

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE FILING BY OHIO
EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY AND
THE TOLEDO EDISON COMPANY OF A
GRID MODERNIZATION BUSINESS PLAN.

CASE NO. 16-481-EL-UNC

IN THE MATTER OF THE FILING BY OHIO
EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY AND
THE TOLEDO EDISON COMPANY OF AN
APPLICATION FOR APPROVAL OF A
DISTRIBUTION PLATFORM
MODERNIZATION PLAN

CASE NO. 17-2436-EL-UNC

IN THE MATTER OF THE APPLICATION OF
OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON
COMPANY TO IMPLEMENT MATTERS
RELATING TO THE TAX CUTS AND JOBS
ACT OF 2017.

CASE NO. 18-1604-EL-UNC

IN THE MATTER OF THE APPLICATION OF
OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON
COMPANY FOR APPROVAL OF A TARIFF
CHANGE.

CASE NO. 18-1656-EL-ATA

THIRD ENTRY ON REHEARING

Entered in the Journal on February 7, 2024

I. SUMMARY

{¶ 1} In this Third Entry on Rehearing, the Commission denies the application for rehearing filed by Ohio Consumers' Counsel.

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 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 March 31, 2016, in Case No. 14-1297-EL-SSO, the Commission approved FirstEnergy's application for its fourth ESP (ESP IV). *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and the Toledo Edison Co. for Authority to Provide for a Std. Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan*, Case No. 14-1297-EL-SSO (ESP IV Case), Opinion and Order (Mar. 31, 2016). Moreover, on October 12, 2016, the Commission issued the Fifth Entry on Rehearing in the ESP IV Case, further modifying ESP IV.

{¶ 5} Among other terms, ESP IV required the Companies to undertake grid modernization initiatives that promote customer choice in Ohio and to file a grid modernization business plan. *ESP IV Case*, Opinion and Order (Mar. 31, 2016) at 22, 95-96. Accordingly, on February 29, 2016, the Companies filed a grid modernization plan with the Commission in Case No. 16-481-EL-UNC (*Grid Mod I Case*). Specifically, the Companies' plan provided scenarios for the Companies to achieve smart meter installation, as well as

other grid modernization investments like distribution automation and integrated volt-VAR control (Co. Ex. 2 at 4-5; Co. Ex. 1 at 5-6; business plan application at 13).¹

{¶ 6} Thereafter, on December 4, 2017, the Companies filed an application for approval of a distribution platform modernization plan (DPM Plan) in Case No. 17-2436-EL-UNC (*DPM Plan Case*) as a complement to the Commission's then-ongoing grid modernization initiative (Co. Ex. 1 at 3; Co. Ex. 2 at 5). According to FirstEnergy, the DPM Plan was designed to be completed over a three-year period to provide enhanced reliability and timelier outage restoration (DPM Plan at 1).

{¶ 7} In the Fifth Entry on Rehearing in the *ESP IV Case*, the Commission noted that it intended to undertake a detailed policy review of grid modernization and that FirstEnergy's grid modernization business plan would be addressed following such review. *ESP IV Case*, Fifth Entry on Rehearing (Oct. 12, 2016) at 96-97. The Commission commenced this detailed policy review in 2017, and, on August 29, 2018, the Commission released *PowerForward: A Roadmap to Ohio's Electricity Future*.

{¶ 8} On January 10, 2018, the Commission opened an investigation into the financial impacts of the Tax Cuts and Jobs Act of 2017 (TCJA) on regulated utilities in this state. *See In re the Commission's Investigation of the Financial Impact of the TCJA on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI (*TCJA Case*), Entry (Jan. 10, 2018). On October 24, 2018, following an extensive comment period and hearing, the Commission directed public utilities to file applications not for an increase in rates, pursuant to R.C. 4909.18, by January 1, 2019, in order to return to consumers the tax impacts resulting from the TCJA. *TCJA Case*, Finding and Order (Oct. 24, 2018). On October 30, 2018, the Companies filed an application to establish a process to resolve TCJA-related issues in Case No. 18-1604-EL-UNC.

¹ All citations are to the record of the evidentiary hearing held in these proceedings on February 5-6, 2019.

