BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo 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

INITIAL BRIEF ON REHEARING OF THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

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I. INTRODUCTION AND PROCEDURAL HISTORY

On August 4, 2014, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (Companies) filed an application with the Public Utilities Commission of Ohio (Commission) to establish a standard service offer (SSO), in the form of a fourth electric security plan (ESP IV), to provide generation service pricing for the period June 1, 2016 through May 31, 2019,[1] later modified to an eight-year term beginning June 1, 2016 through May 31, 2024.[2] The Ohio Manufacturers' Association Energy Group (OMAEG), which is comprised of many members with manufacturing facilities located in the Companies' service territories, was granted intervention in the above-captioned proceeding on December 1, 2014. A hearing on ESP IV commenced on August 31, 2015. Since the initial filing of ESP IV, the Companies have filed four stipulations, which collectively present a new ESP, termed "Stipulated ESP IV" by the Companies.[3]

On March 31, 2016, the Commission approved, with modifications, the Companies' application to provide a standard service offer in the form of an ESP for a term of eight years.[4] A large component of the Companies' approved Stipulated ESP IV is the Retail Rate Stability Rider (Rider RRS), under which the Commission authorized the Companies to flow through the net effects of purchasing generation output from the W.H. Sammis plant and the Davis-Besse Nuclear Power Station plant, and FirstEnergy Solutions' (FES) entitlement to the output of the

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[1] Companies Ex. 1 at 3 (Application).

[2] Companies Ex. 154 at 7 (Third Supp. Stip.).

[3] As explained by the Third Supp. Stip. at 2, the Third. Supp. Stip., together with the "Prior Stipulations" (defined as the December 22, 2014 Stipulation, the May 28, 2013 Supplemental Stipulation, and the June 4, 2015 Second Supplemental Stipulation) form the "Stipulated ESP IV," which must be considered as a package. See also Companies Ex. 155 at 2 (Mikkelsen Fifth Supp.).

[4] *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, Opinion and Order (March 31, 2016) (March 31 Order).

Ohio Valley Electric Corporation (OVEC) pursuant to a purchase power agreement (PPA) between the Companies and its unregulated affiliate, FES.[5]

Subsequent to the Commission's Order, the Federal Energy Regulatory Commission (FERC) issued an Order on April 27, 2016, rescinding an earlier waiver granted to the Companies and its affiliates regarding affiliate power sales restrictions. FERC stated that prior to allowing the Companies to enter into a transaction under the power purchase agreement with the Companies' unregulated affiliate, FES, (Affiliate PPA), the Affiliate PPA must be submitted to FERC for review and approval under the *Edgar* and *Allegheny* test.[6]

On May 2, 2016, the Companies, OMAEG, and numerous other parties filed applications for rehearing regarding several aspects of the Commission's March 31 Order. Specifically, the Companies included in their application for rehearing a modified Rider RRS proposal (Companies' Proposal or Modified Rider RRS), which was further explained in the accompanying testimony of Companies witness Eileen Mikkelsen.[7] The Companies' Proposal includes different terms and conditions than the initial Rider RRS, which was approved by the Commission in its March 31 Order and was the subject of the April 27, 2016 FERC Order. However, the Companies' Proposal still results in significant costs to customers and effectively operates as a subsidy to FirstEnergy Corp. and its unregulated affiliates.

On May 11, 2016, the Commission granted rehearing and granted several applications for rehearing for further consideration of the matters specified in the applications for rehearing. On June 3, 2016, the attorney examiners issued an Entry establishing a procedural schedule for an

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[5] Id. at 78-79.

[6] *Electric Power Supply Assn., et.al. v. FirstEnergy Solutions Corp., et. al.*, 55 FERC ¶ 61, 101 at P 53 (April 27, 2016) (FERC Order).

[7] Companies' Application For Rehearing at 17-21 (May 2, 2016); E. Mikkelsen Rehearing Testimony (May 2, 2016), Companies Ex. 197 (Mikkelsen Rehearing).

additional evidentiary hearing on rehearing specific to the Companies' Proposal raised in its application for rehearing. The scope of the evidentiary hearing was limited to the provisions of, and alternatives to, the Companies' Proposal.[8]

The evidentiary hearing on rehearing began July 11, 2016, with the Companies presenting one witness, Ms. Eileen Mikkelsen, intervening parties presenting 11 witnesses, and Staff of the Public Utilities Commission of Ohio (Staff) presenting three witnesses. Staff's witnesses propose an alternative that includes a Distribution Modernization Rider ((Staff's Proposal or Rider DMR) that would collect from the Companies' customers $131 million annually to "provide appropriately allocated support for FirstEnergy Corp. to maintain investment grade by the major credit rating agencies."[9]

In response to Staff's Proposal, the Companies proposed modifications to Rider DMR, including an annual amount of recovery from customers of $558 million for credit support and an additional amount, not to exceed an economic development value presented by Companies' witness Murley of $568 million, to maintain FirstEnergy Corp.'s headquarters and nexus of operations in Akron, Ohio.[10] Additionally, the Companies proposed that Rider DMR be extended to an eight-year term consistent with the ESP IV.[11]

Regardless of the terms used by the Companies and Staff to describe their various proposals, the fact remains that the essential character of each of the proposals is a corporate bailout and subsidy of FirstEnergy Corp. Although the Companies and Staff seek to tie the corporate bailout to purported hedges or distribution modernization initiatives, the essence of all

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[8] Attorney Examiner Entry setting a procedural schedule and terminating the stay of discovery imposed in the May 20, 2016 Attorney Examiner Entry (June 3, 2016).

[9] Staff Ex. 13 at 2 (Buckley Rehearing).

[10] Companies Ex. 205 at 3-4 (Murley Rebuttal); Companies Ex. 206 at 14 (Mikkelsen Rebuttal and Surrebuttal).

[11] Companies Ex. 206 at 15 (Mikkelsen Rebuttal and Surrebuttal).

three proposals is to provide funds to the Companies in order to provide financial support to FirstEnergy Corp. and its affiliates and bail FirstEnergy Corp. out of financial difficulties and bad corporate decisions.

Not only is it unjust and unreasonable to saddle captive distribution customers with potentially billions of dollars in costs to prop up a company that has failed to make sound business decisions, but it is also unlawful and undermines the economic development of the state of Ohio. While the Companies assert that maintaining FirstEnergy Corp. headquarters and nexus of operations in Akron, Ohio is a "significant contributor" to the Ohio economy,[12] the Companies have failed to consider the economic impact on other companies, including manufacturers, within the state of Ohio who will be forced to pay substantial additional costs for electricity, which will ultimately impact their business decisions and their ability to remain competitive and further invest in the state of Ohio. If any of the proposals are approved, the Commission could be approving upwards of one billion dollars per year of charges to customers to a failing corporation, over which it has no jurisdiction, with no guarantee of return of its steep investment. There is no connection between what customers are paying in costs to the Companies and what they are obtaining in terms of benefits as the Companies have failed to provide any commitments or details related to distribution modernization initiatives or plans. These proposals in no way advance the policy of the state of Ohio to "[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service."[13]

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[12] Companies Ex. 205 at 6 (Murley Rebuttal).

[13] Section 4928.02(A), Revised Code.

For the reasons discussed herein, OMAEG respectfully requests that the Commission reject the Companies' Proposal, Staff's Proposal, and the Companies' modifications to Staff's Proposal as none of the proposals satisfy the statutory requirements of Chapter 4928, Revised Code, or are in the public interest, and all of them are harmful to customers.

II. STANDARD OF REVIEW

Section 4928.143, Revised Code provides that "[a]n electric security plan shall include provisions relating to the supply and pricing of electric generation service."[14] Further, the statute delineates specific provisions, which may be included in a utility company's proposed ESP, including:

> (d) Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service;[15]
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> (h) Provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility. The latter may include a long-term energy delivery infrastructure modernization plan for that utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization.[16]

[14] Section 4928.143(B)(1), Revised Code.

[15] Section 4928.143(B)(2)(d), Revised Code.

[16] Section 4928.143(B)(2)(h), Revised Code.

