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 AN EXTENSION OF THE DISTRIBUTION MODERNIZATION RIDER.	**CASE NO. 19-361-EL-RDR**

ENTRY ON REHEARING

Entered in the Journal on January 15, 2020

I. SUMMARY

{¶ 1} In this Entry on Rehearing, the Commission denies the applications for rehearing filed by Ohio Consumers' Counsel and Ohio Manufacturers' Association Energy Group.

II. DISCUSSION

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (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 consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric service to customers, including a firm supply of electric generation service. 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 provide for an SSO to provide generation pricing for the period of June 1, 2016, through May 31, 2019. The application was for an ESP, in accordance with R.C. 4928.143. *In re Ohio*

Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, Case No. 14-1297-EL-SSO (*ESP IV Case*), Opinion and Order (Mar. 31, 2016) at 9, 120.

{¶ 5} On March 31, 2016, the Commission issued its Opinion and Order in the *ESP IV Case*, approving FirstEnergy's application and stipulations with several modifications. *ESP IV Case*, Opinion and Order at 120-121. As part of that Order, we approved a modified version of FirstEnergy's original proposal for a retail rate stability rider (Rider RRS).

{¶ 6} On April 27, 2016, the Federal Energy Regulatory Commission (FERC) issued an order granting a complaint filed by the Electric Power Supply Association, the Retail Energy Supply Association, Dynegy, Inc., Eastern Generation, LLC, NRG Power Marketing LLC, and GenOn Energy Management, LLC, and rescinding a waiver of its affiliate power sales restrictions previously granted to FirstEnergy Solutions Corporation. 155 FERC ¶ 61,101 (2016).

{¶ 7} On October 12, 2016, the Commission issued its Fifth Entry on Rehearing in the *ESP IV Case*, adopting Staff's alternative proposal to establish a distribution modernization rider (Rider DMR) and eliminate Rider RRS. Among other things, the Commission explained in its Fifth Entry on Rehearing that Rider DMR was valid under R.C. 4928.143(B)(2)(d) because the revenue generated would serve as an incentive for the Companies to modernize their distribution systems. Additionally, the Commission adopted Staff's recommendation that Rider DMR be limited to three years with a possible extension of two years. *ESP IV Case*, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶ 210. The Commission also directed the Companies to file a distribution rate case by the end of ESP IV. *ESP IV Case*, Fifth Entry on Rehearing at ¶ 251. The deadline for FirstEnergy to file an application for an extension of Rider DMR was later adjusted and set for February 1, 2019. *ESP IV Case*, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶ 113. Subsequently, the Commission issued a final, appealable order on October 11, 2017. *ESP IV Case*, Ninth Entry on Rehearing (Oct. 11, 2017).

{¶ 8} On February 1, 2019, FirstEnergy filed an application in the above-captioned proceeding to extend Rider DMR for an additional two years.

{¶ 9} However, on June 19, 2019, the Supreme Court of Ohio issued a decision in the appeals of the *ESP IV Case*, affirming the Commission's order in part, reversing it in part as it relates to Rider DMR, and remanding with instructions to remove Rider DMR from FirstEnergy's ESP. Specifically, the Court held that Rider DMR does not qualify as an incentive under R.C. 4928.143(B)(2)(h) and the conditions placed on the recovery of Rider DMR revenues were not sufficient to protect ratepayers. *In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401, 131 N.E.3d 906, ¶¶ 14-29, *reconsideration denied*, 156 Ohio St.3d 1487, 2019-Ohio-3331, 129 N.E.3d 458.

{¶ 10} On August 22, 2019, pursuant to the *Ohio Edison* decision, the Commission directed the Companies to immediately file proposed revised tariffs setting Rider DMR to $0.00. The Companies were further directed to issue a refund to customers for monies collected through Rider DMR for services rendered after July 2, 2019, subject to Commission review. Once the refund had been appropriately issued, the Companies were instructed to file proposed, revised tariffs removing Rider DMR from the Companies' ESP. *ESP IV Case*, Order on Remand (Aug. 22, 2019) at ¶¶ 14-16. The Companies complied with the Commission's directives as instructed in the Order on Remand and filed tariffs removing Rider DMR from their ESP on October 18, 2019.