{¶ 9} On November 9, 2018, a stipulation and recommendation was filed, recommending a resolution for the four above-captioned cases (Co. Ex. 1).² The Companies indicated the resolution included components of the applications in both the *Grid Mod I Case* and the *DPM Plan Case* and represented the first phase of its grid modernization initiative (Grid Mod I). On January 25, 2019, a supplemental stipulation and recommendation (Co. Ex. 3) was filed, which modified the original stipulation (collectively referred to as the Stipulation). The supplemental stipulation included all of the original signatory parties as well as the Ohio Consumers' Counsel (OCC), the Northeast Ohio Public Energy Council (NOPEC), and Ohio Partners for Affordable Energy (Co. Ex. 3 at 10). The supplemental stipulation noted that OCC and NOPEC agreed to all terms and conditions of the supplemental stipulation except the terms and conditions related to grid modernization, but OCC and NOPEC agreed not to oppose the terms and conditions related to grid modernization (Co. Ex. 3 at 2, fn. 1). An evidentiary hearing regarding the Stipulation commenced on February 5, 2019, and concluded on February 6, 2019 (Tr. I and Tr. II).

{¶ 10} The Commission issued an Opinion and Order on July 17, 2019, approving the Stipulation, subject to the Commission's adjustments to the calculation of the total estimated net benefits proposed for Grid Mod I. *Grid Mod I Case, et al.*, Opinion and Order (July 17, 2019) at ¶¶115-116.

{¶ 11} On August 16, 2019, the Environmental Law and Policy Center (ELPC), Ohio Environmental Council and Natural Resources Defense Council (collectively, Environmental Advocates) filed an application for rehearing. The Commission denied rehearing on September 11, 2019.

² Simultaneously, the Companies filed an application in Case No. 18-1656-EL-ATA, to implement the Tax Savings Adjustment Rider, as contemplated by the stipulation as a proposed resolution of the Companies' TCJA-related issues identified in Case No. 18-1604-EL-UNC.

{¶ 12} Subsequently, on November 24, 2020, ELPC filed a motion to vacate and conduct new proceedings. In its motion, ELPC noted the resignation of the former chairman, among other events, and ELPC argued that the Commission should ascertain the former chairman's involvement in these proceedings and determine the appropriate course of action to ensure that FirstEnergy did not benefit from undue influence or bias.

{¶ 13} On December 30, 2020, the Commission issued an Entry denying ELPC's motion to vacate. The Commission noted that the Supreme Court of Ohio has held that vacation and reconsideration is an inappropriate remedy where the party complaining has not been prejudiced by the improper conduct and the record supported the Commission's decision. *Cincinnati v. Pub. Util. Comm.*, 64 Ohio St.3d 279, 281-282, 595 N.E.2d 858 (1992); *Ohio Transp. v. Pub. Util. Comm'n*, 164 Ohio St. 98, 128 N.E.2d 22 (1955). In the Entry, the Commission determined that ELPC had failed to demonstrate any prejudice from the Commission's decision in the Opinion and Order or the Entry on Rehearing in these cases. Entry (Dec. 30, 2020) at ¶24. Further, the Commission reviewed the decisions in the Opinion and Order and Entry on Rehearing, as well as the evidentiary record in the proceeding and the Commission determined that ample evidence supported the Commission's decision. *Id.* at ¶25. Neither ELPC nor any other party filed an application for rehearing challenging the denial of the motion to vacate.

{¶ 14} In the Opinion and Order approving the Stipulation, the Commission directed Staff, or its consultant, to conduct an operational benefits assessment and review prior to the next projected phase of the Companies' grid modernization investments to evaluate whether the actual functionality and performance of the project is consistent with the planned specifications. *Grid Mod I Case, et al.*, Opinion and Order (July 17, 2019) at ¶¶44-45, 71. During the term of Grid Mod I, the Companies agreed to begin development of the second phase of its distribution grid modernization plan (Grid Mod II) using the same or other technologies in order to facilitate a cost-effective, timely transition between Grid Mod I and Grid Mod II. The Companies and Staff agreed to initiate discussions with any interested parties no later than June 1, 2020, regarding the deployment of Grid Mod II,

including reliability benefits arising from Grid Mod I deployment. *Grid Mod I Case, et al.*, Opinion and Order (July 17, 2019) at ¶20.