Section 4928.143(C)(1), Revised Code, also sets forth the following standard of review, which applies to ESP cases**:**

> The burden of proof in the proceeding shall be on the electric distribution utility.
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> * * *
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> Subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. Additionally, if the commission so approved an application that contains a surcharge under division (B)(2)(b) or (c) of this section, the commission shall ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge. Otherwise, the commission by order shall disapprove the application.

In addition to, and in conjunction with, the provisions above, Section 4905.22, Revised Code, prescribes the following:

> Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

III. DISCUSSION

A. The Attorney Examiner erred in striking portions of the testimony of six witnesses who provided updated and more accurate data and prices to include in the Companies' Proposal and alternatives.

On July 14 and July 15, the attorney examiners in this proceeding struck approximately 55 pages of testimony from six witnesses including Sierra Club witness Mr. Comings, OCC/NOAC witness Mr. Wilson, OCC witnesses Mr. Kahal and Dr. Rose, P3/EPSA witness Dr. Kalt, and Staff witness Dr. Choueiki. These decisions were unreasonable, unlawful and prejudicial to intervening parties as the information contained in the testimony was not only relevant to the current rehearing proceeding, but essential in providing the Commission with all of the appropriate and necessary information to make an informed decision regarding a provision to be included in the Companies' ESP that could cost customers over one billion dollars annually, depending on the proposal. It is critical that the Commission be afforded the opportunity to review all relevant information regarding the Companies' Proposal, Staff's Proposal, and the Companies' modifications to Staff's Proposal, including testimony from intervenors regarding the potential cost to customers of such proposals, in order to make an informed and reasonable decision in this proceeding. Removing approximately 55 pages of testimony from intervenor witnesses and one Staff witness in no way assists the Commission in reviewing all relevant information regarding the three proposals to reach an appropriate decision and only serves to prejudice intervening parties.

Under Ohio Administrative Code 4901-1-15(F), a party adversely affected by an oral ruling may raise the propriety of that ruling in its initial brief as a distinct issue for the Commission's consideration. Accordingly, OMAEG respectfully requests that the Commission find that the attorney examiners erred in granting the motions to strike the various portions of testimony and precluding valuable testimony from becoming part of the record as the testimony presented was well within the scope of the rehearing proceeding, was not cumulative, and is critical to the issues before the Commission.

Specific to Sierra Club witness Mr. Comings, the attorney examiners struck approximately 21 pages from Mr. Comings rehearing testimony, including relevant figures and exhibits, related to updated natural gas and capacity prices based on the Modified Rider RRS that the Companies' claimed would provide the same benefits as Rider RRS that was approved as part of the Stipulated ESP IV.[17] Portions of Mr. Comings' testimony were struck for two main reasons: 1) they were deemed cumulative in that they repeated previous arguments made in the proceeding;[18] and 2) they were deemed beyond the scope of rehearing established by the attorney examiners in the June 3rd entry.[19] These arguments are without merit and the attorney examiners' decision to strike portions of Mr. Comings' rehearing testimony was improper and should be reversed.

First and foremost, the portions of the testimony that were stricken could not have possibly repeated previous arguments as the data and cost (or value) calculations were based upon the new Modified Rider RRS that has a different term, includes different inputs, and calculates forecasted annual energy revenue differently.[20] Additionally, the results of the recent capacity auctions are now known through the 2019/2020 delivery year and those capacity prices are an input to the Modified Rider RRS calculation that significantly alters the purported net

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[17] Mikkelsen Rehearing at 6 ("The Proposal will preserve the benefits of the Stipulated ESP IV for customers as previously determined by the Commission.")

[18] Tr. Vol. IV at 775 and 780.

[19] Id. at 783-784 and 801.

[20] Mikkelsen Rehearing at 5, 8, n.1 ("The monthly on-peak and off-peak generation output will be multiplied by average monthly on-peak and off-peak energy forwards for the [AEP-Dayton Hub] on the Intercontinental Exchange ('ICE')."

benefit of the approved Rider RRS (which the Companies claim would be the same for Modified Rider RRS).

Pursuant to Ohio Rules of Evidence, Rule 403(B), "evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, or needless presentation of cumulative evidence."[21] The Companies' Proposal is a new modified Rider RRS with a new mechanism for calculating customer credits and charges.[22] As such, Mr. Comings' rehearing testimony directly addresses the new calculations by noting that the energy, capacity, and natural gas prices used by the Companies in their calculations is based on outdated forecasts from mid-2014,[23] which will become even more outdated and more unreasonable as time passes, as well as forecasted capacity prices for years that are now known. The stricken testimony also provided known, actual capacity prices through 2019/2020 delivery year. This is not cumulative testimony, but rather directly relevant to the reasonableness of the Companies' Proposal and its impact on customers, who will ultimately bear the risk of these outdated forecasts, especially in light of new forecasts and updated pricing information. The new Modified Rider RRS and estimated cost (or benefits) to customers should have been updated at the time the proposal was made in order to provide the Commission with the most accurate information.

Moreover, it is important to note that the Commission previously admitted multiple ICF forecasts into the record and the ICF reports are authored by the same reporting firm that the Companies relied upon in providing their own testimony regarding natural gas and capacity price

[21] Ohio Rules of Evidence, Rule 403.

[22] Mikkelsen Rehearing at 5.

[23] Sierra Club Ex. 100 at 7, 16-17, and 21-22 (Comings Rehearing).

forecasts.[24] Further, the probative value of the testimony outweighs any argument that it is cumulative.

Additionally, the June 3rd entry issued by the attorney examiners in this proceeding specifically states that "[t]he scope of the hearing will be limited to the provisions of, and alternatives to, the Modified RRS Proposal."[25] Thus, the scope of the rehearing includes not just the Companies' Proposal, but also alternatives to that proposal, which included Staff's alternative Rider DMR as well as alternatives such as pursuing the PPA through FERC. As a result, intervening parties should be permitted to present information regarding the Companies' new calculation of Rider RRS and the impact of that new calculation on customers as well as the impact on the ESP v. MRO test if the Modified Rider RRS is included and adopted as part of the ESP IV. Testimony regarding the fact that the Companies' own consulting firm is now projecting different energy prices than what the Companies are continuing to rely on in the calculations of the Modified Rider RRS, the Companies' estimate of the cost and benefits to customers, and the Companies' ESP v. MRO test results is information that the Commission should be provided and should consider when evaluating the Companies' Proposal.[26]

Further, Ms. Mikkelsen stated in her rehearing testimony that the Companies' Proposal "eliminates the risk to customers" insomuch as it eliminates any changes that could occur with respect to increased costs or reduced output of the generating units.[27] Mr. Comings rehearing'

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[24] Tr. Vol. IV at 773.

[25] Attorney Examiner Entry setting a procedural schedule and terminating the stay of discovery imposed in the May 20, 2016 Attorney Examiner Entry (June 3, 2016).

[26] See generally, Sierra Club Ex. 100 (Comings Rehearing).

[27] Companies Ex. 197 at 10 (Mikkelsen Rehearing).

testimony that was stricken directly responds to Ms. Mikkelsen's assertion that the Companies' Proposal eliminates risk to customers.[28] Thus, it is clearly within the scope of the rehearing.

Specific to OCC/NOAC witness Mr. Wilson, the attorney examiners struck approximately 13 pages from Mr. Wilson's rehearing testimony, including relevant figures and exhibits, related to updated natural gas prices and ICF price forecasts. Portions of Mr. Wilson's rehearing testimony were struck for similar reasons: the portions were deemed cumulative;[29] and beyond the scope of rehearing.[30] As previously stated regarding to Mr. Comings' stricken testimony, these arguments are without merit and the attorney examiners' decision to strike portions of Mr. Wilson's rehearing testimony was also improper.

Similar to Mr. Comings' rehearing testimony, Mr. Wilson's rehearing testimony also addresses the calculation changes contained in the modified Rider RRS, which directly impacts the purported net benefits to customers.[31] Further, the projections included in the Companies' original Rider RRS are now being used as proxy costs, proxy generation output, and proxy revenues for ancillary services and environmental attributes to calculate the Modified Rider RRS in the Companies' Proposal. Thus, intervening parties should be afforded the opportunity to provide testimony regarding flaws in these proxy projections in order to provide the Commission with relevant information regarding whether these proxies are reasonable and appropriate in light of more updated and accurate data. Further, this information is relevant in addressing any quantifiable benefits under the ESP v. MRO test. Therefore, Mr. Wilson's

[28] Sierra Club Ex. 100 at 17 and 22 (Comings Rehearing).

