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 APPROVAL OF THEIR ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION PROGRAM PLANS FOR 2013 THROUGH 2015.	CASE NO. 12-2190-EL-POR CASE NO. 12-2191-EL-POR CASE NO. 12-2192-EL-POR

FIFTH ENTRY ON REHEARING

Entered in the Journal on April 10, 2019

I. SUMMARY

{¶ 1} In this Fifth Entry on Rehearing, the Commission grants, in part, and denies, in part the application rehearing filed on December 22, 2014 by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, and denies all other applications for rehearing.

II. HISTORY OF THE PROCEEDING

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FirstEnergy or 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} On July 31, 2012, FirstEnergy filed an application for approval of the Companies' energy efficiency (EE) and peak demand reduction (PDR) program portfolio plan for 2013 through 2015 pursuant to the Revised Code, Ohio Adm.Code 4901:1-39-04, 4901:1-39-05, 4901:1-39-06, and 4901:1-39-07, and the Commission's February 29, 2012 Entry in Case No. 12-814-EL-UNC. Thereafter, on March 20, 2013, the Commission issued an Opinion and Order approving the portfolio plan with modifications. Opinion and Order (Mar. 20, 2013).

{¶ 4} On April 19, 2013, FirstEnergy, Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU-Ohio), and Nucor Steel Marion, Inc. (Nucor), each filed applications for rehearing. In addition, a joint application for rehearing was filed by the Environmental Law and Policy Center (ELPC) and Ohio Environmental Council (OEC). On May 15, 2013, the Commission granted the applications for rehearing for further consideration of the matters specified in the applications for rehearing. Entry on Rehearing (May 15, 2013). Thereafter, on July 17, 2013, the Commission denied the application for rehearing filed by OCC and the joint application for rehearing filed by ELPC and OEC and granted, in part, and denied, in part, the applications for rehearing filed by FirstEnergy, IEU-Ohio, and Nucor. Second Entry on Rehearing (Jul. 17, 2013) at 18-19.

{¶ 5} On August 16, 2013, EMC Development Company, Inc., (EMC) filed a motion for leave to file an application for rehearing, or in the alternative, motion for clarification as well as an application for rehearing and/or motion for clarification. Further, on August 16, 2013, OCC and ELPC filed applications for rehearing regarding the Second Entry on Rehearing. The Commission denied EMC's motion for leave to file an application for rehearing and granted the applications for rehearing filed by OCC and ELPC for further consideration of the matters specified in the applications for rehearing on September 11, 2013. Third Entry on Rehearing (Sep. 11, 2013) at 4, 5.

{¶ 6} Sub.S.B. No. 310 (S.B. 310), effective on September 12, 2014, amended Ohio's renewable energy, energy efficiency, and peak demand reduction requirements. Section 6(A) of S.B. 310 provides that an electric distribution utility that has a portfolio plan in effect on the effective date was permitted seek an amendment to that portfolio plan, pursuant to Section 6(B) of S.B. 310.

{¶ 7} On September 24, 2014, FirstEnergy filed an application to amend its EE/PDR program portfolio plans for 2015 through 2016, pursuant to Section 6 of S.B. 310. Following a comment period, the Commission approved the Companies' application, subject to modifications. Finding and Order (Nov. 20, 2014).

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

{¶ 9} On December 22, 2014, FirstEnergy, OCC, The Ohio Manufacturers' Association Energy Group (OMAEG), and ELPC, OEC, Sierra Club, and Natural Resources Defense Council (Environmental Advocates) filed applications for rehearing regarding the Finding and Order. On January 2, 2015, FirstEnergy, and OCC filed memoranda contra the applications for rehearing. Also on January 2, 2015, ELPC and Sierra Club jointly filed a memorandum contra the applications for rehearing. On January 14, 2015, the Commission granted the applications for rehearing for further consideration of the matters specified in the applications for rehearing. Fourth Entry on Rehearing (Jan. 14, 2015).

