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witnesses and exhibits. The Commission further found that placing restrictions on the use of Rider DMR funds would defeat the purpose of the rider and, instead, directed Staff to periodically review how the Rider DMR funds are being utilized "to ensure that such funds are used, directly or indirectly, in support of grid modernization," further supporting the Commission's finding that Rider DMR will not act as an unlawful subsidy to the Companies' affiliates. A more thorough explanation of Staff's oversight and monitoring of FirstEnergy's use of Rider DMR revenues can be found in ¶113.

{¶ 124} As a final note, the Commission also found Rider DMR would recover a proportionate share of the CFO to debt ratio shortfall, which ensures that the Companies are not subsidizing affiliates. As we discussed in our Fifth Entry on Rehearing, testimony shows that additional actions have been undertaken by FirstEnergy Corp. and the Companies in order to improve their financial metrics and additional action will be required on their part to fully resolve their current financial dilemma (Fifth Entry on Rehearing at 95-96). Therefore, we find that the intervening parties have raised no new issues and these assignments of error should be denied.

e. *The Commission's finding that the revenues collected under Rider DMR do not constitute unlawful transition revenues.*

{¶ 125} Despite the Commission's finding that the Companies will use these funds to obtain more favorable terms when accessing the capital markets that will allow for necessary investment in grid modernization, NOPEC, OCC/NOAC, Environmental Advocates, OMAEG, and Sierra Club argue that there is no requirement in Rider DMR that the funds be used for these purposes. In fact, OCC/NOAC, OMAEG, Environmental Advocates, and NOPEC contend that the record shows the revenues collected under Rider DMR would be used to provide credit support to FirstEnergy Corp. and its unregulated affiliates, including FES, as a means to improve its credit rating. OCC/NOAC, OMAEG, and NOPEC also emphasize that R.C. 4928.38 prohibits the Commission from authorizing the receipt of transition revenues or "any equivalent revenues," noting that even though Rider DMR revenues would not be explicitly considered transition revenue, it would fall under the equivalency language of the statute due to the fact that these revenues need not be used for grid modernization. *In re Application of Columbus S. Power Co.*, 147 Ohio St.3d 439, 67 N.E.3d 734 (2016) (*AEP Ohio RSR Case*). Environmental Advocates add that the statute provides no exception for regulated utilities that have fully divested their generation. NOPEC and Sierra Club note, in the *AEP Ohio RSR Case*, the Supreme Court of Ohio held that riders that are designed to provide "sufficient revenue to maintain [a utility's] financial integrity and ability to attract capital during the ESP" constitute unlawful transition charges. NOPEC, OMAEG, and Environmental Advocates claim that the Commission attempts to adopt a much too narrow definition of transition revenues, as evidenced by recent Supreme Court of Ohio precedent rejecting the Commission's interpretation of R.C. 4928.38. *AEP Ohio RSR Case* at ¶21-22, ¶24, ¶36; *In re Application of Dayton Power and Light Co.*, 147 Ohio St.3d 166, 62 N.E.3d 179 (2016). These parties also state that it makes no difference that FirstEnergy has already transitioned their assets to FES. Therefore, NOPEC, OCC/NOAC, Environmental Advocates, OMAEG, and Sierra Club argue that the Commission should reject Rider DMR because it would collect unlawful transition revenues.

{¶ 126} In response, FirstEnergy notes that Rider DMR is proposed to help access capital to support distribution services rather than generation services. Additionally, FirstEnergy emphasizes the amount of revenue to be provided to the Companies is based on the Companies' proportional contribution to FirstEnergy Corp., and is completely unrelated to the operations of FES with respect to FirstEnergy Corp. FirstEnergy notes that the cases cited by the intervenors in support of their claims are completely inapposite to this proceeding as Rider DMR is not related to generation assets in any way. Moreover, the Companies emphasize there was nothing in the record to show a means by which the Companies would be able to directly transfer any funds to FES, explaining that the possibility of providing such a dividend is contrary to the facts of this proceeding.

{¶ 127} Consistent with our finding in our Fifth Entry on Rehearing, we disagree with claims that Rider DMR will collect transition revenue or its equivalent (Fifth Entry on Rehearing at 130). As we discussed in that decision, the Companies have already transferred their generation assets to FES and have utilized a competitive bidding process since their first ESP in 2009. Furthermore, the Commission noted that Rider DMR has been authorized under R.C. 4928.143(B)(2)(h) rather than R.C. 4928.143(B)(2)(d), the statute which authorized the AEP Ohio stability charge that was later overturned by the Supreme Court. *AEP Ohio RSR Case.* Moreover, Rider DMR is clearly a "distribution charge." Additionally, we again note Staff's oversight of the uses of Rider DMR revenues, pursuant to the process defined in ¶113, will ensure that these revenues will not be used to subsidize non-distribution functions of FirstEnergy Corp. subsidiaries. Thus, we find that these assignments of error should be denied, as they were thoroughly addressed in the Fifth Entry on Rehearing.

f. The Commission's finding that R.C. 4905.22 is not applicable to an ESP, and, even if this statute was applicable, Rider DMR would nonetheless comply with R.C. 4905.22.

{¶ 128} OMAEG and OCC/NOAC argue the Commission erred when it determined that R.C. 4905.22 does not apply to an ESP, stating that R.C. 4928.143(B)(2)(h) does not provide the Commission the ability to authorize provisions in an ESP that could result in virtually unlimited charges to customers or violate R.C. 4928.02. OCC/NOAC further assert that the Supreme Court has refused to apply the "notwithstanding" language in that statute to mean that it should take precedence over other provisions of R.C. Title 49; rather, the Court noted that if there is a recognized inconsistency between two or more statutes, the enactment that provides "notwithstanding" the other enactments prevails. *State ex rel. Carmean v. Bd. of Education*, 170 Ohio St. 415, 165 N.E.2d 918 (1960). As OCC/NOAC allege there is no inconsistency between R.C. 4905.22 and R.C. 4928.143, R.C. 4905.22 should be construed as providing a reasonable limit on the charges assessed under R.C. 4928.143, which is consistent with state policy. R.C. 4928.02(A). Additionally, OMAEG contends Rider DMR is an unreasonable charge because the Companies failed to consider any alternative tax gross-up factors to the 36 percent average tax rate for the Companies, there is no guarantee that Rider DMR revenues will be spent on distribution grid modernization efforts, the Companies failed to meet their burden to show that credit support for FirstEnergy Corp. is necessary, and there is no guarantee that Rider DMR will enable the Companies to access capital on more favorable terms.

{¶ 129} In response, FirstEnergy asserts that R.C. 4928.143 expressly provides that ESPs may include any of the provisions authorized in R.C. 4928.143(B)(2) "[n]otwithstanding any other provision of Title XLIX of the Revised Code to the contrary," further asserting that none of the exceptions would apply in this case. The Companies also contend that the case precedent cited by OCC/NOAC actually supports the proposition that this statute would take precedence over other R.C. Title 49 provisions. As a final point, the Companies claim that, although R.C. 4905.22 is inapplicable to this case, the Commission is still required to apply the ESP versus MRO test to determine whether the charges included in an ESP are reasonable.

{¶ 130} The Commission finds that these arguments have been thoroughly addressed in the Fifth Entry on Rehearing and, thus, require no additional explanation (Fifth Entry on Rehearing at 131-132). With the language used R.C. 4928.143(B)(2)(h), the General Assembly clearly intended that the Commission have flexibility in approving provisions related to distribution service contained in ESPs and that the strict requirements of R.C. Chapters 4905 and 4909 do not necessarily apply to such provisions. The Commission also stated in the Fifth Entry on Rehearing that, even if R.C. 4905.22 were to apply, Rider DMR would not be unreasonable under R.C. 4905.22. The Commission explained in detail that the Staff's calculation of Rider DMR was reasonable, as modified by the Commission (Fifth Entry on Rehearing at 93-96). Accordingly, claims that Rider DMR violated R.C. 4905.22 should be rejected and rehearing as to these assignments of error should be denied.

g. *The Commission's finding that the record evidence does not support the Retail Competition Enhancement Rider (Rider RCE).*

{¶ 131} As its sole assignment of error, IGS argues that the Commission unlawfully and unreasonably determined that the record evidence did not support the authorization and creation of a placeholder Retail Competition Enhancement Rider (Rider RCE), noting that the record evidence indicates that additional customer engagement is required to maximize the potential of SmartGrid deployment and incentivize shopping and is fully supported by the state policy set forth in R.C. 4928.02. IGS further states that any actual dollar amount to be included in Rider RCE and additional details regarding the operation of the rider would be determined in a separate case, in which interested parties would be able to fully participate. The Companies agree with the Commission's decision to grant rehearing and eliminate the unbundling proposal associated with Rider RCE in the Fifth Entry on Rehearing. However, the Companies contend that the Commission still needs to approve a zero placeholder rider that accurately reflects the retail competition incentive mechanism described in the Competitive Market Enhancement Agreement, noting Ms. Mikkelsen's testimony provides sufficient evidence for such a finding.

{¶ 132} In response, NOPEC and OCC/NOAC argue there is no evidentiary basis for the Commission to approve Rider RCE or its equivalent, noting this rider was not proposed as a part of Stipulated ESP IV, no witness supported this rider during the hearing, and IGS did not include this rider as a part of its written testimony. Rather, NOPEC asserts this rider only exists through a side agreement between IGS and FirstEnergy that was conceived during the latter part of the hearing process (OMAEG Ex. 24). NOPEC further contends that, while the Commission has approved zero placeholder riders in past proceedings, it has always done so after all parties had received adequate notice and opportunity for cross examination regarding the rider. As a bypassable rider, NOPEC asserts that SSO customers will be charged increased amounts in order to benefit the business interests of CRES providers. NOPEC urges the Commission to affirm its decision as to Rider RCE. OCC/NOAC further state that the

Commission already considered the testimony of FirstEnergy witness Mikkelsen and the remaining limited testimony of IGS witness White and concluded they were insufficient to substantiate Rider RCE.