{¶ 11} On August 30, 2019, OCC, OMAEG, NOPEC, and NOAC filed a joint motion requesting that the Commission deny FirstEnergy's pending request to continue Rider DMR for an additional two years.

{¶ 12} Subsequently, on November 21, 2019, the Commission ruled that the pending application in this proceeding to extend Rider DMR for an additional two years should be denied as moot and that the case should be dismissed. Entry, (Nov. 19, 2019) at ¶¶ 1, 19. Further, in light of the changed circumstances, with termination of revenues recovered

through Rider DMR, as well as the elimination of any possibility for an extension of Rider DMR, the Commission held that it is no longer necessary or appropriate for the Companies to be required to file a new distribution rate case at the conclusion of the Companies' current ESP. Entry at ¶ 17.

{¶ 13} On December 23, 2019, applications for rehearing were filed in this proceeding by Ohio Consumers' Counsel (OCC) and Ohio Manufacturers' Association Energy Group (OMAEG). On January 2, 2020, a memorandum contra the applications for rehearing was filed by FirstEnergy.

{¶ 14} In its sole assignment of error, OMAEG states that the Commission erred in eliminating the requirement to file a new distribution rate case at the conclusion of FirstEnergy's current ESP. In support of this assignment of error OMAEG contends that it is not clear what factual support there is for the Commission's finding that changed circumstances have led the Commission to determine that it is no longer necessary for FirstEnergy to be required to file a new rate case. Likewise, in its first assignment of error, OCC claims that the Commission's decision to relieve the Companies of their obligation to file a distribution rate case, when the current ESP ends, harms consumers and is unreasonable and unlawful because it is not supported by the record, thus violating R.C. 4903.09. OCC argues that consumers are harmed where, as here, an EDU's distribution costs and revenues are not comprehensively reviewed for over fifteen years while the EDU's earned return exceeds it authorized return. OCC contends that nothing has changed that justifies relieving the Companies of the requirement to file a rate case following the ESP, alleging that the Commission did not explain why it is no longer necessary or appropriate for the Companies to file a rate case. OCC further claims that the Companies are already earning, though their base distribution rates, a return in excess of its authorized cost of capital. OMAEG also contends that, since newly-enacted R.C. 4928.471 allows the Companies to file for a decoupling mechanism, the Commission's decision to eliminate the

rate case directive has the effect of allowing the decoupling mechanism to continue in perpetuity.

{¶ 15} Similarly, OCC alleges in its second assignment of error that the Commission's decision to relieve FirstEnergy of its obligation to file a distribution rate case was unreasonable and unlawful in violation of Supreme Court precedent because the Commission departed from its prior decision without substantive explanation. OCC cites to *In re Application of Ohio Power Co.* for the well-established proposition that when the Commission has made a lawful order, it is bound by certain institutional constraints to justify that change before such order may be changed or modified. *In re Application of Ohio Power Co.*, 144 Ohio St.3d 1, 2015-Ohio 2056, ¶ 16 (*quoting Ohio Consumers' Counsel v. Pub. Util. Comm.*, 10 Ohio St.3d 49, 50-51, 461 N.E.2d 303 (1984)). OCC contends that the November 21, 2019 Entry did not meet this standard.

{¶ 16} In its memorandum contra the applications for rehearing, FirstEnergy responds that OCC and OMAEG, lack standing to challenge the Commission decision to remove the rate case filing directive because OCC and OMAEG have not demonstrated any prejudice or harm by the Commission's decision. The Companies also claim that pursuant to R.C. 4928.471, the decision to file a rate case now lies with an EDU. The Companies argue that the General Assembly has declared that maintaining rates decoupled to 2018 levels until the EDU decides to initiate a distribution rate case is sound policy and a benefit to consumers. The Companies conclude that, since the rate case directive has been superseded by the decoupling authority granted to the Companies under R.C. 4928.471, OCC and OMAEG cannot demonstrate any harm caused by the November 21, 2019 Entry.