III. DISCUSSION

{¶ 10} In its December 22, 2014 application for rehearing, FirstEnergy asserts that the Finding and Order is unreasonable and unlawful because the Finding and Order prohibits the Companies from counting prospective savings from opt-out customers toward the statutory benchmark and fails to clarify that historical savings that the Companies' customers already have funded would continue to count toward benchmark compliance even after such customers have opted out. More specifically, FirstEnergy first argues that R.C. 4928.66 requires that savings realized prior to customer opt outs must be counted toward the Companies' benchmark compliance. Further, FirstEnergy points out that customers have already paid for these existing savings through the Demand Side Management and Energy Efficiency Rider (Rider DSE) and the savings will persist for years, regardless of a customer's decision whether to participate in future programs. FirstEnergy also reasons that, if historical savings are not allowed to be counted from opt-out customers, the Companies will be forced to remove existing savings from their benchmark calculation when a large customer opts out, which, in turn, will compromise the Companies' ability to plan for benchmark compliance.

{¶ 11} Next, FirstEnergy asserts that opt-out customer prospective savings must also be counted toward compliance with the statutory benchmarks. FirstEnergy claims that R.C. 4928.662 requires customers opting out in 2015 or 2016 to implement projects designed to reduce energy intensity, and requires resulting savings to be counted toward the Companies' benchmarks to the extent they can be identified and verified. FirstEnergy also asserts that Rider ELR customers who opt out will nevertheless have the option to continue taking service under Rider ELR. Consequently, FirstEnergy reasons, these customers will continue to receive and the Companies' customers will continue to pay for certain benefits, as these customers will continue to commit their demand resources to the Companies through May 30, 2016 under Rider ELR, regardless of whether they opt out. Even the savings of non-Rider ELR customers should be counted, the Companies nonetheless assert, on the basis that S.B. 310 requires savings achieved "through actions taken by customers" to be counted toward benchmark compliance.

{¶ 12} In its memorandum contra, OCC argues that the Commission should reject FirstEnergy's argument that it should be able to count savings from opt-out customers, asserting that the Commission already considered this argument, FirstEnergy misapplies the law, and FirstEnergy's request could lead to increased electric charges for residential customers. More specifically, OCC first argues that FirstEnergy raised this same argument in its reply comments, which the Commission fully addressed and rejected in the Finding and Order. Further, OCC argues that FirstEnergy's argument is inconsistent with S.B. 310, as opt-out customers affirmatively choose to remove themselves from the utility's EE programs and are exempt from the rider, is contrary to the accounting principle of matching, and because R.C. 4928.662(A) does not address counting EE/PDR savings of opt-out customers. Finally, OCC contends that counting savings from opt-out customers will displace energy and cost savings required from the residential and small business class, which could result in increased charges for these customers since energy efficiency programs save customers money.

{¶ 13} Similarly, in their memorandum contra, Sierra Club and ELPC contend that the Commission lawfully and reasonably decided to bar FirstEnergy from counting prospective energy savings of opt-out customers. More specifically, Sierra Club and ELPC assert that FirstEnergy's arguments on rehearing fail to recognize that the General Assembly provided a specific mechanism for dealing with opt-out customers through calculation of a utility's compliance baselines in R.C. 4928.66(A)(2)(a), which requires exclusion of the load and usage of opt-out customers from those baseline figures; and that the General Assembly included no similar language addressing opt-out customers in R.C. 4928.662, which directs the Commission to count customer actions toward compliance with R.C. 4928.66. The Environmental Advocates argue that this silence shows that the General Assembly intended to exclude opt-out customers from consideration with respect to the EE/PDR benchmarks. The Environmental Advocates also assert that it is unclear whether opt-out customers will still be eligible to participate in Rider ELR, as FirstEnergy contends, because S.B. 310 mandates that no opt-out customer shall be "eligible to participate in, or directly benefit from, programs arising from the amended portfolio plan[.]"

{¶ 14} The Commission finds that FirstEnergy's application for rehearing on this assignment of error should be granted. Upon further consideration of this issue, the Commission agrees that opt-out customer energy savings, both historic and prospective, should be countable towards compliance with the EE/PDR benchmarks. Excluding opt-out customer energy savings would mean excluding cost-effective energy savings from the EE/PDR benchmarks. In many cases, the opt-out customer already has been compensated by the EDU and that compensation has been recovered from other customers. Excluding cost-effective energy savings from compliance towards the EE/PDR benchmarks would require the Companies to obtain additional energy savings, which may well be less cost-effective, to offset the excluded savings, which is likely to increase the revenue needed to be recovered from all customers to meet the statutory benchmarks. As we have noted before, the Commission is increasingly concerned about the bill impacts on all customers given the rising compliance costs of meeting the EE/PDR benchmarks. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.*, Case No. 16-743-EL-POR (Nov. 21, 2017) at

22-23. The Commission further notes that we recently rejected a proposed rule which would have excluded opt-out customers' energy savings from being counted towards compliance with the EE/PDR benchmarks, and our decision today is consistent with that ruling. *In re the Commission's Review of its Rules for Energy Efficiency Programs Contained in Chapter 4901:1-39 of the Ohio Administrative Code,* Case No. 12-2156-EL-ORD, et al., Finding and Order (Dec. 19, 2018).