{¶ 133} The Commission will affirm our decision that the limited testimony of FirstEnergy witness Mikkelsen, solicited on cross-examination, is insufficient to persuade the Commission to establish Rider RCE (Fifth Entry on Rehearing at 135-36; Tr. Vol. XXXVII at 7817-23, 7911-12, 7925-37). The record includes no information on whether it is necessary to incent shopping by the potentially affected customers in the Companies' service territories (Tr. Vol. XXXVII at 7928-31). In fact, the record demonstrates that, at the hearing, FirstEnergy did not endorse the establishment of Rider RCE. On cross examination, Ms. Mikkelsen was asked a direct question and gave a clear, unequivocal answer:

> Q. * * * Is the company requesting that the Commission approve the retail competitive incentive rider in its ESP in this proceeding?
>
> A. No.

Tr. XXXVII at 7819.

Accordingly, we find that rehearing on these assignments should be denied.

h. The Commission's findings regarding energy efficiency provisions and renewable resource requirements.

i. The Commission's finding to stay the effective date of the increase in the shared savings cap

{¶ 134} The Companies contend that the Commission had no basis for staying the effective date of the increase in the shared savings cap, noting that this is a completely independent concept from Rider DMR, the increase was a provision provided for by the bargaining parties as a part of the Stipulated ESP IV, and the Commission lacked any record evidence supporting its decision, risking violation of R.C. 4903.09.

{¶ 135} Environmental Advocates claim that FirstEnergy has failed to rebut the Commission's reasoning for implementing the stay, adding that, while the Companies are correct these are two independent concepts, both concepts are provisions of the Stipulated ESP IV that would substantially increase the amounts charged in customer bills. Environmental Advocates note that, in the event the Commission affirms its decision to increase the shared savings cap, it would be reasonable of the Commission to also stay the increase in order to moderate the combined effect of these provisions. OCC/NOAC and OMAEG agree that it is reasonable for the Commission to balance such provisions in order to protect customers from undue rate increases. Moreover, OCC/NOAC add that FirstEnergy first introduced energy efficiency shared savings into this proceeding through the Third Supplemental Stipulation, and should not be able to argue when the Commission modifies the recommendations therein. On the other hand, Sierra Club expresses its concerns that staying the increase in the shared savings cap may not be the best way to address customer bill impacts. As the Commission has previously found that increasing the shared savings is in the public interest, Sierra Club suggests that the Commission should grant rehearing on this ground and reinstate the increase in the shared savings cap effective immediately. Additionally, Sierra Club and OMAEG note that the Commission should also affirm its decision to limit allocating shared savings to programs upon which the Companies have a direct impact and, thus, disallow the Companies' recovery of shared savings for energy savings resulting from the Customer Action Program.

{¶ 136} The Commission will deny rehearing to reconsider our order to stay the effective date of the increase in the shared savings cap. The record is clear that Rider DMR will recover \$132.5 million from ratepayers annually, adjusted for recovery of taxes at the prevailing Federal corporate income tax rate (Fifth Entry on Rehearing at 93-94, 95). The record is also clear that the after-tax annual shared saving cap would be increased from \$10 million to \$25 million (Co. Ex. 154 at 11-12). The Commission determined that recovery of Rider DMR and the recovery of, potentially, an additional \$15 million in annual shared savings revenue, in addition to the other provisions of *ESP IV*, may place too great of a burden on ratepayers.

Therefore, in the interests of gradualism, the Commission stayed the increase in the shared savings cap until the Companies are no longer receiving revenue under Rider DMR (Fifth Entry on Rehearing at 147). The Commission has clearly set forth the reasons for our decision to stay the increase in the annual shared savings cap and the basis for this decision in the record. R.C. 4903.09. Additionally, we once again emphasize that parties to any stipulation are well aware that a stipulation is a recommendation only and that the stipulation is subject to modification by the Commission.[7] Therefore, we will affirm our decision to say the increase in the annual shared savings cap until the Companies are no longer receiving revenue under Rider DMR.

ii. The Commission's finding that the Companies should budget for the annual statutory energy efficiency mandate rather than the goal of 800,000 MWh of annual energy efficiency savings.

{¶ 137} In their application for rehearing, Environmental Advocates initially argue that the Commission erred by not requiring the Companies to comply with the provision in the Third Supplemental Stipulation to "strive to achieve 800,000 MWh of annual energy savings," rather than the annual statutory energy efficiency mandate. Environmental Advocates add that in order for this goal to be met, FirstEnergy must be able to establish sufficient program budgets, which are based on the projected incentive payments to implement energy efficiency measures, in order to produce the requisite level of energy savings. Otherwise, customers will likely lose this benefit entirely. The Companies agree with the position of Environmental Advocates, provided that the Commission also grants rehearing to authorize the increase in the shared savings cap to $25 million annually. In support of its request, the Companies argue the Commission should affirm its decision in the Order to approve the 800,000 MWh goal for purposes of the Companies' 2017-19 EE/PDR portfolio program, stating that exceeding the statutory benchmarks will benefit customers and that the Commission had no basis for

[7] We note that no signatory parties have indicated a desire to withdraw from the Stipulations based on the Commission's decision to stay the effective date of the increase in the shared savings cap and no signatory parties have raised this issue on rehearing, with the exception of the Companies.

requiring the Companies to budget to the energy efficiency benchmarks instead of the 800,000 MWh goal.

{¶ 138} OCC/NOAC initially argue that FirstEnergy has failed to meet the rehearing standard under R.C. 4903.10 by failing to provide evidence to show that the Commission's reduction in the shared savings cap or the reduction in the goal for the 2017-19 EE/PDR portfolio program was unlawful or unreasonable. OCC/NOAC also add that no environmental groups joined the Third Supplemental Stipulation and no party to that agreement has opposed the Commission's decision, other than FirstEnergy. Instead of utilizing the language as alleged by FirstEnergy, OCC/NOAC state the signatory parties elected to utilize more generalized language. Moreover, OCC/NOAC also request the Commission deny Environmental Advocates' arguments, as their arguments are not based on record evidence in this proceeding. Contrarily, Sierra Club argues that the Commission should grant FirstEnergy's assignment of error, noting that, if the Companies are required to budget based on the statutory mandate, there is no possible way that they will achieve the 800,000 MWh energy efficiency savings goal.

{¶ 139} The Commission will affirm our clarification provided in the Fifth Entry on Rehearing that the goal of 800,000 MWh of energy efficiency savings annually is simply a goal. FirstEnergy should strive to achieve this goal by efficiently administering its approved programs and by promoting the most cost effective programs possible rather than by simply increasing spending on the approved programs. As stated above, the Commission must be mindful of the rate impacts of all of the provisions of *ESP IV*. All other issues regarding achieving the annual goal of 800,000 MWh of energy efficiency savings should be addressed in the Companies' energy efficiency program portfolio plan proceedings. *See In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co. for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019*, Case No. 16-743-EL-POR. Therefore, rehearing on this assignment of error should be denied.

iii. The Commission's finding that the Companies are authorized to collect lost distribution revenue to the extent that energy savings under the Customer Action Program are verifiable.

{¶ 140} Additionally, Environmental Advocates contend that the Commission unreasonably allowed FirstEnergy to recover lost distribution revenue based on energy savings resulting from the Customer Action Program without explaining its reasoning, in violation of R.C. 4903.09, and in deviation from Commission precedent. *In re Application of FirstEnergy*, Case No. 09-1820-EL-ATA, et al., Finding and Order (June 30, 2010) at 10; *FirstEnergy ESP II Case*, Opinion and Order (Aug. 25, 2010) at 14. Rather, Environmental Advocates note that, in the past, the Commission has typically limited the lost distribution revenue mechanism to contexts where measured savings are the result of actual utility programs. Without an adequate rationale for its contrary position in this case, Environmental Advocates request that the Commission grant rehearing to address these issues.

{¶ 141} In response, FirstEnergy argues that the Commission sufficiently addressed Environmental Advocates' argument regarding lost distribution revenues and the Commission should deny rehearing, as the ability to recover lost distribution revenues arising from savings from the Customer Action Program was an integral part of the Stipulated ESP IV and was supported by all of the signatory parties. Furthermore, the Companies assert that Environmental Advocates have failed to provide sufficient evidence for the Commission to treat this program differently from other similar programs, noting that the Customer Action Program is a Commission-approved energy efficiency program and should not be treated differently with respect to the recovery of lost distribution revenues, especially when it will be subject to the general measurement and verification protocols before any savings could be counted.

{¶ 142} We agree with FirstEnergy that this issue has been thoroughly addressed in the Fifth Entry on Rehearing (Fifth Entry on Rehearing at 143-44, 146-47.). Environmental

Advocates have raised no new arguments on rehearing. Thus, rehearing on this assignment of error will be denied.

iv. The Commission's finding that it was appropriate to remove the 50 basis point adder to the return on equity in the calculation for Rider AMI.

{¶ 143} Although the Companies acknowledge that Rider DMR, in part, and the 50 basis point adder in Rider AMI generally serve as incentives related to grid modernization, they argue that the Commission erred by concluding that Rider DMR supplanted the need for the adder. FirstEnergy adds that the adder will provide an incentive to use capital acquired with the assistance of Rider DMR on grid modernization projects over other types of investments, such as investments in the transmission system, or other short-term obligations of the Companies. Moreover, FirstEnergy asserts the Commission withdrew the 50 basis point adder without sufficient supporting evidence to do so.