[29] Tr. Vol. IV at 853 and 862.

[30] Id. at 865-866 and 875.

[31] OCC/NOAC Ex. 1 at 14-15 (Wilson Rehearing).

rehearing testimony is neither cumulative nor beyond the scope of the rehearing and is highly probative for the Commission.

Specific to OCC witness Mr. Kahal, the attorney examiners struck approximately four pages from Mr. Kahal's testimony, which referred to Mr. Wilson's updated forecasts and projections. Portions of Mr. Kahal's testimony were struck given that the attorney examiners found they were beyond the scope of rehearing established by the attorney examiners in the June 3rd entry.[32] As previously stated above, these updated forecasts and projections are directly responsive to the quantifiable benefits under the ESP v. MRO test, Ms. Mikkelsen's rehearing testimony stating that the Companies' Proposal results in less risk to customers, and the purported benefits of the Companies' Proposal to customers. Mr. Kahal's rehearing testimony is not beyond the scope of the rehearing and should be considered by the Commission in its decision.

Specific to OCC witness Dr. Rose, the attorney examiners struck approximately six pages from Dr. Rose's rehearing testimony, which referred to Mr. Wilson's updated forecasts and projections. Portions of Dr. Rose's rehearing testimony were struck given the attorney examiners found that it was cumulative and/or related to provisions that no longer exist.[33] Dr. Rose's testimony clearly responds to the Companies' Proposal as he asserts that the Modified Rider RRS does not change some of his previous concerns and arguments related to the original Rider RRS.[34] The mere fact that Dr. Rose's rehearing testimony includes similar information either for contextual purposes, or to illustrate that the Modified Rider RRS raises similar issues, does not mean that the testimony is wholly cumulative. Rather, Dr. Rose's testimony addresses a

[32] Tr. Vol. V at 1083 and 1091.

[33] Tr. Vol. V at 1175 and 1179-1180.

[34] OCC Ex. 45 at 8 (Rose Rehearing).

new proposal set forth by the Companies and demonstrates that even though the Companies' Proposal includes a new calculation, the impact on customers and the overarching policy implications are the same (or worse).[35] Thus, Dr. Rose's rehearing testimony is not cumulative, is highly relevant, and should be considered by the Commission in its decision.

Specific to P3/EPSA witness Dr. Kalt, the attorney examiners struck approximately 11 pages, including all exhibits, from Dr. Kalt's rehearing testimony. Portions of Dr. Kalt's testimony were struck for similar reasons as the portions were deemed cumulative,[36] and beyond the scope of rehearing.[37] Similar to Dr. Rose's testimony, Dr. Kalt's testimony is clearly responsive to the Companies' Proposal. While Dr. Rose references some portions of his previous testimony, he does so only to demonstrate that the Companies' new modified Rider RRS raises the same concerns as the original Rider RRS and results in significant costs to ratepayers.[38] Additionally, Dr. Kalt's references to the Companies' price projections that are included in the Companies' Proposal directly address the unreasonableness of using such outdated and unreliable projections as fixed proxy costs in the Modified Rider RRS calculations.[39] Therefore, Dr. Kalt's rehearing testimony is not cumulative or beyond the scope of rehearing and was improperly stricken from the record.

Specific to Staff witness Dr. Choueiki, the attorney examiners struck approximately two sentences from Dr. Choueiki's rehearing testimony related to concerns that the Companies' Proposal raises preemption issues and interferes with FERC's exclusive jurisdiction over

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[35] Id. at 6 and 8-9.

[36] Tr. Vol. V at 1115-1116 and 1127.

[37] Id. at 1136 and 1149.

[38] P3/EPSA Ex. 17 at 6-9 and 14 (Kalt Rehearing).

[39] Id. at 13-14 and 16-18.

wholesale power markets.[40] While preemption arguments are generally constitutional issues not addressed by the Commission, the context of these statements within Dr. Choueiki's testimony is appropriate and should not be stricken. Dr Choueiki's testimony includes rationale regarding why Staff does not support the Companies' Proposal, including a concern that the Proposal could have FERC implications.[41] It is reasonable for Dr. Choueiki to include this information in his testimony and it is relevant information for the Commission to consider in reviewing the Companies' Proposal. Therefore, portions of Dr. Choueiki's testimony should not have been stricken.

As previously noted, it is critical that the Commission be afforded the opportunity to review all relevant testimony and information in reaching its decision in this rehearing proceeding. The exclusion of approximately 55 pages of testimony of such high probative value is prejudicial to intervening parties and the impartial adjudication of this entire proceeding. Therefore, the Commission should find that the attorney examiners erred in striking the testimony included above and consider all of the testimony in making its decision in this proceeding.

B. The Companies' Proposal is unlawful and unreasonable and should be rejected.

In its Application for Rehearing, the Companies propose a modified Rider RRS, which they state will preserve the benefits of the Stipulated ESP IV.[42] Similar to the original Rider RRS, under the Companies' Proposal, costs will be netted against revenues and the difference will be passed through to customers through the Modified Rider RRS.[43] The Companies

[40] Tr. Vol. V at 1264-1265.

[41] Staff Ex. 15 at 14 and 16 (Choueiki Rehearing).

[42] Companies' Application for Rehearing at 16.

[43] Tr. Vol. I at 54.

propose, however, new calculations of the costs and revenues under Modified Rider RRS based on previous estimated projections that will now remain fixed and serve as proxies within the new calculation.

Specifically, the previous estimated costs of the three generating units subject to the original PPA and included in the original Rider RRS calculation will now serve as fixed charges under the Companies' Proposal.[44] The energy-related credits will be based on the estimated annual generation output of the three generating units subject to the original PPA and included in the original Rider RRS calculation, now serving as fixed energy output, and trued-up quarterly with actual energy revenues based on actual average locational marginal prices at the AEP-Dayton Hub.[45] The capacity-related credits will be based on the estimated capacity output of the three generating units subject to the original PPA and included in the original Rider RRS calculation, now serving as fixed capacity output, multiplied by the applicable capacity price for generation in the PJM ATSI zone for the delivery year.[46] As admitted by Companies' witness Mikkelsen, the projected market revenues included in the calculation and now serving as fixed revenues are based on energy and capacity price forecasts from the Companies' original application, filed in August of 2014.[47]

The Companies continue to project a net charge or cost to customers during the first three years of the Modified Rider RRS,[48] totaling at least $259 million in 2017 and 2018 as well as an additional charge in 2016.[49] As stated by OMAEG witness, Thomas Lause, while "[r]emoval of

[44] Companies Ex. 197 at 8 (Mikkelsen Rehearing).

[45] Id. at 7-8; Tr. Vol. I at 55-56.

[46] Companies Ex. 197 at 8 (Mikkelsen Rehearing); Tr. Vol. I at 56-57.

[47] Tr. Vol. I at 55.

[48] Id. at 53; Sierra Club Ex. 89.

[49] Tr. Vol. I at 53-57; Sierra Club Ex. 89.

the PPA, which was the basis for the costs and revenues associated with Rider RRS, alters the nature of the original Rider RRS and the Stipulated ESP IV approved by the Commission, [] the Modified Rider RRS Proposal has the same negative impact on customers."[50]

1. The Modified Rider RRS would unlawfully collect transition revenues from customers or its equivalent under R.C. 4928.38.

As Staff witness Choueiki recognized, "The Modified Rider RRS, though no longer comprised of a PPA between the Companies and FES, *is at its core a generation rider*."[51] A generation rider such as the Modified Rider RRS "may potentially be construed as a transition charge."[52] Collection of transition charges is unlawful and should be denied.