{¶ 15} FirstEnergy further asserts in its December 22, 2014 application for rehearing that the Finding and Order suggests that the "stand still" provision in Section 7(B) of S.B. 310 prevents the Commission from administering the Amended Plan consistent with Commission rules and the express provisions of the Amended Plan. FirstEnergy urges the Commission to clarify that it retains the authority under S.B. 310 to administer the Amended Plan. FirstEnergy contends that the "stand still" provision in S.B. 310 is intended to bar the Commission from interfering with an amended portfolio plan once the Commission has approved a plan, but permits the Commission to take actions necessary to administer the implementation of such plans. FirstEnergy asserts that "administration" would be any act in conformance with the Amended Plan's express terms, which authorizes the Companies to request Commission approval of programs to augment or modify the plan, as well as authority to act in conformance with the Commission's existing EE/PDR rules. Additionally, FirstEnergy notes that the Finding and Order requires the Companies to "seek Commission approval prior to any reallocation of funds or adjustment of the program mix," and contends that this could mean the Companies can no longer obtain written consent from Staff for reallocation of funds. On this issue, the Companies request clarification.

{¶ 16} In its memorandum contra, OCC contends that FirstEnergy's argument should be rejected in order to protect customers. Initially, OCC argues that there is no need to clarify when FirstEnergy can recommence programs, reallocate funds, or adjust the program mix prior to there being an actual request for such a change. OCC asserts that the Commission plainly determined that it does not need to consider the legality of such a request until the request is made. Further, OCC argues that S.B. 310 plainly permitted EDUs to file one

application to amend a portfolio, the time for which has now expired. Consequently, OCC argues that S.B. 310 does not provide EDUs with discretion to amend continuously their portfolios or to amend portfolios through various proceedings.

{¶ 17} In their memorandum contra, Sierra Club and ELPC also assert that the Commission lawfully and reasonably deferred any decision regarding FirstEnergy's ability to amend its portfolio plan program mix or budgets. Sierra Club and ELPC point out that FirstEnergy has cited no legal mandate requiring the Commission to rule on this issue now, and that it is reasonable for the Commission to defer its decision on this issue, because the outcome may depend on the details of any potential proposal by FirstEnergy.

{¶ 18} The Commission finds that FirstEnergy's application for rehearing on this assignment of error should be denied as moot. The Commission found in the Finding and Order that it was unnecessary to address the question of whether the addition of new programs, reallocation of funds, or adjustment of program mix were authorized by S.B. 310 after approval of the Amended Plan until such a proposal is made. FirstEnergy did, in fact, request the reallocation of funds, and the reallocations were approved by Staff on November 24, 2015 and July 15, 2016. Further, FirstEnergy's program portfolio plan expired on December 31, 2016, and the Commission has approved a new program portfolio plan to replace the expired plan. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 16-743-EL-POR, Opinion and Order, (Nov. 21, 2017).

{¶ 19} In its December 22, 2014 application for rehearing, OCC argues that the Commission violated R.C. 4903.09 because it failed to set forth its reasons for authorizing FirstEnergy to charge customers for capacity shortfalls that may result from the Companies' decision to eliminate over 60 percent of its energy efficiency programs. More specifically, OCC contends that, when the Commission determined in the Finding and Order that FirstEnergy should be entitled to recover from customers the prudently incurred costs of any steps taken to eliminate any capacity shortfalls, the Commission relied on the rationale provided in the March 20, 2013 Opinion and Order approving the original portfolio plan.

OCC argues that that rationale is not applicable in this amendment proceeding, because FirstEnergy has eliminated the majority of its programs, which largely eliminates any benefit to customers while increasing the risk of capacity shortfalls.