{¶ 17} Further, the Companies dispute claims that the Commission's explanation for the removal of the rate case directive failed to satisfy R.C. 4903.09 and Ohio Supreme Court precedent. The Companies contend that statute only requires the Commission to provide sufficient details for a reviewing court "to determine, upon appeal, how the commission reached its decision" and "enough evidence and discussion in order to enable the PUCO's

reasoning to be readily discerned." *The Cleveland Elec. Illum. Co. v. Pub. Util. Comm.,* 4 Ohio St.3d 107, 110, 447 N.E.2d 746 (1983). FirstEnergy notes that the November 21, 2019 Entry succinctly explains that the changed circumstances are "termination of revenues recovered through Rider DMR, as well as the elimination of any possibility for an extension of Rider DMR." Entry at ¶ 17. The Companies conclude that the Commission articulated the reasons for its decision with sufficient citations to its prior findings to enable a reviewing court to understand the Commission's rationale. The Companies further claim that the very case OCC cites in its application for rehearing, in portions omitted by OCC, simply requires the Commission to provide an explanation that need not be elaborate and may consist of a "few simple sentences." *In re Ohio Power Co.,* 144 Ohio St.3d 1, 2015-Ohio-2056, 40 N.E.3d 1060, ¶ 16, *quoting Consumers' Counsel,* 16 Ohio St.3d 21, 21-22, 475 N.E.2d 786 (1985).

{¶ 18} The Commission finds that rehearing on OCC's first and second assignments of error should be denied. We reject OCC's claim that the November 21, 2019 Entry failed to properly explain the grounds for our decision. The November 21, 2019 Entry stated that "[i]n light of the changed circumstances, *with the termination of revenues recovered through Rider DMR*, as well as *the elimination of any possibility for an extension* of Rider DMR," it was no longer necessary or appropriate for FirstEnergy to be required to file a new distribution rate case at the end of the current ESP. Entry at ¶ 17 (emphasis added). OCC questions how the elimination of Rider DMR constitutes "changed circumstances" relevant to the directive to file a distribution rate case. However, OCC and OMAEG elide the fact that the Rider DMR was designed to produce annual revenues of $132.5 million, for three years with the potential for a two-year extension of the rider. Although this revenue requirement was reduced due to the reduction of Federal corporate income taxes, the elimination of this revenue clearly provides substantially changed circumstances regarding the amount of distribution revenue recovered by the Companies. Thus, because the Companies would no longer be collecting revenue under Rider DMR, which was one part of the package related to distribution service, the Commission determined that it was no longer necessary or appropriate to require the Companies to file a rate case at the end of the current ESP, which

was another provision related to distribution service in ESP IV. Entry (Nov. 19, 2019) at ¶ 17.

{¶ 19} Further, we affirm our determination that it was reasonable and appropriate to eliminate the directive to file a rate case at the end of ESP IV. In the November 21, 2019 Entry, the Commission noted that Rider DMR was adopted in the Fifth Entry on Rehearing in the *ESP IV Case* as part of a package of provisions related to the Companies' distribution service and that the other elements of the package included a directive to file a distribution rate case at the end of ESP IV, as well as the extension of the Companies' delivery capital recovery rider (Rider DCR). Entry at ¶ 17 (*citing ESP IV Case,* Fifth Entry on Rehearing (Oct. 12, 2016) at ¶¶ 189, 249-251, 327, 343, 346, 358-359, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶ 89, 91, 94). With the termination of recovery of revenue under Rider DMR and the elimination of any possibility for the extension of Rider DMR, the necessity for a distribution rate case at the end of ESP IV was substantially diminished because any potential for excessive earnings was substantially diminished. We also note that Rider DMR was intended by the Commission to incentivize the Companies to invest in grid modernization. *ESP IV Case*, Fifth Entry on Rehearing at ¶ 185. The elimination of this incentive substantially reduces the need for a distribution rate case at the end of ESP IV. Moreover, since the Court's decision in *Ohio Edison*, the Commission has adopted a comprehensive plan for the first phase of grid modernization by the Companies and that comprehensive plan includes stipulated provisions for annual audits and for the crediting of operational savings due to grid modernization. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.,* Case Nos. 16-481-EL-UNC et al., Opinion and Order (July 17, 2019) at ¶¶ 33, 45.