{¶ 144} Contrary to the position of FirstEnergy, OCC/NOAC note that when the Commission authorized Rider DMR with an incentive for FirstEnergy to use the funds for grid modernization, it effectively displaced the need for the 50 basis point adder, consistent with the Commission's reasoning in its Fifth Entry on Rehearing.

{¶ 145} The Commission finds that rehearing on this assignment of error should be denied. As noted in the Fifth Entry on Rehearing, the 50 basis point adder was a provision of the Third Supplemental Stipulation, authorized by R.C. 4928.143(B)(2)(h), in order to provide the Companies with an incentive to invest in grid modernization. (Co. Ex. 154 at 10). In the Third Supplemental Stipulation, the smart grid modernization provisions were linked to Rider RRS, which the Companies forecasted would return an aggregate amount of $561 million (in nominal dollars) to ratepayers over the eight-year term of *ESP IV* (Co. Ex. 155 at 11-12); in fact, this linkage was explicit: "[i]n addition to promoting stable customer rates through Rider RRS, the Companies agree to empower customers through grid modernization initiatives . . . " (Co.

Ex. 154 at 9). On rehearing, the Commission eliminated Rider RRS and replaced it with Rider DMR, which will provide the Companies with annual revenue of $132.5 million, adjusted for recovery of taxes at the prevailing Federal corporate income tax rate (Fifth Entry on Rehearing at 95, 98). As discussed above, Rider DMR is authorized pursuant to R.C. 4928.143(B)(2)(h) and is an incentive to the Companies to invest in grid modernization (Fifth Entry on Rehearing at 88-90; Staff Ex. 15 at 15). Therefore, the 50 basis point adder and Rider DMR are authorized by the same statutory provision and are both intended to incent the Companies to take the same action: to invest in grid modernization. Accordingly, in determining whether the stipulations in this case, as a package, continued to benefit ratepayers and the public interest, the Commission found in the Fifth Entry on Rehearing that the purpose of the 50 basis point adder had been supplanted by Rider DMR. Because the 50 basis point adder was no longer necessary or appropriate, the Commission modified the Third Supplemental Stipulation to eliminate the 50 basis point adder (Fifth Entry on Rehearing at 106). Having thoroughly reviewed the record as it relates to the 50 basis point adder, we affirm our decision in the Fifth Entry on Rehearing.

v. The Commission's findings that customers who have opted out of EE and PDR programs may still participate in the Rider ELR program and receive credits thereunder and that the cost of the ELR program credits should be collected from all customers.

{¶ 146} Additionally, Environmental Advocates claim that the Commission unreasonably allowed the Companies' customers to opt out of paying for peak demand reduction programs while still receiving monetary credits for participation in the Rider ELR program, in violation of R.C. 4928.6613 and against Commission precedent. *AEP Ohio ESP III Case*, Entry on Rehearing (May 28, 2015) at 12; *In re Application of FirstEnergy*, Case No. 08-935-EL-SSO (*FirstEnergy ESP I Case*), Second Opinion and Order (Mar. 25, 2009) at 10. In support of their argument, Environmental Advocates claim that, while a portion of the Rider ELR credit is funded through Rider EDR, the record and Commission's decision also shows that the Companies rely on Rider ELR to meet its PDR obligation under R.C. 4928.66 and funds a portion of the program through its EE/PDR rider, Rider DSE. In fact, Environmental Advocates claim that FirstEnergy included the ELR program in its current portfolio plan. OCC/NOAC note that the Commission's decision to order that the recovery of the ELR program credits should be collected through Rider EDR(e) from all customers was also unreasonable, noting that Rider ELR does not produce economic benefits that will benefit customers and the new rate design simply shifts the allocation of costs from one customer class to another.

{¶ 147} In response, FirstEnergy provides that, although the Commission was sufficiently clear in its Order and Fifth Entry on Rehearing in response to these arguments, Rider ELR customers may opt out of the Companies' EE/PDR portfolio plans and continue to receive Rider ELR credits because those credits do not arise from the Companies' EE/PDR portfolio plans, but rather from the Stipulated ESP IV itself, consistent with R.C. 4928.6613 (Order at 106-107; Fifth Entry on Rehearing at 146). The Companies and IEU-Ohio also contend that the Rider ELR credits approved in *FirstEnergy ESP I* came into existence prior to the Companies' first EE/PDR portfolio plan by approximately two years. Further, in its memorandum contra, IEU-Ohio contends that, because the ELR program predates the portfolio plan, its costs are recovered in part outside of the plan, and the program provides benefits that extend beyond compliance with EE/PDR requirements. Thus, a customer electing service under the ELR program should not be considered to take a benefit from the FirstEnergy portfolio plan. Moreover, IEU-Ohio emphasizes that the customer's right to opt out of the FirstEnergy portfolio plan is statutory. R.C. 4928.6611. IEU-Ohio also states that adopting Environmental Advocates' position would frustrate state energy policy and deter customers with demand response capabilities from taking service under the ELR program. R.C. 4928.02(D).

{¶ 148} The Commission finds that this issue was thoroughly addressed in the Fifth Entry on Rehearing and in that decision, we clarified that customers participating in the ELR program retain their statutory right to opt out of the energy efficiency programs, noting that the ELR programs existed long before the statutory energy efficiency and peak demand reduction mandates, as stated by the Companies. Additionally, the Commission explained that our long-standing precedent has held that ELR has an economic development component and ELR is funded, in part, through the economic development rider, which is paid by all customers, including those who opt out of the energy efficiency programs. Moreover, we agree, as noted by IEU-Ohio, that the decision cited by Environmental Advocates provides little guidance, as the Commission did not address whether a customer that participated in the AEP Ohio interruptible load program would be eligible to opt out of the utility's portfolio program costs and benefits. As such, these assignments of error will be denied.

i. The Commission's finding that the Companies' statutory right to withdraw does not end until at least the issuance of a non-appealable order.

{¶ 149} In their application for rehearing, OCC/NOAC request that the Commission grant rehearing to require the Companies invoke their right to withdraw from the ESP shortly after the Commission rules on rehearing and before any subsequent appeals are taken from that decision, noting this would be a reasonable limitation on the Companies' right to withdraw its ESP in order to bring finality and stability to the rates charged to customers, in accordance with R.C. 4928.143(C)(2). OCC/NOAC also argue that allowing a utility to withdraw from an ESP after a lengthy appellate process and Supreme Court decision would create logistical difficulties for the Commission.

{¶ 150} FirstEnergy argues that the statutory right to withdraw does not have an express time limit, adding that a utility will be unable to make an informed decision as to whether it should provide service under an ESP until the final terms of that ESP are determined. Moreover, FirstEnergy asserts the Commission is capable of handling the unusual circumstances where a utility withdraws from an ESP subsequent Supreme Court decision, as evidenced by the recent Dayton Power and Light ESP proceeding. R.C. 4928.143(C)(2)(b); *In re* *the Application of the Dayton Power and Light Co. to Establish a Standard Service Offer in the Form of an Elec. Security Plan*, Case No. 12-426-EL-SSO (*DP&L ESP II Case*), Finding and Order (Aug. 26, 2016).

{¶ 151} Consistent with our findings in the Fifth Entry on Rehearing, we agree with FirstEnergy that the Companies' filing of tariffs before the conclusion of the application for rehearing and appeals process will be subject to the rehearing and appeal process and that the Companies' right to withdraw from the *ESP IV* will not lapse until the conclusion of that process (Fifth Entry on Rehearing at 149-50). We again note, however, once a final, non-appealable order has been issued, FirstEnergy must exercise its right to withdraw within a reasonable period of time or the filing of tariffs will be considered to constitute acceptance of the modified *ESP IV*. As a final point, OCC/NOAC ignore the fact that Commission action is, at times, necessary to implement the decisions of the Supreme Court when those decisions are not self-executing. As the Supreme Court has held "[i]f the Commission makes a modification to a proposed ESP that the utility is unwilling to accept, R.C. 4928.143(C)(2)(a) allows a utility to withdraw the ESP application." *DP&L ESP II Case*, Seventh Entry on Rehearing (Dec. 14, 2016) at 4-5, 7-9, citing *In re Application of Ohio Power Co.*, 144 Ohio St.3d 1, 40 N.E.3d 1060 (2015). The Commission dismissed these exact same claims in the *DP&L ESP II Case* and, consistent with the reasoning set forth in the decisions of that proceeding and in our Fifth Entry on Rehearing, we find that rehearing as to OCC/NOAC's assignment of error should be denied.

j. Sierra Club and OMAEG's assertion that the Fifth Entry on Rehearing is unlawful and unreasonable because it failed to hold FirstEnergy to the burden of proof in the ESP IV proceeding as required by R.C. 4928.143(C)(1) and Ohio Adm.Code 4901:1-35-06(A).

{¶ 152} In addition to its more specific assertions that the Companies failed to meet their burden under R.C. 4928.143(C)(1) and Ohio Adm.Code 4901:1-35-06(A) throughout this Eighth Entry on Rehearing, Sierra Club and OMAEG assert as separate assignments of error that the Companies failed to meet their burden of proof. Additionally, Sierra Club notes that the Companies' failure to meet their burden is partly due to the expedited hearing process that was set for the consideration of Rider DMR, which prevented a full and fair evaluation of the new proposal. OMAEG specifically notes the Companies failed to meet their burden on the following issues: to demonstrate a need for Rider DMR revenues, to show that Rider DMR will prevent a credit downgrade of FirstEnergy Corp., to determine the potential costs assessed to customers if the Companies and FirstEnergy Corp. are downgraded, to show that Rider DMR will incentivize grid modernization, and to demonstrate that the conditions imposed on Rider DMR are enforceable or beneficial to customers.