{¶ 20} In its next assignment of error, OCC argues that the Commission erred in its decision to hold customers responsible for any "prudently incurred costs of any steps to eliminate any shortfalls" regarding capacity, contending that FirstEnergy should bear any costs associated with its decision to eliminate the majority of its energy efficiency programs. OCC contends that it is unreasonable to hold customers responsible for capacity shortfalls and potentially higher rates that could result from FirstEnergy's decision to reduce its energy efficiency portfolio. OCC specifies that a capacity shortfall could affect customers negatively because customers may have to pay for needed replacement capacity, eliminated capacity resources that cleared the annual auctions will potentially increase the capacity prices customers pay, and customers could have to pay penalties from PJM for nonperformance if FirstEnergy fails to deliver capacity resources that have cleared the Base Residual Auction (BRA). OCC also argues that, if the Commission should determine nonetheless that customers will be responsible for such costs, the Commission, at minimum, should require FirstEnergy to share the potential risk with customers.

{¶ 21} Similarly, the Environmental Advocates argue that the Finding and Order is unlawful and unreasonable because the Commission changed its position from the March 20, 2013 Opinion and Order approving the original plan regarding FirstEnergy's obligation to bid EE resources into the PJM capacity market without providing adequate justification for the change. More specifically, the Environmental Advocates point out that, in the March 20, 2013 Opinion and Order, the Commission required FirstEnergy to bid into the May 2013 PJM BRA 75 percent of the planned energy efficiency resources for the 2016/2017 planning year under the program portfolio, in order to mitigate the Companies' risk and benefit ratepayers. Thereafter, on rehearing, the Commission found that the Companies could implement their PJM revenue sharing pilot program, under which the Companies would be entitled to receive a 20 percent share of revenue from PJM auctions, with the remaining 80 percent going to

ratepayers. In the Finding and Order, on the other hand, the Commission modified its approach to require FirstEnergy to bid only previously installed EE resources into future BRAs, citing potential further future legislative modifications. The Environmental Advocates argue that this reasoning is not rooted in record evidence. Additionally, the Environmental Advocates argue that, if the Commission denies rehearing on this issue, at minimum, it should eliminate the PJM revenue sharing pilot program.

{¶ 22} Finally, the Environmental Advocates contend that the Finding and Order is unlawful and unreasonable because the Commission failed to examine the reasonableness and prudence of FirstEnergy's decision to amend its portfolio plan by weighing the potential costs from eliminating future EE resources from PJM against the costs of FirstEnergy continuing the programs, as required under Ohio Adm.Code 4901:1-39-04(E). More specifically, the Environmental Advocates claim that the Commission's decision to allow FirstEnergy to recover costs of steps taken to eliminate shortfalls is unreasonable because the shortfalls are a foreseeable consequence of FirstEnergy's voluntary decision to amend its portfolio plan, and the costs to ratepayers to make up for shortfalls could result in greater costs for ratepayers than they would have borne if the original plan had been left in place.

{¶ 23} In its memorandum contra, FirstEnergy asserts that the Commission did not need to outline facts and reasoning when it reiterated its previous order related to the recovery of prudently incurred costs of any steps taken to eliminate shortfalls for PJM bidding. FirstEnergy points out that, as it relates to the recoverability of costs taken to eliminate any shortfalls, the Commission did not authorize in the Finding and Order for the Companies to do anything differently than what the Commission previously approved in its March 20, 2013 Opinion and Order or July 17, 2013 Entry on Rehearing.

{¶ 24} The Commission finds that rehearing on these assignments of error should be denied. FirstEnergy had an unqualified right pursuant to Section 6 of S.B. 310 to amend its program portfolio plan. In the Finding and Order, the Commission thoroughly considered the comments filed in response to the amended plan with respect to the PJM revenue sharing

pilot program. Finding and Order (Nov. 20, 2014) at 20-22. The Commission determined, in order to mitigate any future risks to customers and the Companies that, going forward, the Companies should bid only installed energy efficiency resources into future PJM capacity auctions. Further, the Commission affirmed that the Companies may recover prudently incurred costs of steps taken to eliminate any capacity shortfalls consistent with the Opinion and Order in this proceeding and the Second Entry on Rehearing. Finding and Order (Nov. 20, 2014) at 22; Opinion and Order (Mar. 20, 2013) at 17-21; Second Entry on Rehearing (Jul. 17, 2013) at 7.