Under Section 4928.38, Revised Code, an electric utility may receive transition revenues from the starting date of competitive retail electric service through the end of the market development period, which expired on December 31, 2005. Section 4928.38, Revised Code, provides that once the utility's market development period ends, it "shall be fully on its own in the competitive market." Section 4928.39, Revised Code, defines transition costs as costs unrecoverable in a competitive environment. The Companies' Proposal is attempting to collect revenue associated with its generation plants in violation of Ohio law. The Supreme Court of Ohio recently overturned two Commission decisions that authorized the receipt of unlawful transition revenue or its equivalent through the establishment of non-bypassable riders.[53] Similarly, Modified Rider RRS would unlawfully collect the equivalent of transition revenues and must be rejected.

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[50] OMAEG Ex. 37 at 7 (Lause Rehearing).

[51] Staff Ex. 15 at 14, 16 (Choueiki Rehearing).

[52] Id.

[53] *In re Application of Columbus S. Power Co.*, 144 Ohio St.3d 1, 2016-Ohio-1608 at ¶ 22; *In re Application of Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Slip Opinion No. 2016-Ohio-3490 at ¶ 1.

2. The Companies' Proposal is not appropriate for inclusion in an ESP under Section 4928.143(B)(2)(d), Revised Code, as it fails to have the effect of stabilizing or providing certainty regarding retail electric service.

As previously stated, Section 4928.143(B)(2)(d), Revised Code, states that an ESP may include, among other items, "terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service . . . as would have the effect of stabilizing or providing certainty regarding retail electric service."[54] The Companies assert that the Modified Rider RRS will still have the effect of "stabilizing or providing certainty" of retail electric service as the rider still operates to offset the market (e.g., when market prices are low, customers will see a charge and when market prices are high, customers will see a credit).[55] This assertion overstates the purported stability that will result from the Companies' Proposal and ignores the risks to and negative impacts on customers.

The Companies' Proposal does not enhance price stability or certainty. For customers who take service from a competitive retail electric service (CRES) provider, an additional charge or credit actually disrupts the certainty that customers, especially large commercial customers such as manufacturers, have obtained through shopping for their retail electric service in the competitive market.[56] For example, if a customer is on a fixed-rate contract, Rider RRS will destabilize their otherwise fixed rate, creating added uncertainty. An additional charge does not decrease volatility in electricity pricing; rather it increases manufacturing costs and prohibits companies from taking advantage of competitive market rates.[57] Increased electricity costs then have the domino effect of increasing manufacturing costs, which will either be paid by

[54] Section 4928.143(B)(2)(d), Revised Code.

[55] Companies Ex. 197 at 10 (Mikkelsen Rehearing); Tr. Vol. I at 126.

[56] OMAEG Ex. 37 at 11 (Lause Rehearing).

[57] Id. at 11-12.

consumers or cause companies to become less competitive in the global marketplace and potentially go out of business.[58] Moreover, increased electricity prices and lack of stability regarding electricity prices will impact the business investment decisions of companies looking to locate in Ohio, possibly deterring them from locating in a state with higher electricity costs than their competitors.[59]

The Companies also assert that the modified Rider RRS operates as a hedge against increasing market prices and creates less risk for customers as charges and credits are now based on fixed numbers.[60] However, as Ms. Mikkelsen testified, there is no guarantee that customers will receive a credit in any given year under the Companies' Proposal.[61] Thus, the Companies' Proposal does create a significant risk for customers. In reality, the Companies' proposed hedge operates by requiring customers to pay costs associated with Modified Rider RRS through 2018 (at least), potentially pay costs associated with administering the rider, and then hope to receive some money back from the Companies through a bill reduction later in the eight-year period of the Companies' Proposal.[62] The Companies' Proposal places an additional charge and an additional risk on customers based on the Companies' stale and outdated forecasts of costs and revenues[63] and without any evidence or customer survey indicating that customers want a rate stabilizing mechanism, such as the Companies' Proposal.[64] This construct does not produce a hedge for customers, does not increase price stability or certainty, and does not mitigate any risk for customers.

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[58] Id. at 12.

[59] Id. at 12; Tr. Vol. II at 335-337.

[60] Companies Ex. 197 at 6 (Mikkelsen Rehearing).

[61] Tr. Vol. I at 133.

[62] Tr. Vol. II at 334.

[63] RESA Ex. 7 at 5 (Crockett-McNew Rehearing).

[64] OCC/NOAC Ex. 1 at 33 (Wilson Rehearing).

Rate fluctuations, even when allegedly offset by a mechanism such as the Modified Rider RRS, do not create price stability for customers. As constructed, the Companies' Proposal will cause customers' rates to change on an annual basis – it will in no way stabilize rates or create rate certainty. This lack of stability and certainty will impede the ability of companies, including manufacturers, to make sound business decisions regarding pricing and will thwart their ability to take advantage of competitive market pricing established by the Ohio General Assembly in Senate Bill 3.[65] The overall effect is a negative impact for customers and for the economic development of the state of Ohio as a whole.[66] Therefore, the Companies' Proposal does not meet the requirements of Section 4928.143(B)(2)(d), Revised Code, and is impermissible as included in the Companies' ESP.

3. The Companies' Proposal is a virtual PPA that provides an unlawful subsidy to FirstEnergy Corp. and its unregulated affiliates.

While the underlying PPA of the original Rider RRS has been removed from the Modified Rider RRS, the Companies' Proposal effectively substitutes the PPA, which included its unregulated affiliate FirstEnergy Solutions (FES), with a virtual PPA in order to calculate the modified Rider RRS.[67] Additionally, while the costs collected from customers under the Companies' Proposal will not directly flow to FES, the Companies, FES, and other generation affiliates share the same corporate parent, FirstEnergy Corp. The Companies have admitted that the Companies' Proposal includes no prohibition against paying dividends to FirstEnergy Corp., and corporate tax law does not prohibit a movement of funds among subsidiaries of a company

[65] RESA Ex. 7 at 12-13 (Crockett-McNew Rehearing).

[66] Id.

[67] OMAEG Ex. 37 at 7 (Lause Rehearing).

given all of the FirstEnergy Corp. entities are in the same tax jurisdiction.[68] Further, the Companies have not provided a guarantee that costs collected from customers under the Companies' Proposal will not be used to provide dividends to FirstEnergy Corp. or prohibit FirstEnergy Corp. from moving monies to FES.[69] Rather, once dividends are paid to FirstEnergy Corp., the parent company can then use the money it receives to pay dividends to shareholders, invest in subsidiaries, or for whatever purpose it chooses.[70] The Companies have failed to establish any rules or safeguards to ensure that monies received from customers under the modified Rider RRS would not flow to FES.[71] Staff also recognized that funds provided to the Companies will have the result of providing financial support to the parent company and its unregulated subsidiaries (including FES) such as in the form of credit support.[72]

As demonstrated by the recent action (April 28, 2016) of Moody's downgrading FirstEnergy Corp. and its subsidiaries' outlook from stable to negative, there is unease in the investment community regarding FirstEnergy Corp. and its subsidiaries' financial viability and whether it will maintain its investment grade credit rating status.[73] Rather than respond to these concerns after April 28, 2016 through cost savings measures, such as addressing advertising, headcounts, and executive compensation (including bonuses), curtailing or rationalizing capital spending, and reviewing the level of dividend payments to shareholders in order to strengthen

[68] Id. at 8 and Attachment TNL-4; Tr. Vol. I at 74-75.

[69] Tr. Vol. I at 75.

[70] Tr. Vol. I at 158.

[71] OMAEG Ex. 37, Attachment TNL-4 (Lause Rehearing).

[72] Buckley Rehearing at 2; Choueiki Rehearing at 15.

[73] Direct Ex. 1; OMAEG Ex. 37 at 9 (Lause Rehearing).

investor ratings, FirstEnergy Corp. (through the Companies) have sought an unlawful subsidy and corporate bailout from its customers in the form of the modified Rider RRS.[74]

The Companies have provided no quantification of the magnitude of the adverse impacts of a downgrade in investment grade credit rating, such as the specific increase in borrowing costs or the degree of increase in interest rates.[75] Further, even if FirstEnergy Corp. and its subsidiaries were downgraded to a notch below investment grade by the credit rating agencies, there is no guarantee such an action would actually result in increased borrowing costs.[76] The subsidy only adds increased costs for customers and Ohio businesses who are forced to pay additional and unnecessary charges associated with their electricity costs.