{¶ 153} The Commission agrees that R.C. 4928.143(C)(1) and Ohio Adm.Code 4901:1-35-06 impose the burden of showing that an application is just and reasonable on the electric distribution utility. However, there is no basis for asserting that FirstEnergy did not meet its burden in this case. We cannot fault the Companies for our decision to approve Rider DMR simply because Staff recommended it as an alternative to the Companies' Proposal. Additionally, this Commission has previously held on numerous occasions that the procedural schedule relating to the evaluation of Rider DMR was not prejudicial to any party and resulted in the fair and efficient consideration of the rider (Third Entry on Rehearing at 9-12; Fifth Entry on Rehearing at 12-14). Sierra Club has provided no evidence to indicate otherwise. Therefore, we will affirm our conclusion that the preponderance of evidence supports the establishment of Rider DMR (Fifth Entry on Rehearing at 87-97). Rehearing on these assignments of error should be denied.

k. ***Sierra Club's and OMAEG's assignments of error contending that the Fifth Entry on Rehearing is unlawful and unreasonable because the Commission failed to satisfy its duty under R.C. 4903.09 on multiple issues.***

{¶ 154} Sierra Club and OMAEG also generally assert that the Fifth Entry on Rehearing fails to satisfy R.C. 4903.09, which requires that "[i]n all contested cases * * * the commission shall file * * * findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact." Specifically, OMAEG asserts that the Commission failed to provide sufficient rationale for its decisions when determining that Rider DMR is a grid modernization incentive, that, absent Rider DMR, the Companies will be unable to access the capital markets, and whether any of the cited adverse consequences of a credit downgrade will actually occur or could potentially occur in the Companies' and FirstEnergy Corp.'s current financial state.

{¶ 155} Sierra Club cites to *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 706 N.E.2d 1255 (1999) in support of its contention that the Commission failed to satisfy its burden under R.C. 4903.09; however, the Supreme Court held in that case that the Commission had failed to make a complete record, as required by R.C. 4903.09, where the record was completely devoid of evidence upon which Staff had relied in making the recommendation which was ultimately followed. This is not the case here. The entirety of the Fifth Entry on Rehearing is replete with references to the record and evidence upon which the Commission relied to make its decisions. Moreover, the Supreme Court has also held that strict compliance with the terms of R.C. 4903.09 is not required; rather the Supreme Court has indicated the purpose of R.C. 4903.09 is to enable the Court to review the decisions of the Commission in order to determine whether "the facts found by the commission lawfully and reasonably justified the conclusions reached by the commission in its order and whether the evidence presented to the commission as found in the record supported the essential findings of fact so made by the commission," without resorting to combing through countless volumes of transcripts and admitted exhibits. *Commercial Motor Freight, Inc. v. Pub. Util. Comm.*, 156 Ohio St. 360, 102 N.E.2d 842 (1951). Sierra Club's real contention seems to be with the conclusions of the Commission and not the bases for those conclusions. We thoroughly examined all evidence and arguments presented to us during the course of this proceeding, and the Fifth Entry on Rehearing is reflective of that thorough analysis. Thus, we find these general assignments of error should be denied.

C. *The Commission's finding that the ESP IV, as Modified by the Commission, Continues to be more favorable in the aggregate than the expected results of an MRO.*

1. THE COMMISSION'S FINDING THAT *ESP IV*, AS MODIFIED BY THE COMMISSION, IS QUANTITATIVELY MORE FAVORABLE THAN THE EXPECTED RESULTS OF AN MRO.

i. **The Commission's finding that revenues collected under Rider DMR have no quantitative impact for purposes of the ESP versus MRO test.**

{¶ 156} The Commission found that the approval of Rider DMR and the rejection of the Companies' Proposal would result in a plan which passes the MRO versus ESP test on a quantitative basis, as the modified Stipulated ESP IV would result in approximately $51.1 million in benefits that would not otherwise be available under an MRO. Additionally, the Commission held that the Rider DMR revenues used to support grid modernization would essentially be "a wash" for purposes of the ESP versus MRO test. In their applications for rehearing, OCC/NOAC and NOPEC contend that the Commission unreasonably found that the Companies could recover revenues equivalent to Rider DMR revenues through a base rate case, thus determining that Rider DMR had no impact for purposes of the ESP versus MRO test. Further, OCC/NOAC argue that endorsing such a position would render the test meaningless, as the same argument could be made for any rider. Sierra Club contends that Rider DMR is dissimilar to Rider AMI and that revenues collected under Rider DMR could not be recovered under such a rider. On a related note, Sierra Club adds that there is no evidence in the record to support that the proposed Rider DMR revenues could be collected through an alternative means, adding that, unlike a base rate case or Rider AMI, customers would not receive anything in return for their additional payments under Rider DMR. *Dayton Power & Light Co. v. Pub. Util. Comm.*, 4 Ohio St.3d 91, 103, 447 N.E.2d 733 (1983); *Office of Consumers' Counsel v. Pub. Util. Comm.*, 67 Ohio St.2d 153, 164, 167, 423 N.E.2d 820 (1981). Similarly, Sierra Club, Environmental Advocates, OCC/NOAC, OMAEG, NOPEC, and CMSD argue that the Commission's determination that revenues equivalent to those that would be generated by Rider DMR could be authorized in a MRO proceeding is based on an erroneous interpretation of the criteria for granting emergency rate relief, ignores the distinction between R.C. 4909.16 and the emergency provision of R.C. 4928.142(D)(4), and lacks any evidentiary support from the record in this case. Specifically, CMSD notes that treating FirstEnergy's current situation as an emergency that threatens its financial integrity is completely baseless, given the fact that they expected to pay a projected $256 million net credit to customers over the eight-year term of Rider RRS. Environmental Advocates further allege that the process set forth under R.C. 4909.16 is meant to provide temporary relief to the utility in order to prevent injury to the utility, which, in turn, could injure its customers. *In re Toledo Edison Co.*, Case No. 84-1286-EL-AEM, Supp. Opinion and Order (May 12, 1987). NOPEC argues that, even if the facts could support the Commission's finding of an emergency situation under a hypothetical MRO statute, it nonetheless would not be justified in awarding the Companies the Rider DMR revenues. In support of its argument, NOPEC cites to a prior case in which the Commission, having determined that an emergency existed, elected not to grant any additional rate relief and, instead, allow the utilities to make accounting adjustments and continue to monitor the situation during the pending rate case. *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989). Thus, OCC/NOAC, NOPEC, OMAEG, CMSD, and Sierra Club request the Commission grant rehearing as to these assignments of error.

{¶ 157} In its memorandum contra, FirstEnergy notes that the intended uses of the Rider DMR revenues would be considered distribution-related cash outflows and would be recoverable in a base rate case or the Companies' existing Rider AMI or comparable rider, adding that grid modernization related expenses are recoverable outside of ESPs. In response to arguments that Rider DMR would not be considered a "wash" for purposes of the ESP versus MRO test, FirstEnergy claims that such arguments were rejected by the Commission and the Supreme Court of Ohio. *FirstEnergy ESP III* Order at 50-52, 55-57; *FirstEnergy*, 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d 1218. In response to Sierra Club's arguments, the Companies assert that Sierra Club ignores the vast amount of evidence supporting the position that these revenues could be recovered outside of an ESP proceeding. Additionally, FirstEnergy notes that, as Rider DMR revenues will be used for credit support and access to reasonably priced capital in order to jumpstart the Companies' grid modernization initiatives, such charges could be recovered outside of the ESP, pursuant to the Energy Policy Act of 2005. Additionally, in their application for rehearing, the Companies assert the Commission should have specified the additional bases for concluding that Rider DMR has no quantitative effect on the ESP versus MRO test, including that the Companies could receive Rider DMR revenues outside of an ESP in a base distribution rate case or other rate mechanism and, even if Rider DMR's costs to customers were included only on the ESP portion of the test, such costs are more than offset by the $568 million economic impact attributed to Rider DMR's headquarters condition.

{¶ 158} In response to FirstEnergy's assignment of error, CMSD argues there is no provision in R.C. 4928.142 that authorizes the recovery of distribution-related costs in an MRO proceeding based on the notion that such costs might be recognized for purposes of establishing the revenue requirement in an R.C. 4909.18 distribution rate case and, thus, means that the Rider DMR revenues would not represent a "wash" for purposes of the ESP versus MRO test. CMSD and OMAEG also reiterate their earlier arguments that the real purpose for Rider DMR is to provide a cash infusion to the Companies, rather than fund grid modernization programs, while also pointing out several alleged inconsistencies with FirstEnergy's concerns regarding the cash outflows from debt refinancing and pension expense. As its final point, CMSD and Sierra Club contend that FirstEnergy is incorrect to state that the Commission could authorize the collection of Rider DMR revenues in a distribution rate case or the Companies could recover such revenues under Rider AMI, noting, once again, that Rider DMR merely represents a cash infusion with no associated benefits by way of grid modernization. CMSD, OMAEG, and Sierra Club also reiterate their earlier arguments against the authority of Rider DMR under R.C. 4928.143(B)(2)(i) to contradict FirstEnergy's assertion that the quantifiable benefits of Rider DMR should include the estimated $568 million economic impact of the headquarters, noting that FirstEnergy already had a commitment to maintain its headquarters in Akron, Ohio through its lease agreement and by the terms of the Third Supplemental Stipulation. Thus, it would be improper for the Commission to assign a quantitative value of that economic benefit for purposes of the ESP versus MRO test when FirstEnergy has showed no intention of moving its headquarters and has provided no information as to the quantifiable benefits or costs of maintaining its location. NOPEC and OCC/NOAC also disagree with the assertion that the Commission should find comparable revenues would be recoverable in a base distribution rate case, noting that R.C. 4905.15 provides no provisions that would allow an electric distribution utility, or its parent, to recover for credit support, R.C. 4928.143(C)(1) limits the comparison of an ESP to only that of an MRO, and to state otherwise would be in complete contradiction with the plain meaning of the statute and statutory interpretation directives. *In re Columbus S. Power Co.*, 138 Ohio St.3d 448, 9 N.E.3d 1064 (2014). Sierra Club adds that, because Rider DMR is not based on the recovery of any costs incurred by the Companies or attributable to any investments in distribution modernization initiatives, Rider DMR revenues could not be collected through a base rate case. *Consumers' Counsel v. Pub. Util. Comm.*, 67 Ohio St.2d 153, 423 N.E.2d 820 (1981).