{¶ 15} Subsequently, on April 20, 2022, the Commission selected Daymark Energy Advisors, Inc. (Daymark) to conduct the operational benefits assessment to evaluate whether the actual functionality and performance of Grid Mod I are consistent with planned specifications as approved in the Stipulation. Daymark filed the required audit report on November 14, 2022 (Audit Report).

{¶ 16} Initial comments were timely filed by Ohio Energy Leadership Council (OELC), the Companies, Northwest Aggregation Coalition (NOAC), OCC, The Retail Energy Supply Association (RESA), and jointly by The Ohio Manufacturers' Association Energy Group (OMAEG) and The Kroger Co. (Kroger). Reply comments were timely filed by RESA, OELC, FirstEnergy, NOAC, OCC, and jointly by OMAEG and Kroger.

{¶ 17} Meanwhile, the Companies filed an application for approval of Grid Mod II, and supporting testimony, on July 15, 2022. The hearing for that proceeding is scheduled to commence on April 16, 2024. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 22-704-EL-UNC (*Grid Mod II Case*), Entry (Jan. 4, 2024) at ¶17.

{¶ 18} On November 16, 2023, the Commission issued a Finding and Order adopting the recommendations proposed by Daymark and directing that the recommendations be implemented in Grid Mod II. Finding and Order at ¶1.

{¶ 19} R.C. 4903.10 states that any party to 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.

{¶ 20} On December 18, 2023, OCC filed an application for rehearing regarding the November 16, 2023 Finding and Order. The Companies filed a memorandum contra the application for rehearing on December 28, 2023.

{¶ 21} On January 10, 2024, the Commission granted OCC's application for rehearing for the limited purpose of further consideration of the matters raised in the application for rehearing.

{¶ 22} In its first assignment of error, OCC alleges that the Commission erred by issuing an order that allows FirstEnergy to continue with, and charge consumers for, Grid Mod II when FirstEnergy has failed to demonstrate operational benefits to consumers of Grid Mod I. Similarly, OCC claims in its second assignment of error that the Commission erred by issuing an order that allows FirstEnergy to continue with, and charge consumers for, Grid Mod II when FirstEnergy has failed to demonstrate that the investments for Grid Mod I are used and useful and were prudently incurred under Ohio ratemaking law. R.C. 4909.15.

{¶ 23} In the memorandum contra the application for rehearing, the Companies argue that, in the application for rehearing, OCC simply repeats arguments already rejected by the Commission in the Finding and Order and that rehearing should be denied on that basis. With respect to OCC's first assignment of error, the Companies reply that the Commission's decision is consistent with the process set forth in the Stipulation adopted by the Commission in these cases which allows for the results of reviews to be incorporated into future deployment of grid modernization investments (Co. Ex. 3 at 9). FirstEnergy responds to OCC's second assignment of error by noting that the process set forth in the Stipulation provides for annual reviews of Rider AMI to determine that Grid Mod I investments are used and useful and prudently incurred (Co. Ex. 3 at 5). Finding and Order at ¶34.

{¶ 24} The Commission finds that rehearing on OCC's first and second assignment of error should be denied. In both assignments of error, OCC argues that the Finding and Order allows the Companies "to continue with and charge consumers for Grid Mod II." However, the Commission has not authorized FirstEnergy to recover any costs associated with Grid Mod II. FirstEnergy's application for Grid Mod II is currently pending before the

Commission, and the evidentiary hearing has not been held yet. *Grid Mod II*, Entry (Jan. 4, 2024) at ¶17. Thus, FirstEnergy cannot recover any costs for Grid Mod II unless and until the application for Grid Mod II has been approved by the Commission. The Commission notes that, in the *Grid Mod II Case*, OCC will have a full and fair opportunity to raise any issues relevant to the Commission's consideration of FirstEnergy's application for Grid Mod II, including the amount of operational benefits resulting from grid modernization.