Therefore, the virtual PPA established by the Companies through the Modified Rider RRS essentially creates a situation in which the Companies, and FirstEnergy Corp., can act in any manner they choose from a business perspective, such as engaging in risky financial business decisions, purchasing lines of businesses and assets that they desire, , engaging in poor management and operations of those assets, and avoiding cost cutting measures, as they will ask for and receive a subsidy in the form of a corporate bailout from customers under the Companies' Proposal. This result is both unlawful and harmful to customers.

4. The Companies' Proposal will harm economic development in the state of Ohio.

Although the Companies assert that the Modified Rider RRS will promote economic development by mitigating volatility and creating more certainty in electricity pricing,[77] in reality

[74] OMAEG Ex. 37 at 10 (Lause Rehearing).

[75] Tr. Vol. I at 102-105.

[76] Tr. Vol. V at 1073-1074.

[77] Companies Ex. 197 at 12 (Mikkelsen Rehearing); Tr. Vol. I at 198.

the Companies' Proposal has the exact opposite effect. As explained by OMAEG witness Lause, manufacturers review their cost structure, including the cost of energy, in making their business investment decisions.[78] This cost analysis includes an assessment of both current costs, as well as projected costs, which can be largely impacted by a variable cost such as energy.[79] For manufacturers who make decisions every day regarding where to allocate production and invest resources, operational costs, such as electricity, are a "significant consideration."[80] The Companies' Proposal creates uncertainty in electricity pricing as the overall price of electricity will still rise and fall with the market, although with an additional charge from the Modified Rider RRS.[81] Manufacturers, and other businesses, will have to account for this price instability in making their business investment decisions, which actually harms economic development for the state of Ohio.

Moreover, "[a]n additional charge to electricity prices will create increased costs for manufacturing companies, which will either be borne by customers or cause the companies to go out of business."[82] Not only will the loss of manufacturing companies from the state of Ohio be detrimental to the state's economy and job retention efforts, but it will also deter new business investment in the state as new companies may choose other locations for their businesses due to the high, above-market electricity costs in the state of Ohio.[83]

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[78] Tr. Vol. V at 1060-1061.

[79] Id.

[80] OMAEG Ex. 37 at 11 (Lause Rehearing).

[81] Id. at 13.

[82] Id. at 12.

[83] Id.

As previously explained, the Companies' Proposal prevents manufacturers from taking advantage of the markets and entering into cost-competitive contracts with CRES providers.[84] It is imperative that companies located in Ohio, including manufacturers, remain competitive in the global economic market. In order to maintain this competitiveness, companies must be provided the opportunity to obtain and utilize low operational costs, such as low natural gas and electricity prices in the competitive market. The Companies' claim that Modified Rider RRS will contribute to economic development even when it results in an additional charge to customers that increases their overall electricity bill is nonsensical.[85] An increase in operational costs makes companies *less* competitive in the global economy. Additionally it has a negative effect on economic development for both current companies within the state as well as companies looking to invest in the state.

5. The Companies fail to demonstrate that the modified Rider RRS, combined with the other provisions of the Companies' ESP IV, is more favorable in the aggregate than an MRO as required by Section 4928.14(C)(1), Revised Code.

As previously stated, before approving an ESP, the Commission must determine that the ESP is more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO ("the MRO test").[86] The Commission has considered both quantitative and qualitative factors in determining whether a proposed ESP is more favorable in the aggregate

[84] Id. at 11-12.

[85] Tr. Vol. I at 198.

[86] Section 4928.143(C)(1), Revised Code; see also *In the Matter of the Application of the Dayton Power and Light Company for Approval of its Electric Security Plan,* Case No. 12-426-EL-SSO, Opinion and Order at 48 (September 4, 2013).

than the expected results of an ESP.[87] Further, the Companies have the burden of demonstrating that their proposed ESP is, in fact, more favorable than an MRO.[88]

The Companies assert that the Modified Rider RRS does not impact the Companies' analysis relied upon by the Commission in its Opinion and Order regarding the Stipulated ESP IV, which found that the Stipulated ESP IV was more favorable quantitatively than an MRO.[89] Further, the Companies' assert that the qualitative benefits of the Stipulated ESP IV are "enhanced under the modified Rider RRS."[90] These assertions are inaccurate.

The Companies continue to rely on projections and forecasts from 2014 in the calculation of charges and credits under Modified Rider RRS. This reliance on stale and outdated data impacts the ESP v. MRO test as the Companies' asserted net benefits of the Modified Rider RRS and the Stipulated ESP IV ($561 million in net credits to customers)[91] are overstated based on more recent, updated forecasts and known capacity pricing.

Further, the removal of FES and the continued operation of the Sammis and Davis-Besse power plants from the Modified Rider RRS calculation removes critical quantifiable and qualitative public interest benefits that the Companies previously testified to in this proceeding and the Commission relied upon when issuing its decision, which alters the total benefits under

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[87] *See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. §4928.143in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order at 55-57 (July 18, 2012); *IN the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4328.143, Ohio Rev. Code, in the Form of an Electric Security Plan, et al.*, Case No. 11-346-EL-SSO, et al., Opinion and Order at 73-77 (August 8, 2012); *In the Matter of the Application of The Dayton Power and Light Company For Approval of its Electric Security Plan, et al.*, Case No. 12-426-EL-SSO, et al., Opinion and Order at 48-52 (September 4, 2013).

[88] Section 4928.143(C)(1), Revised Code; see also *In the Matter of the Application of the Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 12-426-EL-SSO, Opinion and Order at 48 (September 4, 2013).

[89] Companies Ex. 197 at 18-19 (Mikkelsen Rehearing).

[90] Id. at 19.

[91] Id. at 163.

the ESP v. MRO test.[92] The Companies previously indicated that by preserving the Sammis and Davis-Besse power plant, ratepayers would obtain benefits such as increased reliability of generation, supply diversity, avoidance of transmission costs, economic development, and job retention at the power plants.[93] All of these alleged public interest benefits are lost under Modified Rider RRS, as acknowledged by Staff witness Choueiki when he stated in his testimony that the Companies' Modified Rider RRS "eliminates two important benefits that the Commission highlighted in its Opinion and Order" as the Modified Rider RRS is not tied to specific power plants located in the state. [94]

Additionally, the removal of FES from the Modified Rider RRS calculation makes the Modified Rider RRS no longer financially neutral for the Companies.[95] Under the Modified Rider RRS construct, money collected from ratepayers would flow to the Companies, which would result in either excess profits, or a loss of $561 million based on net credits to customers, as predicted by the Companies.[96] Either way, the result is that the Modified Rider RRS is no longer revenue neutral and has a significant impact on the ESP v. MRO test.

More importantly, a potential loss of $561 million for the Companies begs the question of whether the Companies' Proposal is even financially feasible and how the Companies will be able to sustain operations with the reduction in revenue that would be required in order to fund customer credits (if they ever occur) through bill credits, let alone invest in SmartGrid, Volt/VAR, and distribution automation. Companies witness Mikkelsen testified that the Companies will receive cash from operations and sources of revenues from other provisions

[92] OCC Ex. 44 at 7 (Kahal Rehearing);March 31 Order at 87-88, 114-120.

[93] OCC Ex. 44 at 12; March 31 Order at 87-88..

[94] Staff Ex. 15 at 13 (Choueiki Rehearing).

[95] OCC Ex. 44 at 13 (Kahal Rehearing).

[96] Tr. Vol. I at 163.

within the Stipulated ESP IV such as shared savings, lost distribution revenue, Rider DCR, and Rider AMI, which could then be used to fund the credits to customers.[97] All of these cash generating mechanisms would initially originate from customers.[98] Thus, the Companies' projected $561 million in credits to customers over the term of the modified Rider RRS will be funded by customer payments from other riders and mechanisms. Further, the Companies' Proposal includes no prohibition from seeking recovery of monies from ratepayers to fund the purported credits under Modified Rider RRS through the filing of an emergency rate relief case, a self complaint, or Staff approval of an exception to the Companies' distribution rate freeze as part of its Stipulated ESP IV.[99] This is hardly a benefit to customers.