{¶ 20} In addition, OCC's argument that the Companies' costs and revenues have not been subject to a comprehensive review since the last rate case is misguided. We note that the Companies' base distribution rates are based upon the rate base as of the date certain in the Companies' last rate case. Any additional revenue recovered for investments made after

the date certain is collected through the Companies' Rider DCR, and Rider DCR is, in fact, subject to an audit on an annual basis. *See, e.g.*, *In re Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.,* Case No. 16-2041-EL-RDR (2016 review of Rider DCR); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.,* Case No. 15-1739-EL-RDR (2015 review of Rider DCR); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.,* Case No. 14-1929-EL-RDR (2014 review of Rider DCR). This audit is filed in the docket established for the review of Rider DCR every year, and OCC is provided a full and fair opportunity to comment upon, and contest, the findings of the audit.

{¶ 21} Moreover, R.C. 4928.143(F) provides for the annual review of the earnings of an EDU during an ESP. The Commission has conducted the significantly excessive earnings test (SEET) with respect to the Companies on an annual basis since the Companies' first ESP was implemented, and OCC has had a full and fair opportunity to participate in each proceeding. *See, e.g., In re Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.,* Case No. 18-857-EL-UNC (2017 SEET Case); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.,* Case No. 17-993-EL-UNC (2016 SEET Case); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.,* Case No. 16-925-EL-UNC (2015 SEET Case); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.,* Case No. 15-1540-EL-UNC (2014 SEET Case). Finally, with respect to OCC's allegations that the Companies are currently earning more than their authorized return, OCC improperly relies upon evidence that is not in the record. Neither the testimony relied upon by OCC, nor the subsequent cross-examination of the witnesses presenting this testimony, is in the record of this case.

{¶ 22} In its third assignment of error, OCC claims that the decision to relieve FirstEnergy of the obligation to file a distribution rate case is unreasonable and unlawful under the ESP settlement process and harms customers because the Commission approved the settlement agreement, which included the obligation to file a distribution rate case, in the case which established the current ESP. OCC contends that, in the *ESP IV Case*, parties

made decisions regarding whether to agree to or oppose the settlement agreement based on the settlement's terms as a package, including the Commission's rulings on rehearing in the *ESP IV Case* requiring FirstEnergy to file a rate case at the end of ESP IV. OCC and OMAEG both claim that the current proceeding is completely unrelated to the decision to require the Companies to file a distribution rate case at the end of ESP IV. OMAEG, in support of its sole assignment of error, posits that the discussion of the rate case directive in the Fifth Entry on Rehearing and the Eighth Entry on Rehearing in the *ESP IV Case* took place solely in the context of the discussion of Rider DCR, rather than Rider DMR. *ESP IV Case*, Fifth Entry on Rehearing at ¶¶ 249-251; Eighth Entry on Rehearing at ¶¶ 89-91.

{¶ 23} The Companies respond that the removal of the rate case directive did not alter the package of settlement terms in the *ESP IV Case*. The Companies note that neither OCC nor OMAEG were a signatory party to the stipulations in the *ESP IV Case*. The Companies state that the rate case directive was not part of the stipulations in the *ESP IV Case* and, thus, no signatory party agreed to the stipulations in reliance upon the rate case directive. FirstEnergy also notes that no signatory party to the stipulations is contesting the elimination of the rate case directive.