{¶ 25} OCC's second assignment of error alleges that FirstEnergy has not demonstrated that the investments for Grid Mod I are used and useful and were prudently incurred. We note that OCC relies upon statements made by Daymark in the audit report, but Daymark was charged only with conducting an operational benefits assessment and review to evaluate whether the actual functionality and performance of the project were consistent with the planned specifications. *Grid Mod I Case, et al.*, Opinion and Order (July 17, 2019) at ¶¶44-45, 71. Daymark was not directed to review whether FirstEnergy's investments were used and useful or were prudently incurred. On the other hand, the Stipulation establishing Grid Mod I specifically directs that the annual audits verify that Grid Mod I investments are used and useful and prudently incurred (Co. Ex. 1 at 11; Co. Ex. 3 at 3). Thus, as noted by the Commission in the Finding and Order:

Staff is required to conduct and has conducted annual audits of Rider AMI, including a verification that Grid Mod I investments are prudently incurred in those audits. See *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. for Review of Rider AMI*, Case No. 18-1647-EL-RDR, Staff Review (Dec. 24, 2020); *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. for Review of Rider AMI*, Case No. 19-1903-EL-RDR, Staff Review (Mar. 24, 2022); *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. for Review of Rider AMI*, Case No. 20-1672-EL-RDR, Staff Review (February 1, 2023). In these annual Rider AMI audits, Staff examined the as-filed schedules for consistency with the Commission's Opinion and Orders in previous smart

grid cases and to ensure proper accounting treatment was applied. The audits consisted of reviews of the financial statements for completeness, occurrence, presentation, valuation, interviews, and interrogatories. Furthermore, investments that are found to be not used and useful or not prudently incurred will be subject to reconciliation, as contemplated in the Stipulation. *Grid Mod I Case, et al.*, [Co. Ex. 3 at 4].
Finding and Order at ¶34.

In fact, in its motion to intervene in the 2021 annual audit case, OCC acknowledged the scope of the annual audit, stating that the “audit will *review the prudence* of nearly \$260 million FirstEnergy invested” in Grid Mod I. *In re Ohio Edison Co., The Cleveland Elec. Illum Co. and The Toledo Edison Co.*, Case No. 20-1672-EL-RDR, Motion to Intervene by Office of the Ohio Consumers’ Counsel (Apr. 15, 2022) at 1 [emphasis added]. The record is clear that the annual audits conducted by Staff include a review of whether investments for Grid Mod I are used and useful and were prudently incurred. Accordingly, the Commission finds that rehearing on OCC’s first and second assignment of error should be denied.

{¶ 26} In its third assignment of error, OCC claims that the Commission erred by issuing an order that allows FirstEnergy to apply fixed operational savings in years four through six of Grid Mod I and that the Commission should grant rehearing to require FirstEnergy to identify the actual operational savings of Grid Mod I before implementing Grid Mod II.

{¶ 27} In response, the Companies cite to the Finding and Order where the Commission found that fixed operational savings should be utilized because “the Stipulation specifically contemplated a situation in which actual savings could not be determined, as Daymark found to be the case here, and a fixed amount was agreed upon in the Stipulation.” Finding and Order at ¶31. Moreover, the Companies claim that there is no specific level of Grid Mod I operational savings that must be achieved prior to proceeding with Grid Mod II.

{¶ 28} The Commission finds that OCC's third assignment of error is barred by R.C. 4903.10 and by the principles of res judicata and collateral estoppel. The Stipulation contained, *inter alia*, three related provisions: (1) the Stipulation contained performance metrics agreed to by the signatory parties (Co. Ex. 1, Attachment C); (2) the Stipulation contained provisions for an operational benefits audit (Co. Ex. 1 at 22-23; Co. Ex. 3 at 5-6); and (3) the Stipulation contains deemed operational savings for years four through six of Grid Mod I to be used in the event that Grid Mod II has not been approved or if there is no adopted recommendation for operational savings resulting from the operational benefits review (Co. Ex. 1 at 23-24; Co. Ex. 3 at 6). In the Finding and Order, the Commission acknowledged Daymark's finding that the Companies had met their obligation to report on the performance metrics established by the Stipulation. Finding and Order at ¶32. The Commission also noted Daymark's finding that the stipulated performance metrics were insufficient to determine actual operational savings for years four through six of Grid Mod I. Finding and Order at ¶20. Accordingly, the Commission directed that the deemed operational savings in the Stipulation should be utilized because the Stipulation contained specific deemed savings provisions for years four through six in the event that actual operational savings could not be determined (Co. Ex. 1 at 23-24). Finding and Order at ¶31. In this assignment of error, OCC seeks to ignore the provisions of the Stipulation regarding deemed savings and requests the Commission to direct the Companies to work with Daymark to establish actual savings and to preclude recovery of the costs of Grid Mod I until such time as actual savings are established. However, OCC is barred by R.C. 4903.10 from raising this claim at this time.