{¶ 159} The Commission finds that the issues raised by OCC/NOAC, CMSD, and Sierra Club were thoroughly addressed in the Fifth Entry on Rehearing (Fifth Entry on Rehearing at 153-57, 160-63). We also add that there was ample evidence in the record to make such conclusions in that decisions, notably the testimony of FirstEnergy witness Mikkelsen and Staff witness Turkenton (Co. Ex. 206 at 19-20; Staff Ex. 14 at 3-4; Rehearing Tr. Vol. II at 482-83). The Commission, acknowledging that we have never approved an application under R.C. 4928.142(D), looked to other comparable statutes to consider the types of evaluative factors that we could utilize under that section and determined that R.C. 4909.16 provided guidance for our analysis under a hypothetical MRO application, even though the same standards applicable to R.C. 4909.16 would not necessarily apply to R.C. 4928.142(D).[8] With such criteria

[8] In ¶¶354 and 355 of the Fifth Entry on Rehearing, the Commission inadvertently referenced "R.C. 4928.143(D)" and "R.C. 4928.143" instead of R.C. 4928.142(D) and R.C. 4928.142, respectively.

in mind, we determined that the risk of the Companies' and FirstEnergy Corp.'s credit ratings dropping to below investment grade, along with the consequences resulting from such a decline, would be sufficient to constitute an emergency that threatens the utility's financial integrity, rather than simply only relying on the current credit ratings of the Companies, as alleged by CMSD. Further, CMSD ignores the fact that Rider DMR will provide the necessary financial support to the Companies in the short-term in order to access the capital markets for grid modernization purposes and cover short-term obligations. The fact that the modified Rider RRS was projected to provide a $256 million net credit to customers over eight years does not change the fact that the Companies require financial assistance now. The Commission also finds that the arguments of intervening parties that FirstEnergy failed to provide evidence of such a financial emergency are baseless, as there was an abundance of evidence presented by FirstEnergy, Staff, and even several of the intervening parties, upon which the Commission relied to make such a determination. We would also like to address Sierra Club's allegation that we "ignored" the arguments raised in its post-hearing brief and note that we thoroughly reviewed and considered all arguments presented by the parties and, based on that analysis, made our determinations. Furthermore, we find it very difficult for Sierra Club to make such an allegation when we summarized, and subsequently rejected, their arguments relating to the quantitative effect of Rider DMR on the ESP versus MRO test in our decision (Fifth Entry on Rehearing 153-55, 160-63). Again, it seems Sierra Club's main contention is that we disagreed with their recommendations, which is not an appropriate justification to grant rehearing. Accordingly, these assignments of error and, consequently, any assignments of error contending that the costs associated with Rider DMR should be considered in our quantitative analysis, should be denied.

{¶ 160} In response to FirstEnergy's application for rehearing, we are not persuaded by FirstEnergy's assertion that Rider DMR revenue could be recovered through a base distribution rate case. We do agree that certain costs of grid modernization, specifically the costs of any acquisition and deployment of advanced metering, including the costs of any meters prematurely retired as a result of the advanced metering implementation, may be recovered outside of an ESP, pursuant to our statutory authority under R.C. 4905.31. Moreover, we also agree that the $568 million annual economic impact of the retention of the FirstEnergy Corp. headquarters is an economic benefit under the ESP and should be included as a consideration in the ESP versus MRO test. Accordingly, rehearing on this assignment of error by the Companies should be granted in part and denied in part.

ii. The Commission's finding that Rider DCR has no quantitative impact for purposes of the ESP versus MRO test.

{¶ 161} In addition, OCC/NOAC argue in their application for rehearing that the Commission violated R.C. 4903.09 by solely relying on previous case law in support of its finding that the costs of Rider DCR would have no quantitative impact for purposes of the ESP versus MRO test. Further, OCC/NOAC assert that the Commission failed to address the testimony of OCC witnesses Effron and Kahal, which allegedly show that the Companies are over-earning on their distribution service. Similarly, because of the evidence of over-earning, OCC/NOAC add that prior cases finding that Rider DCR had no quantitative impact for purposes of the ESP versus MRO should not be applicable.

{¶ 162} In its memorandum contra, FirstEnergy contends that the Commission was correct to treat Rider DCR as a "wash" for purposes of the ESP versus MRO test, notably because these distribution-related capital costs would also be recoverable under an MRO through a base distribution rate case and there is no quantifiable cost associated with this provision in the Stipulated ESP IV (Order at 119). Further, the Companies assert that OCC/NOAC provide no supporting authority for its position and ignores the fact that the prior precedent relied upon by the Commission has also been upheld by the Supreme Court, making this matter a settled proposition. *FirstEnergy ESP III* Opinion and Order at 55-56. Additionally, the Companies contend that the Commission did thoroughly consider, and subsequently rejected, OCC/NOAC's arguments and testimony regarding the Companies' alleged over-earning on its distribution service in its Order and Fifth Entry on Rehearing (Order at 119; Fifth Entry on Rehearing at 116).

{¶ 163} We agree with FirstEnergy and find that these arguments have been thoroughly addressed in our Order and Fifth Entry on Rehearing, in addition to prior Commission decisions in other ESP proceedings (Order at 119; Fifth Entry on Rehearing at 116). *FirstEnergy ESP III* Opinion and Order at 55-56; *In re Columbus S. Power Co.*, Case No. 11-346-EL-SSO, Opinion and Order at 31. Thus, there is no reason for us to reiterate that reasoning again. Further, it is well-known that the Commission may refer to its past decisions in support of its findings in a case, much like the parties are entitled to reference past Commission decisions in their briefs and applications for rehearing without introducing those decisions into the evidentiary record first. This practice is particularly essential when dealing with riders and other mechanisms that have a long-standing presence before the Commission. OCC/NOAC's assignments of error as to this issue will be denied.

2. THE COMMISSION'S FINDING THAT *ESP IV*, AS MODIFIED BY THE COMMISSION, IS QUALITATIVELY MORE FAVORABLE THAN THE EXPECTED RESULTS OF AN MRO.

{¶ 164} In its application for rehearing, CMSD argues that the Commission erred in its application of the ESP versus MRO test by failing to balance the quantitative and qualitative benefits. CMSD notes that the Commission elected to find that *ESP IV* was more favorable than the MRO based on qualitative benefits alone, without regard to a correctly administered quantitative analysis. Additionally, CMSD contends that the additional costs that a customer would incur under an ESP should be proportional to the qualitative benefits the ESP would provide, and because the Commission failed to make such a determination, the ESP versus MRO test analysis is unreliable.

{¶ 165} In response, FirstEnergy first claims that CMSD's arguments misrepresent the findings in the Fifth Entry on Rehearing, in which the Commission posited a very thorough review of both the quantitative and qualitative benefits of *ESP IV*. The Companies add that the result of that analysis was that *ESP IV* is more beneficial than an MRO by at least $51.1 million of quantitative benefits from shareholder funded commitments, in addition to several significant qualitative benefits. Considering the Commission's finding that Rider DMR had no quantitative impact for purposes of the ESP versus MRO test, FirstEnergy asserts that CMSD's argument is meritless. Furthermore, the Companies assert that CMSD cites no supporting authority for its proportional test, noting that R.C. 4928.143(C)(1) has no such requirement. Finally, the Companies argue that the Commission evaluated the quantitative and qualitative benefits, both independently and taken together, and each case supported the Commission's finding that *ESP IV*, as modified by the Commission, was more favorable in the aggregate than the results of an MRO. Moreover, the Companies add that if the quantitative benefits had not outweighed the qualitative benefits, the analysis would have ultimately resulted in the same outcome. *In re the Application of Columbus S. Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, Opinion and Order (Aug. 8, 2012) at 75-77.

{¶ 166} The Commission is not persuaded by CMSD's arguments regarding the proportionality of quantitative costs relative to qualitative benefits, noting that R.C. 4928.143(C)(1) provides no such requirement. Furthermore, the Commission agrees with FirstEnergy that we conducted a thorough analysis of both quantitative and qualitative benefits to determine that *ESP IV*, as modified by our Order and Fifth Entry on Rehearing, is more favorable in the aggregate than the results of an MRO (Order at 112-20; Fifth Entry on Rehearing at 151-65). As such, we find CMSD's assignments of error should be denied.

i. The Commission's finding that Rider DMR will provide easier access to capital markets and allow the Companies to invest in grid modernization initiatives in their distribution systems.

{¶ 167} In their applications for rehearing, OMAEG, Sierra Club, and CMSD once again assert that there are no real commitments that the revenues received under Rider DMR are to be used for distribution grid modernization. Instead, these parties assert that Rider DMR was designed only to provide a cash infusion to the Companies to support FirstEnergy Corp.'s credit rating. OMAEG adds that Staff witness Choueiki even acknowledged that Rider DMR was created in order to provide necessary credit support to FirstEnergy Corp. and the Companies, instead of grid modernization. Sierra Club further argues that Rider DMR is unnecessary for grid modernization to occur and that the alleged grid modernization benefits of Rider DMR are illusory, as Rider DMR is intended to provide support to FirstEnergy Corp. and its subsidiaries. CMSD again raises the concern that there is no guarantee that Rider DMR will prevent a ratings downgrade, and as a result, contends that the Commission erred in finding that Rider DMR will encompass grid modernization benefits.

{¶ 168} In their memorandum contra, the Companies first assert that the Commission has already considered and rejected these arguments in the Fifth Entry on Rehearing (Fifth Entry on Rehearing at 160-64). Without unnecessarily duplicating its earlier arguments in response to intervenors claiming that there was no real commitment by the Companies to invest in grid modernization, FirstEnergy simply notes that the revenues received under Rider DMR will provide credit support to enable the Companies to maintain investment grade ratings and access the necessary capital required to engage in their grid modernization initiatives over the term of *ESP IV*. As such, the Companies assert that the ability to maintain their investment grade ratings is certainly a qualitative benefit of Rider DMR.

{¶ 169} We find that these arguments have been fully addressed and we will not duplicate the reasoning set forth in the Fifth Entry on Rehearing in this decision (Fifth Entry on Rehearing at 160-64). Accordingly, these assignments of error should be denied.

ii. The Commission's finding that Rider DMR will promote diversity of supplies and suppliers and promote Ohio's competitiveness in the global marketplace.

{¶ 170} OMAEG reiterates its earlier arguments that Rider DMR's purported qualitative benefit of diversity of suppliers and supplies is also largely overstated, noting that Rider DMR may actually deter other generation suppliers from entering the market upon seeing the competitive advantage provided to FirstEnergy Corp. and its subsidiaries. OMAEG adds that Rider DMR will actually have a detrimental effect on economic development in the state of Ohio.

{¶ 171} FirstEnergy notes that the Commission has previously considered and rejected these arguments and OMAEG has offered no additional information that would warrant changing the Commission's earlier finding (Fifth Entry on Rehearing at 158, 163). Additionally, the Companies reiterate there was a considerable amount of evidence in the record that showed encouraging the deployment of advanced technology throughout the distribution system will cause competitive suppliers to enter the market and to offer more innovative products to retail customers. The Companies also argue that the Commission similarly recognized the extensive economic benefits resulting from maintaining FirstEnergy Corp.'s headquarters in Akron, Ohio, as quantified in FirstEnergy witness Murley's economic impact analysis (Fifth Entry on Rehearing at 77).

{¶ 172} We agree that these arguments were thoroughly addressed in our Fifth Entry on Rehearing, in which we found that Rider DMR will promote diversity of supplies and suppliers and promote Ohio's competiveness in the global marketplace (Fifth Entry on Rehearing at 163-64). In support of our findings, we specifically referenced the rehearing testimony of RESA witness Crockett-McNew and Staff witnesses, in which they agreed that grid modernization will promote customer choice and promote the state's competitiveness in the global marketplace (Fifth Entry on Rehearing at 163-64; RESA Ex. 7 at 7; Staff Ex. 15 at 15-16; Staff Ex. 14 at 4). We also recognized the economic impact of maintaining FirstEnergy Corp.'s headquarters in Ohio, further noting that no other witness was able to produce evidence contradicting Ms. Murley's estimated economic impact of $568 million on Ohio's economy (Fifth Entry on Rehearing at 77). Thus, OMAEG's assignments of error as to these issues should be denied.

iii. The Commission's finding that the five qualitative benefits previously relied upon by the Commission in its original Order will continue to exist under *ESP IV*, as modified by the Fifth Entry on Rehearing.[9]

{¶ 173} In its application for rehearing, Sierra Club argues that the Commission unreasonably found certain qualitative benefits to exist under *ESP IV*. Specifically, Sierra Club takes issue with the Commission's recognition of the CO_2 reduction commitment and the 800,000 MWh reduction goal, contending such benefits are illusory and should not be considered qualitative benefits for purposes of the ESP versus MRO test because they are unenforceable. OMAEG also incorporates its arguments against these alleged benefits from its May 2, 2016 application for rehearing.

{¶ 174} In response, FirstEnergy argues that Sierra Club's assertions were rejected previously by the Commission (Order at 94-95). Furthermore, the Companies assert that they have filed their report with the Commission describing FirstEnergy Corp.'s carbon reduction efforts, and will continue to do so every five years through 2045. The Companies note further that they will strive to achieve this goal even if the Environmental Protection Agency's Clean Power Plan is overturned. Similarly, the Companies contend that, as they are committed to achieving substantial annual energy savings, they fully intend to uphold their commitment that they have presented to the Commission.

{¶ 175} Consistent with the *ESP IV* Opinion and Order and Fifth Entry on Rehearing issued in this case and based upon the testimony presented on rehearing, we find that these constitute tangible qualitative benefits will provide some value during *ESP IV* that would not

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9 These qualitative benefits include: (1) modernizing distribution infrastructure through the filing of a business plan for the deployment of smart grid technology and advanced metering infrastructure in accordance with state policy set forth in R.C. 4928.02(D); (2) promoting resource diversity by investing in utility scale battery technology and by procuring or constructing new renewable energy resources; (3) encouraging energy efficiency; (4) continuing the distribution base rate freeze until June 1, 2024; and (5) providing multiple rate options and programs to preserve and enhance rate options for various customers (Fifth Entry on Rehearing at 163-64).

otherwise be available under an MRO (Order at 119; Fifth Entry on Rehearing at 163-64). As such, we find that Sierra Club's assignments of error as to these issues should be denied.

IV. Procedural Matters

A. *FirstEnergy's Motions to Strike*

{¶ 176} FirstEnergy filed motions to strike portions of the applications for rehearing filed by NOPEC and OMAEG on November 25, 2016 and December 2, 2016, respectively. OMAEG filed a memorandum contra FirstEnergy's motion to strike portions of its application for rehearing, to which FirstEnergy filed a reply.

{¶ 177} In its motion to strike portions of NOPEC's application for rehearing, FirstEnergy asserts that NOPEC improperly relied on material that is not in the evidentiary record and would be extremely prejudicial to the Companies. Moreover, FirstEnergy notes that NOPEC relies on news articles for this information, which the attorney examiners have already determined constitutes inadmissible hearsay. NOPEC did not file a memorandum contra asserting that the information should remain in its application for rehearing.

{¶ 178} In its motion to strike portions of OMAEG's memorandum contra applications for rehearing, FirstEnergy contends that OMAEG's argument that the Commission erred in extending the Companies' right to withdraw its ESP constitutes an untimely application for rehearing and its inclusion in a memorandum contra would be prejudicial to the Companies because they will have no opportunity to respond. As this section in OMAEG's memorandum contra fails to attempt to refute any argument raised in the applications for rehearing, FirstEnergy claims it is improper under both the Ohio Administrative Code and Commission precedent. Ohio Adm.Code 4901-1-35; *In re the Establishment of Carrier-to-Carrier Rules* , Case No. 06-1344-TP-ORD, Entry on Rehearing (Oct. 17, 2007) at 3; *In re the Regulation of the Elec. Fuel Component Contained within the Rate Schedules of Ohio Power Co.*, Case No. 98-101-EL-EFC, et al., Entry on Rehearing (July 15, 1999) at 8.

{¶ 179} In response, OMAEG asserts that its argument was proper, noting that the Companies' right to withdraw from the ESP is directly related to the assignments of error raised by the Companies in their application for rehearing. Specifically, OMAEG claims that each time FirstEnergy proposes an additional modification to Stipulated ESP IV, in addition to considering the modification, the Commission should also consider whether it is appropriate to allow the Companies to withdraw its ESP after collecting costs pursuant to their filed tariffs. Further, OMAEG asserts the Companies face no prejudice by OMAEG's argument, as they thoroughly addressed this issue in their own memorandum contra. Finally, while the Companies assert that Ohio Adm.Code 4901-1-35 contains no provisions allowing memoranda in support, OMAEG contends that there is also nothing in the rule prohibiting such supportive arguments. Thus, OMAEG requests that the Commission deny the motion to strike. Alternatively, OMAEG requests leave to file a memorandum in support of OCC/NOAC's application for rehearing.

{¶ 180} In its reply, FirstEnergy argues that OMAEG's position is clearly incorrect, noting that OMAEG fails to explain how the Companies' right to withdraw its ESP would be affected by the Commission's subsequent ruling on the Companies' application for rehearing since that statutory right is independent from the Commission's modifications to Stipulated ESP IV. Further, the Companies contend that its application for rehearing contained no assignment of error addressing their right to withdraw the ESP. Additionally, the Companies assert that OMAEG's argument vary from those raised by OCC/NOAC and, thus, the Companies are prejudiced with the inability to respond to those separate arguments. FirstEnergy requests that the Commission grant its motion to strike, given that OMAEG's argument was inconsistent with Ohio Adm.Code 4901-1-35 and prior Commission practice, and notes that any request for leave to file a memorandum in support of OCC/NOAC's application for rehearing would only unnecessarily delay these proceedings.