Finally, the Companies' assert that the Modified Rider RRS includes other qualitative benefits such as promoting rate stability, promoting competition among competitive providers, and modernizing the distribution grid.[100] As previously discussed, the Companies' Proposal does not promote rate stability and in fact "interferes with and disrupts the certainty that [customers] have derived from shopping for generation service."[101] An additional charge to electricity service only serves to increase the operational costs for manufacturing companies, and other customers, making the price of their electric service less predictable and making them less competitive with other businesses outside of Ohio.

The modified Rider RRS also does not promote competition among competitive providers as asserted by the Companies. The passage of Senate Bill 3 by the General Assembly resulted in a decisive shift away from traditional cost-of-service principles to a competitive-

[97] Id. at 80-85.

[98] Id. at 88.

[99] Id. at 81-82 and 200-208.

[100] Companies Ex. 197 at 19-20 (Mikkelsen Rehearing).

[101] OMAEG Ex. 37 at 11 (Lause Rehearing).

market approach, which "provides for competition in the supply of electric generation services * * *"[102] and where CRES suppliers compete for business among customers. The Ohio manufacturing sector, along with other customers, has benefitted from competition given that the cost of electricity is a critical component in producing their products and making sound business decisions based on estimated costs.[103] The Companies' Proposal threatens to remove a portion of that competition from the marketplace by assessing an additional nonbypassable charge on all customers, shopping and nonshopping, under the guise of a hedge. Thus, customers who were able to take advantage of low market prices through fixed-price contracts from CRES suppliers will no longer fully benefit from competition in the marketplace.

Moreover, the entire foundation of the Companies' Proposal, which is an unlawful subsidy to the Companies and FirstEnergy Corp., in no way promotes competition in the state of Ohio. As previously stated, the construct of the Modified Rider RRS includes no safeguards or protections against the Companies using revenues collected from customers to pay dividends to FirstEnergy Corp. and then use those monies to support FES or another unregulated affiliate.[104] Thus, customers are being forced to subsidize one company within the state of Ohio (FirstEnergy Corp.) through a "cash infusion"[105] to the detriment of their own electricity costs and their own businesses. Subsidizing one utility or its unregulated generator affiliate over others does not promote competition in the marketplace.

The Companies' Proposal thwarts the market-based construct established by the General Assembly in 1999. This has harmful effects for customers, including manufacturers, who are

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[102] *Migden-Ostrander v. Pub. Util. Comm.*. 102 Ohio St. 3d 451, 2004-Ohio-3924 at ¶2.

[103] OMAEG Ex. 37 at 12 (Lause Rehearing). Tr. Vol. V at 1060-1061.

[104] Tr. Vol. I at 158, 227 and 247; OMAEG Ex. 37, Attachment TNL-4 (Lause Rehearing).

[105] Dynegy Ex. 2 at 6 (Ellis Rehearing).

consistently looking for ways to remain competitive in the global economy. The Companies' Proposal would have the effect of moving "the entire state back to an era of uncompetitiveness."[106]

Additionally, the Companies' Proposal contains no firm commitment as it relates to modernizing the distribution grid.[107] Ms. Mikkelsen admitted that the Companies are unwilling to commit to spending a portion of the cash collected under the Modified Rider RRS on initiatives such as advanced metering infrastructure, distribution automation, Volt/Var controls, battery resources, and new Ohio renewable resources.[108] The Companies have failed to identify any specific projects to fund with revenues collected from ratepayers through Modified Rider RRS[109] and the Companies have wholly failed to provide any details or implementation strategies to enable the Commission or other stakeholders to understand any specific deployment strategies regarding grid modernization. The record is completely void of any evidence that the Companies have completed any analysis to demonstrate the benefits to customers from their specific grid modernization plans or any specific costs of implementing a plan. Therefore, including grid modernization as a qualitative benefit of the Companies' Proposal and the ESP IV is improper.

As the evidence demonstrates, the fundamental changes in the Companies' Proposal from the original Rider RRS to the Modified Rider RRS have a significant effect on the ESP v. MRO test. Based on the new calculation of the Modified Rider RRS and its related impacts on the previously asserted quantitative and qualitative benefits of the ESP IV, the Companies have

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[106] OMAEG Ex. 37, Attachment TNL-1 (Lause Rehearing).

[107] Companies Ex. 197 at 20 (Mikkelsen Rehearing).

[108] Tr. Vol. I at 63.

[109] Id. at 64.

failed to demonstrate that the Modified Rider RRS, in combination with all other provisions of the ESP IV is more favorable in the aggregate than an MRO.

C. Staff's alternative proposal to establish a new Rider DMR is unlawful and unreasonable and should be rejected.

In response to the Companies' Proposal contained in its Application for Rehearing and in Ms. Mikkelsen's rehearing testimony, Staff submitted testimony of three witnesses, proposing an alternative to the Companies' Proposal.[110] Staff's Proposal recommends a Distribution Modernization Rider (Rider DMR) as part of the Companies' ESP IV, which will provide credit support to FirstEnergy Corp., through the Companies, enabling them to receive more favorable terms when accessing the capital market, and in turn obtain funds to begin their distribution grid modernization initiatives.[111] Staff's purported rationale for establishing such rider is Section 4928.143(B)(2)(h), Revised Code.[112] Staff's Proposal is to establish Rider DMR to allow for recovery of $131 million annually from ratepayers for a period of three years, with the option of an extension for an additional two years if FirstEnergy Corp. has not improved its credit position.[113] Further, Staff proposes two conditions on Rider DMR: 1) FirstEnergy Corp. must keep its corporate headquarters and nexus of operations in Akron, Ohio for the duration of the Companies' ESP or the credit support provided to FirstEnergy Corp. will be subject to refund; and 2) if FirstEnergy Corp. or its subsidiaries were to experience a change in ownership, Rider DMR would end immediately.[114]

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[110] Staff Ex. 13 (Buckley Rehearing); Staff Ex. 14 (Turkenton Rehearing); Staff Ex. 15 (Choueiki Rehearing).

[111] Staff Ex. 13 at 2 (Buckley Rehearing); Staff Ex. 15 at 15 (Choueiki Rehearing).

[112] Staff Ex. 15 at 15 (Choueiki Rehearing).

[113] Staff Ex. 13 at 2 and 7 (Buckley Rehearing).

[114] Staff Ex. 13 at 7 (Buckley Rehearing).

Staff's recommended Rider DMR is another form of a corporate bailout of FirstEnergy Corp. and an unlawful subsidy of FirstEnergy Corp.'s unregulated operations by Ohio's customers.[115] Staff's Proposal is unjust and unreasonable, detrimental to economic development in the state of Ohio, and fails to satisfy the ESP v. MRO test.

1. Staff's Proposal is unlawful as it does not satisfy the statutory list for items that may be included in an ESP under Section 4928.143(B)(2)(h), Revised Code, given there is no requirement that the funds collected under the proposed Rider DMR be used for an item delineated in Section 4928.143(B)(2)(h), Revised Code.

Staff witness Dr. Choueiki references Section 4928.143(B)(2)(h), Revised Code, in his testimony in support of Staff's proposed Rider DMR.[116] As previously stated, Section 4928.143(B)(2)(h), Revised Code, states that an ESP may include, among other things, "provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility."[117] Specifically, Dr. Choueiki states that the credit support from customers will assist the Companies in receiving more favorable terms in the capital market, thereby "enabl[ing] the Companies to procure funds to jumpstart their distribution grid modernization initiatives."[118] However, Staff's Proposal is noticeably void of explicit requirements that the Companies use the revenue from Rider DMR to invest in distribution grid modernization.[119] Rider DMR is explicitly tied to credit support for FirstEnergy Corp.; it is not a provision regarding the Companies' distribution service or a provision "regarding distribution

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[115] OMAEG Ex. 37 at 3 (Lause Rebuttal); OCC Ex. 46 at 12 (Kahal Rebuttal).

[116] Staff Ex. 15 at 15 (Choueiki Rehearing).

[117] Section 4928.143(B)(2)(h), Revised Code.