{¶ 29} OCC was a signatory party to the Stipulation; in the Stipulation, OCC expressly stated that it agreed to all terms and conditions of the supplemental stipulation except the terms and conditions related to grid modernization, but OCC agreed not to oppose the terms and conditions related to grid modernization (Co. Ex. 3 at 2). The Commission approved the Stipulation, as modified by the Commission, on July 17, 2019. Opinion and Order at ¶1, 133, 136. OCC did not file an application for rehearing; the

Commission did issue an Entry on Rehearing on September 11, 2019, denying the application for rehearing filed by the Environmental Advocates regarding issues unrelated to the deemed savings provisions of the Stipulation. Entry on Rehearing (Sept. 11, 2019) at ¶¶1, 25, 27. Therefore, following the denial of the Environmental Advocates' application for rehearing, the Opinion and Order adopting the Stipulation, including the provisions related to deemed savings, constituted a final, appealable order. Neither OCC nor any other party filed a notice of appeal of the Commission's decision within the 60 days provided by R.C. 4903.11. Accordingly, the Opinion and Order is now a final, non-appealable order, and OCC is barred by R.C. 4903.10 from challenging the deemed savings provisions contained in the Stipulation.

{¶ 30} Further, OCC's claim is barred by res judicata and collateral estoppel. Res judicata and collateral estoppel "operate to preclude the relitigation of a point of law or fact that was at issue in a former action between the same parties and was passed upon by a court of competent jurisdiction." *Ohio Power Co.*, 144 Ohio St.3d 1, 2015-Ohio-2056, 40 N.E.3d 1060 at ¶20 (quoting *Consumers' Counsel v. Pub. Util. Comm.*, 16 Ohio St.3d 9, 10, 475 N.E.2d 782 (1985)). "Collateral estoppel may be applied in a civil action to bar the relitigation of an issue already determined by an administrative agency and left unchallenged if the administrative proceeding was judicial in nature and if the parties had an adequate opportunity to litigate their versions of the disputed facts and seek review of any adverse findings." *In re The Dayton Power and Light Co.*, Case No. 08-1094-EL-SSO, Third Entry on Rehearing at ¶33 (quoting *Tedesco v. Glenbeigh Hosp. of Cleveland, Inc.* (Mar. 16, 1989), Cuyahoga App. No. 54899, 1989 WL 24908). "The doctrine of res judicata requires a plaintiff to present every ground for relief in the first action, or be forever barred from asserting it." *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 382, 653 N.E.2d 226 (1995). *See also, O'Nesti v. DeBartolo Realty Corp.*, 113 Ohio St.3d 59, 2007-Ohio-1102, 862 N.E.2d 803.

{¶ 31} In these cases, the question of whether the Stipulation, including the provisions for deemed savings, should be adopted by the Commission was fully litigated by the parties. The parties were provided an ample opportunity for discovery. An

evidentiary hearing was held over two days (Tr. Vol. I and Tr. Vol. II). Post-hearing briefs and reply briefs were filed by interested parties both for and against the adoption of the Stipulation. Thus, we find that the administrative proceeding was judicial in nature, and all parties had an opportunity to litigate the issue. However, at the evidentiary hearing, OCC's own witness testified in support of the modifications regarding grid modernization made by the supplemental stipulation to the original stipulation and stated that OCC was "not opposing the grid modernization portion of the Stipulation" (OCC Ex. 1 at 5-7; Tr. Vol. II at 317). Further, the parties had an opportunity to seek review of an adverse ruling. As noted above, following the issuance of the Opinion and Order adopting the Stipulation, the Environmental Advocates filed an application for rehearing, which was subsequently denied by the Commission. OCC did not file an appeal. Therefore, *res judicata* and collateral estoppel bar relitigation of the provisions of the Stipulation, including the deemed savings provision.