{¶ 181} Consistent with our prior decisions in this proceeding, we continue to find that new information should not be introduced after the closure of the record (*ESP IV* Opinion and Order at 37; Fifth Entry on Rehearing at 171). We note that the same analysis may be applied in this Eighth Entry on Rehearing, as FirstEnergy's motion to strike portions of NOPEC's application for rehearing deal with hearsay statements and other evidence not included in the record (*ESP IV* Opinion and Order at 35-37). We find it would be inappropriate to allow this information to be considered at this point in the proceeding, as the record is now closed and the Companies would not have the opportunity to prepare and respond to that information. We also find that FirstEnergy's motion to strike portions of OMAEG's memorandum contra should be granted for the reasons stated in FirstEnergy's motion. While OMAEG may be correct that Ohio Adm.Code 4901-1-35 contains no explicit prohibition against supportive arguments in memoranda contra, the Commission has previously interpreted this rule to limit arguments presented in memoranda contra to those directly adverse to the assignments of error raised in applications for rehearing. We also agree that the additional delay from allowing OMAEG to file a memorandum in support of OCC/NOAC's application for rehearing would be unnecessary and OMAEG has not shown good cause to remedy its procedural mistake.

{¶ 182} Accordingly, FirstEnergy's motions to strike portions of NOPEC's application for rehearing and OMAEG's memorandum contra applications for rehearing will be granted in their entirety. The stricken portions of these filings, as detailed above, have been disregarded by the Commission for purposes of its decision in this Eighth Entry on Rehearing. OMAEG's additional request for leave to file a memorandum in support of OCC/NOAC's application for rehearing should also be denied.

B. ***OCC/NOAC's assignment of error alleging that FirstEnergy's application for rehearing does not satisfy the requirements of R.C. 4903.10.***

{¶ 183} In its application for rehearing, OCC/NOAC also allege that FirstEnergy's application for rehearing does not satisfy the requirements of R.C. 4903.10 because it failed to set forth specifically how the Commission's Fifth Entry on Rehearing was unlawful or unreasonable.

{¶ 184} The Commission finds no merit in OCC/NOAC's assignment of error. FirstEnergy clearly identified its assignments of error, in compliance with the statute, and the Commission was able to substantively address those assignments of error. Moreover, our decision is consistent with prior holdings in this proceeding (Third Entry on Rehearing at 9-12, 19; Fifth Entry on Rehearing at 14). Therefore, OCC/NOAC's assignment of error will be denied.

C. *Moot Assignments of Error*

{¶ 185} Upon reviewing several remaining assignments of error raised in the applications for rehearing filed on November 11, 2016, and November 14, 2016, this Commission finds the following assignments of error are moot as they pertain to the Rider RRS mechanism as originally approved by this Commission in the Order or were otherwise addressed in the Fifth Entry on Rehearing:

- The Commission's finding that Modified Rider RRS constitutes a "charge" and a "limitation on customer shopping" pursuant to R.C. 4928.143(B)(2)(d) is unreasonable and unlawful (P3/EPSA App. for Rehearing at 13-16).
- The Commission erred in upholding the attorney examiners' rulings that resulted in striking portions of testimony related to the Companies' Proposal that should have been considered by the Commission in rendering its decision on the lawfulness of Modified Rider RRS (OMAEG App. for Rehearing at 37-46).
- The Commission erred in determining that the Companies' Proposal is authorized under R.C. 4928.143(B)(2)(d) (OMAEG App. for Rehearing at 10-12).

{¶ 186} As we modified our Order in the Fifth Entry on Rehearing to approve Staff's alternative proposal, in the form of Rider DMR, we need not take time to address the merits of the assignments of error raised, or responsive arguments contained in memoranda contra, relating to the Rider RRS mechanism or reiterate our reasoning for the denial of the Companies'

Proposal provided in the Fifth Entry on Rehearing (Fifth Entry on Rehearing at 43-51). Accordingly, the assignments of error raised by P3/EPSA and OMAEG pertaining to Rider RRS and the Companies' Proposal are denied.

D. *General Denial of Assignments of Error Not Specifically Addressed in this Eighth Entry on Rehearing*

{¶ 187} As a final matter, any assignments of error raised by the Companies or the intervening parties in this proceeding that have not otherwise been addressed in this Eighth Entry on Rehearing are hereby denied.

V. ORDER

{¶ 188} It is, therefore,

{¶ 189} ORDERED, That the Companies' motions to strike portions of NOPEC's application for rehearing and OMAEG's memorandum contra the applications for rehearing are granted, as set forth herein. It is, further,

{¶ 190} ORDERED, That the applications for rehearing filed by FirstEnergy be denied in part and granted in part, as set forth herein. It is, further,

{¶ 191} ORDERED, That the applications for rehearing filed by Sierra Club, OCC/NOAC, CMSD, Nucor, NOEPC, OEG, IGS, Environmental Advocates, OMAEG, and P3/EPSA be denied. It is, further,

{¶ 192} ORDERED, That a copy of this Eighth Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

M. Beth Trombold

Thomas W. Johnson

Lawrence K. Friedeman

Daniel R. Conway

GAP/MJA/sc

Entered in the Journal
AUG 1 6 2017

Barcy F. McNeal
Secretary

ATTACHMENT D

PUCO NINTH ENTRY ON REHEARING
(October 11, 2017)

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

NINTH ENTRY ON REHEARING

Entered in the Journal on October 11, 2017

I. SUMMARY

{¶ 1} The Commission finds that the application for rehearing of the Eighth Entry on Rehearing should be denied.

II. DISCUSSION

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or the Companies) are electric distribution utilities as defined in R.C. 4928.01(A)(6) and public utilities as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an electric distribution utility shall provide customers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} On August 4, 2014, FirstEnergy filed an application pursuant to R.C. 4928.141 to establish an SSO to provide generation pricing for the period of June 1, 2016, through

May 31, 2019. The application is for an ESP, in accordance with R.C. 4928.143 (*FirstEnergy ESP IV*).

{¶ 5} On March 31, 2016, the Commission issued its Opinion and Order in *FirstEnergy ESP IV*, approving FirstEnergy's application and stipulations with several modifications (Opinion and Order). As part of that Opinion and Order, the Commission approved a modified version of FirstEnergy's original proposal for a retail rate stability rider (Rider RRS).

{¶ 6} On October 12, 2016, the Commission issued its Fifth Entry on Rehearing in this proceeding (Fifth Entry on Rehearing), rejecting the Companies' proposal to modify Rider RRS and adopting Staff's alternative proposal to establish a distribution modernization rider (Rider DMR). The Commission also elected to make additional modifications to the stipulations approved in the Opinion and Order.

{¶ 7} Subsequently, on August 16, 2017, the Commission issued its Eighth Entry on Rehearing (Eighth Entry on Rehearing), granting, in part, and denying, in part, applications for rehearing submitted by numerous parties with respect to the Fifth Entry on Rehearing.

{¶ 8} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 9} On September 15, 2017, FirstEnergy filed an application for rehearing of the Eighth Entry on Rehearing.

{¶ 10} The Ohio Consumers' Counsel and the Northwest Ohio Aggregation Coalition (OCC/NOAC) jointly filed a memorandum contra the application for rehearing on September 25, 2017. The Ohio Manufacturers' Association Energy Group (OMAEG) also filed a memorandum contra the application for rehearing on September 25, 2017.

{¶ 11} In its application for rehearing, FirstEnergy raises two assignments of error. In its first assignment of error, the Companies contend that the Eighth Entry on Rehearing is unreasonable and unlawful because it would require Staff to retain a monitor to ensure that funds collected under Rider DMR are expended appropriately.

{¶ 12} In support of this assignment of error, FirstEnergy claims that the directive to use a third-party monitor is wrong because, as the Commission had previously noted, the Commission and Staff are fully capable of making such an assessment. FirstEnergy also contends that Rider DMR revenues cannot be tracked in "real time." The Companies note that there is no way to "paint" Rider DMR dollars so that those dollars can be directly tracked to eventual use in support of grid modernization (Rehearing Tr. Vol. X at 1605-06). Instead, the Companies can report to Staff on payments in support of grid modernization, pension obligations, debt service obligations, and taxes, among other things. Further, FirstEnergy claims that the Commission has ample controls available to ensure no affiliate cross-subsidization will occur. FirstEnergy notes that the Companies are required to publically report dividends, loans and equity infusions and to report to the Commission on a quarterly basis on their participation in the FirstEnergy Corp. utility money pool arrangement. *In re Am. Transm. Sys. Inc., Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.,* Case Nos. 16-2050-EL-AIS et. al, Finding and Order (December 21, 2016) *(Money Pool Order).*

{¶ 13} The Companies also contend that quarterly reviews are impractical and unnecessary. The Companies claim that anticipated expenditures or use of funds in support of grid modernization will not occur regularly. Thus, the Companies argue that quarterly interim reports effectively would be "busy-work." Instead, the Companies propose to provide Staff annually with a list of what funds have been expended to further the purposes of Rider DMR, which the Staff could audit at its convenience.

{¶ 14} Finally, the Companies posit that "real-time" monitoring could restrict the use of Rider DMR funds. The Companies claim that the third-party monitor will have strong incentives to insert itself in the decision-making process or to seek opportunities to second-guess utility management. The Companies note that, since utilities are privately-owned and operated, regulators cannot and should not usurp the management role. *Elyria Tel. Co. v. Pub. Util. Comm.*, 158 Ohio St. 441, 447-448, 110 N.E.2d 59 (1953).

{¶ 15} In its memorandum contra, OMAEG contends that Staff's review of Rider DMR is necessary to protect customers and to ensure that funds collected under Rider DMR will be used to support grid modernization. OMAEG alleges that, other than claiming that Rider DMR dollars cannot be painted to allow tracking and that a monitor is not necessary, the Companies make no argument or showing how the use of a third-party monitor is inconsistent with the Commission's directive in the Fifth Entry on Rehearing mandating that Staff review the use of Rider DMR funds, which the Companies did not oppose. Further, OMAEG claims that the Companies fail to allege how the employment of a third-party monitor to assist Staff is unreasonable or unlawful as required by R.C. 4903.10(B). OMAEG notes that the Commission regularly uses third parties to assist Staff in reviewing and evaluating a public utility's financial records and business practices to ensure that customer funds are expended appropriately and prudently. OMAEG also argues that the Companies have failed to allege how the quarterly interim reports to Staff are unreasonable or unlawful; OMAEG claims that FirstEnergy merely asserts that the quarterly reports will serve no purpose and would be busy-work for the third-party monitors. Finally, OMAEG disputes the Companies' claim that a real time review of Rider DMR places restrictions on how the Companies use Rider DMR funds and interferes with their management role. OMAEG argues that, although neither the Fifth Entry on Rehearing nor the Eighth Entry on Rehearing limit or restrict how the Companies may use Rider DMR funds to support grid modernization, the Commission was clear that Rider DMR funds must be used to support grid modernization. Fifth Entry on Rehearing at 127-128. OMAEG argues that Staff's ongoing and real time review is necessary to protect customers and ensure that this directive is followed.

{¶ 16} OCC/NOAC, in their memorandum contra, claim that the plan for third-party monitors adopted by the Commission is intended to provide oversight on the use of Rider DMR funds. OCC/NOAC contend that the purpose of the using a third-party monitor is to ensure that Rider DMR revenues are being used to address credit quality and related goals accepted by the Commission. OCC/NOAC claim that existing financial and other self-reporting is useful but is not an adequate substitute for the third-party monitors contemplated by the Commission. OCC/NOAC also notes that existing regulatory mechanisms regarding affiliate transactions are not specifically directed to the objectives of Rider DMR. OCC/NOAC dismisses FirstEnergy's claims that the third-party monitors will usurp the Companies' management authority, noting that the third-party monitors will not have the authority to operate the utility, preempt utility management decisions or restrict financial flexibility. OCC/NOAC concludes that, if FirstEnergy finds the scrutiny and regulatory oversight of the third-party monitor so objectionable, the Companies can avoid such scrutiny and oversight by forgoing collection of funds under Rider DMR, a result which OCC/NOAC would support.

{¶ 17} The Commission finds that rehearing on this assignment of error should be denied. With respect to FirstEnergy's contention that Staff is fully capable of confirming whether the Companies (and FirstEnergy Corp.) have used funds collected to support grid modernization, we agree. Staff is fully capable of making this determination. However, in balancing the workload of Staff, the Commission frequently uses third parties to conduct audits or reviews on Staff's behalf. *See, In re Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.*, Case No. 17-974-EL-UNC (*Corporation Separation Audit Case*), Entry (July 5, 2017) (auditor selected for corporate separation audit). *See also, In re Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.*, Case No. 16-2041-EL-RDR, Entry (December 7, 2016) (auditor selected for 2016 review of delivery capital recovery rider); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.*, Case No. 15-1739-EL-RDR, Entry (December 9, 2015) (auditor selected for 2015 review of delivery capital recovery rider); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co. and The*

Toledo Edison Co., Case No. 14-1929-EL-RDR, Entry (December 10, 2014) (auditor selected for 2014 review of delivery capital recovery rider). This case is no different. We have determined, in this case, that the periodic reviews would be better conducted by a third-party monitor on behalf of Staff. FirstEnergy has not presented any compelling arguments why this decision to use a third party on behalf of Staff is different than any other decision to use a third party on behalf of Staff or how the Companies are prejudiced by the use of a third party rather than Staff.

{¶ 18} We are also not persuaded by FirstEnergy's claims that existing controls ensure that there is no unlawful subsidy of the Companies affiliates in the use of Rider DMR funds. The audit in the *Corporate Separation Audit Case* has a different scope than the review of the use of Rider DMR revenues and, in any event, is due to be completed by February 28, 2018; *Corporate Separation Audit Case*, Entry (May 17, 2017), Request for Proposal No. RA17-CA-2 at 3. Thus, the auditor would not be able to review any transactions entered into in 2018 after February 28, 2018, or any transactions entered into in 2019. Likewise, the reporting requirements contained in Commission orders authorizing utilities to issue debt, while important in their own right, have a different scope than the review at issue here. *In re Am. Transm. Sys. Inc., Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.*, Case Nos. 16-2050-EL-AIS et al., Finding and Order (December 21, 2016).

{¶ 19} FirstEnergy also claims that quarterly reviews are impractical and unnecessary. We disagree. The Commission notes that, in the Fifth Entry on Rehearing, we directed the Staff to "periodically review" how the Companies (and FirstEnergy Corp.) use Rider DMR funds. The quarterly interim reports are simply part of the detailed instructions the Commission provided Staff for terms and conditions to include in the request for proposals (RFP) for the third-party monitor. As this is an ongoing review, we have determined that the third-party monitor should provide interim reports to the Staff on a quarterly basis so that Staff can remain informed on the progress of the ongoing review. Therefore, the Commission directed the Staff to include this provision as part of the RFP. This is also not an unusual provision. In the *Corporate Separation Audit Case,* the auditor is required to provide *monthly* status updates to Staff regarding the audit. *Corporate Separation Audit Case,* Entry (May 17, 2017), Request for Proposal No. RA17-CA-2 at 4. The requirement for quarterly interim reports in the Eighth Entry on Rehearing simply provides direction on the third-party monitor's obligations to Staff during the review, and the Companies have not shown any prejudice by this requirement.

{¶ 20} The Commission also rejects FirstEnergy's claim that real-time monitoring will somehow restrict the use of funds collected under Rider DMR. As OMAEG correctly observed, the Commission directed in the Fifth Entry on Rehearing that Rider DMR funds be used, directly or indirectly, in support of grid modernization. The Commission noted that the Companies may use Rider DMR funds directly in support of grid modernization, by using the funds for the large up-front cash investments necessary for grid modernization. The Commission also noted that the Companies may use Rider DMR funds indirectly in support of grid modernization by taking steps to lower the cost of borrowing the funds necessary to invest in grid modernization; these steps may include reducing outstanding pension obligations, reducing debt, or taking other steps to reduce long-term costs of accessing capital. Fifth Entry on Rehearing at 127-128. Nothing in the Eighth Entry on Rehearing explicitly changed these findings, and we are not persuaded by FirstEnergy that these findings were implicitly changed by our guidance that the review be done by a third party rather than Staff or that the review be ongoing, in real-time, rather than "periodically." Accordingly, rehearing on this assignment of error should be denied.

{¶ 21} In its second assignment of error, FirstEnergy alleges that the Eighth Entry on Rehearing is unlawful and unreasonable because the Commission failed to restore the 50 basis point adder to the return on equity calculation for the Advanced Metering Infrastructure/Modern Grid Rider (Rider AMI) previously approved by the Commission.

{¶ 22} OMAEG and OCC/NOAC reply that the Eighth Entry on Rehearing did not eliminate the 50 basis point adder. Instead, OMAEG and OCC/NOAC note that the

Fifth Entry on Rehearing eliminated the 50 basis point adder. OMAEG claims that the Companies raised the exact same arguments in their application for rehearing of the Fifth Entry on Rehearing and that the Commission rejected those arguments in the Eighth Entry on Rehearing. OCC/NOAC claim that the Companies seek a second bite at the apple. Both OMAEG and OCC/NOAC conclude that the arguments raised by FirstEnergy in the September 15, 2017 application for rehearing are untimely and that the Commission should reject this second request to reinstate the 50 basis point adder.

{¶ 23} The Commission finds that, with respect to its second assignment of error, FirstEnergy improperly seeks rehearing on rehearing. The Commission approved the 50 basis point adder as part of our approval of the stipulations originally filed in this proceeding. Opinion and Order at 22-23, 95, 111. In the Fifth Entry on Rehearing, the Commission reversed the decision to approve the 50 basis point adder. Fifth Entry on Rehearing at 106-108. In the Eighth Entry on Rehearing, the Commission affirmed the ruling in the Fifth Entry on Rehearing and denied rehearing on FirstEnergy's assignment of error related to the 50 basis point adder. Eighth Entry on Rehearing 67-68. Now, the Companies seek rehearing of that denial of rehearing. It is well established that it is improper to seek rehearing of a denial of rehearing on the same issue.

{¶ 24} In *Ormet Primary Aluminum Corp. v. South Central Power Co. and Ohio Power Co.*, the Commission squarely addressed this question, holding that R.C. 4903.10 does not allow persons who enter appearances to have "two bites at the apple" or to file rehearing upon rehearing of the same issue. *Ormet Primary Aluminum Corp. v. South Central Power Co. and Ohio Power Co.*, Case No. 05-1057-EL-CSS, Second Entry on Rehearing (September 13, 2006) at 3-4 (citing *In re The East Ohio Gas Co. and Columbia Gas Co.*, Case Nos. 05-1421-GA-PIP, et al., Second Entry on Rehearing (May 3, 2006) at 3). *See also In re Ohio Power Co. and Columbus Southern Power Co.*, Case No. 10-2929-EL-UNC, Entry on Rehearing (January 30, 2013) at 4-5. Accordingly, rehearing on this assignment of error should be denied.

III. ORDER

{¶ 25} It is, therefore,

{¶ 26} ORDERED, That the application for rehearing filed by FirstEnergy be denied. It is, further,

{¶ 27} ORDERED, That a copy of this Ninth Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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