[118] Id.

[119] Tr. Vol. II at 433; Tr. Vol. IV at 957.

infrastructure and modernization incentives for the electric distribution utility"[120] as the name suggests.

The record is clear that Staff's proposed Rider DMR contains no firm commitment or requirement that the Companies use the revenues from Rider DMR to invest in distribution grid modernization.[121] Moreover, Staff witness Buckley testified that it is unclear when the Companies will even begin investing in grid modernization, which raises the question of how long customers will be required to pay the Companies under Rider DMR before any grid modernization investment could or will be done.[122] Further, Staff testified that they will not add a condition or recommendation to their proposal that requires the Companies to make a certain amount or level of investment in grid modernization, nor is Staff aware of the proportion of the revenues collected through Rider DMR that will be spent on grid modernization.[123] Rider DMR operates primarily as a cash infusion for the Companies and FirstEnergy Corp., rather than a grid modernization incentive for the Companies as required under Section 4928.143(B)(2)(h), Revised Code.

Additionally, Staff acknowledges that the Companies filed a distribution grid modernization business plan pursuant to the Companies' Stipulated ESP IV well before Staff developed its proposed Rider DMR.[124] As such, the $131 million annually that Staff proposes the Companies collect from customers under Rider DMR is independent of any cost recovery the Companies may receive for grid modernization projects, such as those received under Rider AMI

[120] Section 4928.143(B)(2)(h), Revised Code.

[121] See e.g., Tr. Vol. II at 433; Tr. Vol. III at 584; Tr. Vol. III at 702-703; Tr. Vol. III at 957-958; Tr. Vol. IV at 1001.

[122] Tr. Vol. III at 644-645.

[123] Id. at 647-648; Tr. Vol. IV at 969.

[124] *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 (February 29, 2016); Tr. Vol. IV at 1004.

per the distribution grid modernization business plan and Rider DCR through the Stipulated ESP IV.[125] As explained by Staff witness Turkenton, money collected as cost recovery for grid modernization projects is for plant infrastructure, while monies collected through Rider DMR is for credit support.[126] Thus, although Rider DMR is named a distribution modernization rider, the rider is actually a form of credit support for FirstEnergy Corp. to access the capital markets and then "hope that [FirstEnergy Corp.] modernize[s] the grid."[127] The Companies have made no commitment to actually spend the revenues received from Rider DMR on grid modernization.[128] Therefore, the core purpose of Rider DMR is credit support for an unregulated entity, FirstEnergy Corp., with a "hope" that investment in grid modernization is a byproduct that may occur at some point in the future by the Companies.[129] The mere name of the rider is insufficient to demonstrate compliance with the statute. Rather, the purpose of the rider must be consistent with the statutory provision and purpose.[130] Rider DMR fails to satisfy the statutory requirements for inclusion as a provision within the Companies' ESP and must be rejected.

2. Rider DMR is a corporate bailout and unlawful subsidy to FirstEnergy Corp.

Although Staff's proposed Rider DMR differs from the Companies' Modified Rider RRS in the amount to be collected from customers and calculation of the rider, the impact on customers is the same; Rider DMR collects a minimum of $393 million from customers over

[125] Tr. Vol. II at 460; Tr. Vol. III at 691.

[126] Tr. Vol. II at 473-474.

[127] Id. at 426 and 429.

[128] Id. at 472.

[129] Id. at 426.

[130] See *Young v. Ohio Dept. of Human Serv.*, 76 Ohio St.3d 547,551, 668 N.E.2d 908 (1996) (stating the Court "prefer[s] a standard analysis that requires [them] to determine the intent . . . rather than to attribute intent on the basis of a magic words rule.); See also, *Bay Mechanism & Elec. Corp v. Testa*, 133 Ohio State.3d 423, 2012-Ohio-4312, ¶ 22-23 (holding that the "absence of magical words is not dispositive" and the presence of specific words does not create an entitlement.)

three years in order to provide credit support to FirstEnergy Corp. At its core, Rider DMR is nothing more than a "corporate bailout of FirstEnergy Corp. in the form of a subsidy by Ohio consumers."[131]

The primary purpose of Rider DMR is to provide credit support for FirstEnergy Corp. to maintain investment grade credit rating[132] and allow FirstEnergy Corp. adequate time to implement a long-term financial solution.[133] The credit support is not for the provision of a distribution service.[134] Rather, as stated by Dr. Choueiki, Rider DMR is designed to provide a "cash infusion" to the Companies and FirstEnergy Corp. to begin grid modernization initiatives.[135] There is no mandate, however, that the cash collected from customers be used for such initiatives[136] and no requirement that actual investment occur.[137] Thus, Rider DMR functions as an unlawful subsidy for FirstEnergy Corp. and increases costs for manufacturers who are forced to pay additional charges for their electric service, thereby impeding their ability to remain competitive in the global economy.[138] "By approving this corporate bailout, the Commission would, in essence, be picking winners and losers of businesses and industries operating in Ohio," subsidizing one company (FirstEnergy Corp.) over all others.[139]

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[131] OMAEG Ex. 39 at 4 (Lause Rebuttal).

[132] Staff Ex. 13 at 2 (Buckley Rehearing).

[133] Id. at 6.

[134] Tr. Vol. III at 611.

[135] Tr. Vol. IV at 956-957.

[136] Id. at 957.

[137] OMAEG Ex. 39 at 8 (Lause Rebuttal).

[138] Id. at 6.

[139] Id.

While Staff asserts that Rider DMR is necessary to improve the credit rating of FirstEnergy Corp. in order to allow favorable access to the capital markets,[140] the evidence demonstrates that such a corporate bailout is not necessary. Currently, FirstEnergy Corp. is rated Baa3 by Moody's rating services and BBB- by Standard and Poor's rating services, which is the final notch of investment grade rating.[141] The Toledo Edison Company and Cleveland Electric Illuminating Company are one notch above non-investment grade and the Ohio Edison Company is three notches above non-investment grade.[142] Thus, neither FirstEnergy Corp. nor the Companies are currently at a non-investment grade credit rating. The Companies' credit grade ratings in particular are adequate to issue new debt on reasonable terms.[143] Moreover, as testified by OMAEG witness Lause, even if FirstEnergy Corp. were downgraded to a notch below investment grade, there is no guarantee that such a movement will increase borrowing costs for the Companies or FirstEnergy Corp.[144] The Companies and Staff have failed to provide any evidence to show that an extraordinary measure, such as a subsidy in the form of Rider DMR is needed to address FirstEnergy Corp., or its subsidiaries', credit ratings.[145]

Further, there is no guarantee that Rider DMR will *prevent* a downgrade of FirstEnergy Corp or the Companies' credit rating.[146] There is also no guarantee that Rider DMR will enable FirstEnergy Corp. to achieve Staff's proposed cash flow operations (CFO) to debt level of 14.5 percent or a funds from operations (FFO) to debt level of at least 12 percent.[147] Based on the 22

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[140] Staff Ex. 15 at 15 (Choueiki Rehearing).

[141] Staff Ex. 13 at 5 (Buckley Rehearing).

[142] Tr. Vol. I at 185-186; OCC Ex. 46 at 10 (Kahal Rebuttal).

[143] Staff Ex. 13 at 6 (Buckley Rehearing).

[144] Tr. Vol. V at 1073-1074.

[145] Staff Ex. 13 at 6 (Buckley Rehearing).

[146] Tr. Vol. II at 576.

[147] Tr. Vol. III at 531-534

percent allocation figure determined by Staff witness Buckley,[148] in order for Rider DMR to provide the desired credit support for FirstEnergy Corp., other subsidiaries of FirstEnergy Corp. need to provide the remaining 78 percent in credit support.[149] There is no evidence to show that other subsidiaries of FirstEnergy Corp. in other jurisdictions will in fact provide this similar cash flow support to FirstEnergy Corp.[150] Thus, Rider DMR may have no impact at all on maintaining or improving FirstEnergy Corp.'s credit grade rating.