{¶ 24} The Commission finds that rehearing on this assignment of error should be denied. First, we note that, in the *ESP IV Case*, the Commission, sua sponte and *not based upon the request or recommendation of any party,* directed the Companies to file a distribution rate case at the end of ESP IV. However, we did not explicitly modify the stipulations submitted in that case when we issued that directive. *ESP IV Case,* Fifth Entry on Rehearing at ¶ 251. There is no doubt that this directive was a lawful order of the Commission and that the Companies were obligated to follow that directive, but it was not an explicit modification of any term of the stipulations approved by the Commission. See also, *ESP IV Case,* Eighth Entry on Rehearing at ¶¶ 89, 91.

{¶ 25} Second, as noted by the Companies, OCC was not a signatory party to the stipulations approved by the Commission in the *ESP IV Case*. In fact, OCC opposed the

stipulations because OCC alleged that "serious bargaining" among the parties did not occur. *ESP IV Case,* Opinion and Order (Mar. 31, 2016) at 30; Fifth Entry on Rehearing at ¶¶ 221. We also note that the signatory parties negotiated for provisions in the stipulations to protect their ability to defend their interests in the event that the Commission modified the stipulations. *ESP IV Case*, Opinion and Order at 30. During the extensive proceedings in the *ESP IV Case*, the Commission made substantial modifications to the stipulations submitted by the signatory parties in the *ESP IV Case*. However, as a non-signatory party, OCC had no rights, *under the stipulations,* to challenge these Commission modifications to those stipulations.

{¶ 26} Moreover, it is well established that the Commission is entitled to modify a prior order provided that the Commission explains the reasons for the modification and that the new regulatory course is permissible. *In re Application of Ohio Power Co.,* 2015-Ohio-2056, ¶ 16 (*quoting In re Application of Columbus S. Power Co.,* 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655 ¶ 52,). OCC cites to no authority that the Commission's ability to modify a prior order is limited by the fact that the prior order was based upon a stipulation.

{¶ 27} Finally, we find that the claim by OCC and OMAEG that this case is completely unrelated to the directive to file a distribution rate case lacks merit. As noted above, the directive to file a distribution rate case was part of a package of distribution-related provisions established by, or otherwise addressed, in the Fifth Entry on Rehearing. These provisions included the creation of Rider DMR, the potential for extension of Rider DMR, the stipulated distribution base rate freeze, the distribution rate case directive, and affirmation of the extension of Rider DCR through the duration of ESP IV. Entry at ¶ 17; *ESP IV Case,* Fifth Entry on Rehearing ¶¶ 189, 249-251,327, 343, 346, 358-359. To be sure, the discussion of the rate case directive took place after denying rehearing on all assignments of error opposing the extension of Rider DCR throughout the term of ESP IV. However, OMAEG's scrutiny places far too much weight on the location of the creation of the rate case directive; the rate case directive was included in ¶ 251 of the Fifth Entry on Rehearing in the

ESP IV Case because it was a reasonable place for the Commission to raise the issue, rather than to signal that the rate case directive was solely related to Rider DCR. Further, OCC and OMAEG elide the fact that the Fifth Entry on Rehearing actually established both Rider DMR and the rate case directive. We cannot conclude that provisions which were established by the same Commission order and relate to the same subject matter can be fairly described as "completely unrelated."

{¶ 28} OCC claims, in its fourth assignment of error, that the Commission decision to relieve FirstEnergy of the obligation to file a distribution rate case is unreasonable and unlawful because it denies OCC its due process rights. OCC claims that the Commission acted without providing OCC notice that the distribution rate case was at issue in this case, without record evidence, without allowing OCC to put on evidence, and without allowing OCC to refute and cross-examine other parties' evidence.

{¶ 29} The Companies respond that due process is defined by statute in Commission proceedings and that no due process rights exist beyond those afforded by statute. *Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213, ¶ 20. The Companies contend that neither OCC nor OMAEG have cited any statute that mandates any additional process under the circumstances presented here. Finally, the Companies claim that no hearings were held in this proceeding because OCC, OMAEG, and other parties moved to dismiss the application without any further due process for the Companies and, thus, OCC and OMAEG have no reasonable grounds to complain of a lack of due process.