{¶ 25} In its final assignment of error, OCC claims that the Commission erred when it did not clarify that FirstEnergy is required to demonstrate that its amended energy efficiency portfolio is cost-effective in accordance with Ohio Adm.Code 4901:1-39-04(B). OCC argues that FirstEnergy's application lacked data necessary to demonstrate that its plan is cost-effective under the Total Recourse Cost Test, and that, despite the Commission's admonition that it "work with its collaborative to ensure the overall portfolio remains cost-effective," FirstEnergy should still be required to demonstrate the cost-effectiveness of its entire amended portfolio.

{¶ 26} Likewise, in their application for rehearing, the Environmental Advocates first contend that the Finding and Order is unlawful and unreasonable because the Commission determined that FirstEnergy's application failed to comply with Ohio Adm.Code 4901:1-39-03 and 4901:1-39-04, but approved the application without waiving these rules. More specifically, the Environmental Advocates argue that, in the Finding and Order, the Commission found that FirstEnergy provided further details regarding program budget and cost-effectiveness in its reply comments in order that there was sufficient information for the Commission's review under Section 6 of S.B. 310, and no waiver was necessary. However, the Environmental Advocates argue that FirstEnergy failed to satisfy the rules because it filed key information only in its reply comments, which deprived interested parties of the opportunity to evaluate and provide input to the Commission; and that even the information filed in the reply comments was inadequate under the Commission's rules. Further, the

Environmental Advocates argue that the Commission should not have deferred requiring demonstration of cost-effectiveness to future audits or the collaborative.

{¶ 27} In its memorandum contra, FirstEnergy notes that the Commission expressly rejected OCC's argument that the Companies' must demonstrate cost-effectiveness, citing the time constraints of the proceeding. FirstEnergy argues that, in contrast to OCC's and the Environmental Advocates' arguments, the Commission's determination was reasonable because all of the Commission's rules could not be applied while meeting the expedited time frame required by S.B. 310. FirstEnergy surmises that S.B. 310 left it to the Commission to decide which rules would be applicable to an expedited filing to amend an existing plan. Further, FirstEnergy notes that the Commission required the Companies to provide cost-effectiveness information in their annual reports.

{¶ 28} The Commission finds that OCC's and the Environmental Advocates' applications for rehearing should be denied on this issue. First, the Commission notes that this issue is moot. As previously noted, FirstEnergy's program portfolio plan expired on December 31, 2016, and the Commission has approved a new program portfolio plan to replace the expired plan. Case No. 16-743-EL-POR, Opinion and Order, (Nov. 21, 2017). Nonetheless, the Commission reiterates that, as stated in the Finding and Order, the Commission was required to review and approve, or modify and approve, FirstEnergy's application within 60 days of its filing. Given these time constraints, the Commission found that FirstEnergy may include its Customer Action Plan in its amended plan, subject to the Total Resource Cost test being applied as a part of future audits, and should work with its collaborative to ensure the cost-effectiveness of its overall portfolio. The Commission declines to modify its finding in the Finding and Order based on OCC's and the Environmental Advocates' arguments for these same reasons.

{¶ 29} In its application for rehearing, OMAEG contends that the Finding and Order is unlawful and unreasonable because it fails to limit FirstEnergy's portfolio plan budget to reflect the costs of the Companies' amended plan offerings. More specifically, OMAEG

disagrees with the Commission's decision in the Finding and Order to approve the amended portfolio plan without modifying the associated budget. OMAEG notes that the Commission commented in the Finding and Order that it expected the Companies' subsequent Rider DSE adjustments to reflect lower costs, in light of the amended program offerings, but claims that recently filed Rider DSE adjustments show increases for FirstEnergy's customers. OMAEG argues that, consequently, the danger in permitting the plan to continue without a revised budget is that parties cannot associate proposed adjustments to specific program costs and the opportunity for unnecessary spending is created. Consequently, OMAEG urges the Commission to grant its application for rehearing to examine the potential effects of the unrevised budget.

{¶ 30} In its memorandum contra, FirstEnergy initially argues that OMAEG's argument was already made to, considered, and rejected by the Commission. Additionally, FirstEnergy addresses OMAEG's argument that the December 1, 2014 Rider DSE filing reflects no reduction in costs for some customer classes, contrary to the Commission's comment in the Finding and Order that it expected "that the next rider adjustment will reflect lower costs to customers resulting from the implementation of the Amended Portfolio." FirstEnergy asserts that OMAEG is mistaken in its argument, explaining that the December 1, 2014 filing was developed in November. As a result, it reflects true-up costs from the prior six months under the original plan and forecasted costs for the subsequent months of November 2014 through June 2015; thus, it includes costs incurred in transitioning from the original plan to the amended plan, and does not indicate that the Companies are unnecessarily spending or over-collecting.