{¶ 32} It its fourth assignment of error, OCC alleges that the Commission erred by issuing an order that allows FirstEnergy to continue with and charge consumers for Grid Mod II given the commonality of Grid Mod II with the FirstEnergy H.B. 6 investigation cases stayed by the Commission.

{¶ 33} FirstEnergy responds that OCC's request for a stay is not appropriate. The Companies argue that the Commission has already rejected these same arguments in the Finding and Order. Finding and Order at ¶34. The Companies also argue that filing a request to stay the *Grid Mod II Case* in these proceedings, rather than the *Grid Mod II Case*, is procedurally improper.

{¶ 34} In light of the stay in Case Nos. 17-974-EL-UNC, 17-2474-EL-RDR, 20-1502-EL-UNC, and 20-1629-EL-RDR (collectively, *FirstEnergy Investigation Cases*), OCC requests on rehearing that the Commission also stay the *Grid Mod II Case* based upon alleged "commonalities" between FirstEnergy's grid modernization cases and the *FirstEnergy*

Investigation Cases. However, the Commission notes additional facts in the record regarding these alleged commonalities.

- a) The Stipulation ensured that customers would receive total tax savings of approximately \$900 million, consistent with the Commission's directives in the *TCJA Investigation*. Opinion and Order at ¶¶66, 117, 131.
- b) The Stipulation was negotiated and filed with the Commission prior to the former chairman taking office. As discussed above, the Stipulation approved by the Commission was the result of two separate filings: an original stipulation filed on November 9, 2018 (Co. Ex. 1) and a supplemental stipulation filed on January 25, 2019 (Co. Ex 3).
- c) OCC was a signatory party to the Stipulation and supported the Stipulation before the Commission (OCC Ex. 1). Although the Stipulation states that OCC neither agreed to nor opposed the provisions related to grid modernization, OCC's own witness testified in support of the modifications regarding grid modernization made by the supplemental stipulation to the original stipulation and stated that OCC was "not opposing the grid modernization portion of the Stipulation" (Co. Ex. 3 at 2 fn.1; OCC Ex. 1 at 5-7; Tr. II at 317).
- d) The Stipulation was fully adopted by the Commission with only one minor modification. Opinion and Order at ¶¶121-122, 133, 136. OCC did not seek rehearing regarding either the minor modification to the Stipulation made by the Commission or the adoption of the Stipulation.
- e) ELPC filed a motion to vacate the Opinion and Order due to the involvement of the former chairman. The Commission denied the motion to vacate, finding that ELPC could not demonstrate any prejudice from the Commission decision and that, following a review of the record, ample evidence supported

the Commission's decision. Entry (Dec. 30, 2020) at ¶¶24, 25. OCC did not seek rehearing of the denial of the motion to vacate.

{¶ 35} The Commission further finds that OCC has not made its request for a stay of the *Grid Mod II Case* in the proper case. The Commission is considering the application filed by FirstEnergy for Grid Mod II in a separate proceeding. A procedural schedule has been set and has been extended three times by the attorney examiner. *Grid Mod II Case*, Entry (Jul. 20, 2023) at ¶16, 21; Entry (Oct. 2, 2023) at ¶ 16, 20; Entry (Nov. 3, 2023) at ¶17, 19; Entry (Jan. 4, 2024) at ¶17, 19. Intervention has been granted to multiple parties. Entry (Jul. 20, 2023) at ¶18, 19, 23; Entry (Oct. 2, 2023) at ¶17, 21.

{¶ 36} We also note that, on January 22, 2024, OCC filed a request for a stay of the *Grid Mod II Case* in the *Grid Mod II Case*. OCC's request for a stay will be given its due consideration in that case. Accordingly, rehearing this assignment of error should be denied.

III. ORDER

{¶ 37} It is, therefore,

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

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

COMMISSIONERS:

Approving:

Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters
John D. Williams

GAP/dmh

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**Case No(s). 16-0481-EL-UNC, 17-2436-EL-UNC, 18-1604-EL-UNC, 18-1656-EL-
ATA**

Summary: Entry on rehearing that the Commission denies the application for rehearing filed by Ohio Consumers' Counsel electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio.