the PUCO's Order on Rehearing from the Supreme Court of Ohio. The Court granted the stay but

³⁷ *In re Columbus & Southern Ohio Electric Co.*, Case No. 83-1058-EL-AIR, Entry (November 17, 1982).

³⁸ *Id.*, Opinion and Order at 8-14 (November 5, 1982).

³⁹ *Id.*, Entry at 1 (November 17, 1982).

⁴⁰ *Id.*, Order on Rehearing (March 16, 1983).

subsequently affirmed the PUCO's denial of a CWIP allowance.⁴¹ After the PUCO's action was upheld on appeal,⁴² the PUCO ordered the utility to refund approximately \$4.5 million to its customers.⁴³ The PUCO ordered the collection, subject to refund to protect customers in the event of a later decision that the utility was collecting more from customers than warranted by law, rule, or reason.

Another example where the PUCO has collected rates subject to refund involved the Ohio Utilities Company.⁴⁴ After a rate order was issued,⁴⁵ legislation was enacted that changed Ohio's ratemaking formula. The PUCO opened an investigation to determine if the previously-established rates were still reasonable in light of the new law.⁴⁶ The PUCO determined that the rates were excessive, taking into account the new law, and ordered the utility to withdraw its tariffs and file new lower rates consistent with the PUCO's findings.⁴⁷ The utility sought a stay of the PUCO's order, pending further

⁴¹ *Columbus & Southern Ohio Electric Co. v. Pub. Util. Comm.*, (1984) 10 Ohio St.3d 12.

⁴² *Columbus & Southern Ohio Electric Co. v. Pub. Util. Comm.* (1984), 10 Ohio St.3d 12.

⁴³ *In re Columbus & Southern Ohio Electric Co.*, Case No. 81-1058-EL-AIR, Order on Rehearing (May 1, 1984).

⁴⁴ *In the Matter of the Commission's Investigation of the Current Rates, Revenues, Rate Base, and Rate of Return of the Ohio Utilities Company*, Case No. 77-1073-WS-COI, Entry at 2 (June 7, 1978).

⁴⁵ *In the Matter of the Ohio Utilities Co. Application for an Increase in Rates*, Case No. 79-529-WS-AIR, Opinion and Order (January 18, 1977).

⁴⁶ *In the Matter of the Commission's Investigation of the Current Rates, Revenues, Rate Base, and Rate of Return of the Ohio Utilities Company*, Case No. 77-1073-WS-COI, Entry (September 7, 1977).

⁴⁷ *In the Matter of the Commission's Investigation of the Current Rates, Revenues, Rate Base, and Rate of Return of the Ohio Utilities Company*, Case No. 77-1073-WS-COI, Opinion and Order (May 18, 1978).

review, which was granted with the condition that the utility was required to collect rates subject to refund.⁴⁸

And in a case involving AEP's Rate Stability Rider, the PUCO ordered that the RSR be collected subject to refund after the case was remanded by the Court.⁴⁹ The PUCO "direct[ed] AEP Ohio to file revised tariffs that provide that the RSR is being collected subject to refund" in order to protect consumers from irreparable harm – continuing to pay the RSR without the potential of getting a refund.⁵⁰

The PUCO can act now to prevent harm to consumers under the DMR. It should do so. It can protect consumers in any number of ways. It can reject the tariffs seeking to implement the DMR on January 1, 2017. It can stay the implementation of Rider DMR pending final resolution of the issues through the appellate process. Alternatively, the PUCO could allow Rider DMR charges to be collected subject to refund.

IV. CONCLUSION

FirstEnergy's attempt to begin collecting charges from customers under the DMR on January 1, 2017 should be rejected. FirstEnergy has not complied with the conditions precedent laid out in the PUCO's Fifth Entry on Rehearing. The PUCO should make

⁴⁸ *In the Matter of the Commission's Investigation of the Current Rates, Revenues, Rate Base, and Rate of Return of the Ohio Utilities Company*, Case No. 77-1073-WS-COI, Entry (June 7, 1978). The utility was also required to file an "undertaking" consisting of a promise to refund any amount collected for service rendered after the date of the Entry by a method later determined by the Commission (either cash refund or as a credit to future bills). The undertaking was required to be under oath by an officer of the company and was to include a promise to include interest. The amount ordered for refund was the amount collected for service in excess of those rates ultimately determined to be lawful. *Id.*

⁴⁹ *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC et. al. (May 18, 2016).

⁵⁰ *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC et. al. at 4 (May 18, 2016).

FirstEnergy comply with these conditions before allowing Rider DMR funds to be collected from customers.

If the PUCO determines to approve the DMR tariffs it should protect consumers by ruling that any credit support payments are to be collected subject to refund including carrying charges. Alternatively, it could stay implementation of these tariffs until the issue is resolved through the appellate process.

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I hereby certify that I served a true copy of the foregoing Motions upon the parties listed below, via electronic transmission, this 8th day of December 2016.

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Summary: Motion Motion to Reject FirstEnergy's Distribution Modernization Rider Tariffs or, in the Alternative, Motion to Stay FirstEnergy's Collection of the Rider From Customers or Motion for FirstEnergy to Collect Distribution Modernization Rider Subject to Refund by the Office of the Ohio Consumers' Counsel and Ohio Manufacturer's Association Energy Group electronically filed by Ms. Deb J. Bingham on behalf of Sauer, Larry S.