{¶ 31} The Commission finds that OMAEG's application for rehearing on this issue should be denied. This issue was thoroughly addressed in the Finding and Order. As stated in the Finding and Order, collection is based on a forecast of the costs to be incurred over a six-month rider period, which is subject to true-up to actual costs. Thus, as collection is not based on the amount of the budget, the Commission continues to find that the budget amount does not need revision. Further, although OMAEG has argued that recently filed Rider DSE

adjustments show increases for FirstEnergy customers, the Commission finds that FirstEnergy has explained that the filing to which OMAEG refers reflects true-up costs from the previous six months under the original plan. Finding and Order (Nov. 20, 2014) at 10-12. Finally, this issue is moot as FirstEnergy's program portfolio plan has expired and been replaced with a new plan.

{¶ 32} In its August 16, 2013 application for rehearing, OCC claims the Commission erred in approving the PJM revenue sharing pilot program because no application was filed seeking that decision. Further, in its second assignment of error, OCC claims that the Commission failed to set forth the reasons supporting the decision as required by R.C. 4903.09. Likewise, in its August 16, 2013 application for rehearing, ELPC appears to argue that the Commission's decision to approve the PJM revenue sharing pilot program was unlawful, unreasonable and unsupported by the record in this case. ELPC also argues that the Commission lacked authority to establish the pilot program because the issue was not raised on rehearing by any party.

{¶ 33} In its memorandum contra, the Companies contend that the Commission's creation of the PJM revenue sharing pilot program was in response to the Companies' April 19, 2013 application for rehearing in which FirstEnergy objected to any requirement to bid planned energy efficiency resources into the PJM capacity auctions without considering the risks to customers and the Companies and because it did not authorize the Companies to recover any penalties or costs the Companies could incur as a result of the Commission's mandate.

{¶ 34} The Commission finds that rehearing on these assignments of error should be denied. In the Companies' April 19, 2013 application for rehearing, the Companies claimed that the requirement to bid planned energy efficiency resources into the PJM capacity auctions was unjust and unreasonable because the Commission failed to properly consider the risks to customers and the Companies. The Commission granted rehearing and addressed these risks by creating a revenue sharing mechanism under which the customers

and the Companies would share the revenue from bidding planned energy efficiency resources to the PJM auction on an 80/20 basis. This mechanism mitigates the risks to the Companies by providing an incentive to the Companies to prudently mange the energy efficiency resources and to maximize the value of such resources. Second Entry on Rehearing (Jul. 17, 2013) at 2-5. Moreover, the argument that the Second Entry on Rehearing was unlawful because no party specifically proposed the PJM revenue sharing pilot program has no merit. It is well-established that "[u]nder R.C. 4903.10(B), if the [C]ommission determines upon rehearing that its 'original order or any part thereof is *in any respect* unjust or unwarranted, *or should be changed,*' [the Commission] can abrogate or modify the order." *In re Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 856 N.E.2d 213, 2006-Ohio-5789 at ¶15 (emphasis added). In this case, the Commission determined, on rehearing, that the Opinion and Order was unjust and should be changed, and the Commission modified the Opinion and Order based upon the evidence in the record of this proceeding.

{¶ 35} Finally, the Commission finds that any assignment of error not specifically addressed above should be denied as moot. As previously noted, FirstEnergy's program portfolio plan expired on December 31, 2016, and the Commission approved a new program portfolio plan to replace the expired plan. Case No. 16-743-EL-POR, Opinion and Order (Nov. 21, 2017).

IV. ORDER

{¶ 36} It is, therefore,

{¶ 37} ORDERED, That the December 22, 2014 application for rehearing filed by FirstEnergy be granted, in part and denied, in part. It is, further,

{¶ 38} ORDERED, That the applications for rehearing filed by OCC, ELPC, OMAEG, and Environmental Advocates be denied. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

M. Beth Trombold, Chair

Thomas W. Johnson

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

GAP/sc

Entered in the Journal APR 10 2019

Tanowa M. Troupe
Secretary