{¶ 30} The Commission finds that rehearing on this assignment of error should be denied. In this case, OCC, as well as OMAEG and other parties, filed a joint motion to dismiss this case, asking the Commission to find that the proposed extension of Rider DMR was unlawful, unjust and unreasonable. The Commission did exactly what the parties seeking dismissal requested the Commission to do; the Commission denied the application as moot and dismissed the case in light of *Ohio Edison*. However, there is no doubt that a

potential extension of Rider DMR was contemplated in the *ESP IV Case* and that dismissing this case implicitly modified ESP IV. Having asked the Commission to reopen and modify ESP IV to eliminate one provision, OCC and OMAEG are in no position to dispute the Commission's decision to modify a related provision. Moreover, with respect to due process claims, the Supreme Court of Ohio has held that there is no constitutional right to notice and hearing in rate-related matters if no statutory right to a hearing exists. *Consumers' Counsel*, 2006-Ohio-5789, at ¶ 20 (*citing Consumers' Counsel v. Pub. Util. Comm.*, 70 Ohio St.3d 244, 248-249, 638 N.E.2d 550 (1994); *Armco, Inc. v. Pub. Util. Comm.*, 69 Ohio St.2d 401, 409, 23 O.O.3d 361, 433 N.E.2d 923 (1982); *Cleveland v. Pub. Util. Comm.*, 67 Ohio St.2d 446, 453, 21 O.O.3d 279, 424 N.E.2d 561 (1981). We agree with the Companies that OCC has cited to no statutory right to a hearing in this proceeding, which was initiated by FirstEnergy's application to implement a provision of ESP IV.

{¶ 31} Finally, with respect to all assignments of error raised in the applications for rehearing, the Commission finds that both OCC and OMAEG have failed to demonstrate any prejudice as the result of the November 21, 2019 Entry. As noted above, no capital investments by the Companies are being recovered from ratepayers unless such investments were included in the rate base and reviewed in the Companies' last distribution rate case or such investments are subject to either the annual reviews of Rider DCR or the reviews of the Companies' smart grid riders. Further, Commission has consistently reviewed the Companies' earnings under the SEET provided for by R.C. 4928.143(F). Accordingly, we find that OCC has demonstrated no harm to customers resulting from the November 21, 2019 Entry.

III. ORDER

{¶ 32} It is, therefore,

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

{¶ 34} ORDERED, That a copy of this Entry on Rehearing be served upon each party of record.

COMMISSIONERS:
Approving:
Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Dennis P. Deters
Dissenting:
Daniel R. Conway

GAP/hac

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 AN EXTENSION OF THE DISTRIBUTION MODERNIZATION RIDER.	**CASE NO. 19-361-EL-RDR**

DISSENTING OPINION OF COMMISSIONER DANIEL R. CONWAY

Entered in the Journal on January 15, 2020

{¶ 1} I would grant rehearing and reverse the aspect of our November 21, 2019, entry in this case that eliminates the requirement that the First Energy Companies file a rate case by no later than the end of their ESP IV. In an era where our electric distribution utilities are making increasingly substantial amounts of investments the costs of which they recover through riders, as is the case for the First Energy Companies, I believe it is important to conduct base rate cases on a periodic basis in order to comprehensively evaluate those utilities' revenue requirements. The risk of not conducting regular comprehensive reviews, and leaving the decision solely up to the EDU regarding whether and when to conduct such a review, particularly during periods of low inflation, low interest rates, and technological innovation, is that the base rate will over-recover the portion of costs that it is responsible to recover.

{¶ 2} The requirement that was established in the ESP IV proceeding, that the companies file a rate case by the end of their ESP IV, mitigates that risk to some extent, and I would retain it.

{¶ 3} Accordingly, I would grant the applications for rehearing and, therefore, dissent.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Daniel R. Conway

By: Daniel R. Conway
Commissioner

Summary: Entry that the Entry on Rehearing, the Commission denies the applications for rehearing filed by Ohio Consumers' Counsel and Ohio Manufacturers' Association Energy Group; Dissenting Opinion of Commissioner Daniel R. Conway electronically filed by Docketing Staff on behalf of Docketing