Rather than receive a costly corporate bailout from Ohio ratepayers, FirstEnergy Corp. should be required to make fiscally responsible financial business decisions like all other public companies to address key areas such as cutting advertising costs or executive compensation, curtailing or rationalizing capital spending, and reviewing the level of dividend payments to shareholders.[151] FirstEnergy Corp. management actions such as strengthening the balance sheet and exploring ring fencing are viable options that should be pursued by the Companies and FirstEnergy Corp. rather than pursuing a utility customer subsidy through Rider DMR.[152]

The only guarantee regarding Rider DMR is that customers will be charged an additional $393 million, at a minimum, in credit support for FirstEnergy Corp. over a three year period, which could be extended two more years. This will cause manufacturers to become less competitive in the global market as operational costs, such as electricity, will rise, forcing manufacturers to charge customers more or absorb additional costs.[153] Further, Rider DMR establishes bad public policy and sends the message to new businesses looking to locate in Ohio

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[148] Staff Ex. 13 at 3 (Buckley Rehearing).

[149] OCC Ex. 49 at 3 (Kahal Rebuttal).

[150] Id. at 5 and 8.

[151] OMAEG Ex. 39 at 9-10 (Lause Rebuttal).

[152] OCC Ex. 46 at 13 (Kahal Rebuttal).

[153] OMAEG Ex. 39 at 11 (Lause Rebuttal).

and businesses looking to expand in Ohio that the state will unlawfully subsidize one company over another.[154] Moreover, a subsidy such as Rider DMR creates no incentive for FirstEnergy Corp. to take fiscally responsible actions as they can rely on receiving a corporate bailout from the Commission, paid for by customers.[155] As stated by OCC witness Kahal, "it is unfair to hold utility customers accountable for those FE Corp policy decisions and force them to subsidize shareholders and FE Corp's unregulated operations."[156] Maintaining and improving credit ratings are management's responsibility,[157] and should not fall on the shoulders of ratepayers in the form of a customer-funded subsidy.

3. Rider DMR does not advance state policy under Section 4928.02, Revised Code.

As articulated in Section 4928.02, Revised Code, the policy of the state of Ohio includes the following:

> (C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;
>
> (D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, and implementation of advanced metering infrastructure.[158]

Staff's stated belief that the credit support provided under Rider DMR will enable the Companies to procure funds to invest in modernizing the distribution grid, increase the diversity of supplies

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[154] Id.

[155] Id. at 9.

[156] OCC Ex. 46 at 4 (Kahal Rebuttal).

[157] Id. at 6.

[158] Section 4928.02(C) and (D), Revised Code.

and suppliers, and encourage the offerings of innovative services,[159] fails to consider the negative impacts of Rider DMR on captive customers who will be forced to pay an additional $131 million annually.

In reality, the corporate bailout of FirstEnergy Corp. under Rider DMR will diminish diversity of supply and limit competitive retail generation choices for customers in the long-term.[160] As constructed, Rider DMR will deter new entry into the generation supply market as other generating companies may see that the Commission is providing large amounts of money to support FirstEnergy Corp. and its subsidiaries.[161] Choosing to assist one generation supplier over another through a customer-funded rider does not promote competition or diversity of supply. Moreover, the Commission should not be providing a competitive advantage to certain generators over others.[162]

Further, as previously demonstrated, Staff's Proposal includes no firm commitment or requirement that the Companies actually spend money on distribution grid modernization[163] or that the money received from Rider DMR be marked for grid modernization initiatives.[164] Staff is only requesting that the Commission direct the Companies to begin grid modernization initiatives.[165] As explained by Dr. Choueiki, Rider DMR is necessary to provide credit support to the Companies and FirstEnergy Corp., not to modernize the grid.[166] Staff merely hopes that

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[159] Staff Ex. 15 at 14-15 (Choueiki Rehearing); Staff Ex. 14 at 4 (Turkenton Rehearing).

[160] OMAEG Ex. 39 at 7 (Lause Rebuttal).

[161] Id.

[162] Id.

[163] See e.g., Tr. Vol. II at 433; Tr. Vol. III at 584; Tr. Vol. III at 702-703; Tr. Vol. III at 957-958; Tr. Vol. IV at 1001.

[164] Tr. Vol. III at 702-703.

[165] Tr. Vol. IV at 957-958.

[166] Id. at 960.

the Companies will modernize the grid after they receive adequate credit support to access the capital markets.[167] This fails to promote or advance the policy of the state to modernize the distribution grid, and thus, should be rejected.

4. Rider DMR does not promote economic development in the state of Ohio.

Staff's proposed Rider DMR includes a condition that FirstEnergy Corp. maintain its headquarters and nexus of operations in Akron, Ohio for the duration of the ESP.[168] Staff witness Buckley states that this condition in Rider DMR enhances economic development through job retention, additional spending by employees, and preserves local property taxes.[169] However, Staff has not conducted any analysis quantifying the effect of keeping the corporate headquarters and nexus of operations in Akron, Ohio.[170] Further, Staff has not conducted an analysis regarding the impact of Rider DMR on customer bills and local businesses as a result of increased costs collected under the rider.[171]

Rather, Rider DMR and the customer-funded subsidy that results from Rider DMR, has a much greater negative impact on the state of Ohio. The additional charge to customers of $131 million annually creates increased costs for customers, including manufacturers. These additional costs would have to either be borne by customers or cause manufacturers to close or move their businesses out of the state if they cannot recover their increased costs.[172] Additionally, the increased electric costs deters new business entry and development in the state as businesses may choose to locate elsewhere due to high electric costs and the subsidy provided

[167] Tr. Vol. II at 426.

[168] Staff Ex. 13 at 7 (Buckley Rehearing); Tr. Vol. III at 578.

[169] Tr. Vol. III at 679-680.

[170] Id. at 694.

[171] Id. at 694-695.

[172] OMAEG Ex. 39 at 8 (Lause Rebuttal).

to one company.[173] Rider DMR prevents all customers, including businesses and electricity-intensive manufacturers, from taking advantage of the competitive market for generation services.[174]

Additionally, the Companies and FirstEnergy Corp. have already made commitments to retain their headquarters in Akron, Ohio. FirstEnergy Corp. has already signed an eight and a half-year lease extension on its downtown office headquarters to keep the office location through June 2025.[175] The Companies also agreed to retain the corporate headquarters and nexus of operations in Akron, Ohio in the Stipulated ESP IV for the duration of Rider RRS,[176] which the Commission relied upon.[177] Companies witness Mikkelsen specifically stated that the only changes to the original Rider RRS were on page 5 of her rehearing testimony and removal of the commitment was not identified. Companies witness Mikkelsen also stated that all other terms of the Stipulated ESP IV approved and relied upon by the Commission (except as modified by the Companies' Proposal) remain in effect and unchanged: "The Companies will remain obligated to fulfill the remaining terms, conditions, and commitments set forth in the Stipulated ESP IV, as approved."[178]

Therefore, although maintaining the FirstEnergy Corp. corporate headquarters and nexus of operations in Akron may assist with economic development in the city of Akron, the overall negative impact on the state of Ohio far outweighs any potential benefits.

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[173] Id.

[174] Id.

[175] Dynegy Ex. 1 at 11 (Ellis Direct).

[176] Companies Ex. 154 at 17 (Third Supp. Stip).

[177] Opinion and Order at 96-97.

[178] Companies Ex. 197 at 1-2, 5-6 and 7 (Mikkelsen Rehearing).

5. Rider DMR, combined with the other provisions of the Companies' ESP IV, is not more favorable in the aggregate than an MRO as required by Section 4928.143(C)(1), Revised Code.

As previously explained, before approving an ESP, the Commission must determine that the ESP is more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO.[179] Similar to the Companies' Modified Rider RRS proposal, Staff's proposed Rider DMR, when combined with other provisions of the Commission approved ESP IV, also fails the ESP v. MRO test.

Staff witness Turkenton states that under a quantitative analysis, the additional $131 million per year in costs to customers would have no impact on the ESP v. MRO test as equivalent revenues could be recovered through either an MRO application under Section 4928.142(D), Revised Code, or an ESP application under Section 4928.143(B(2)(h), Revised Code.[180] Thus, the ESP v. MRO test relied upon by Staff includes only the $51.1 million in quantitative benefits identified by the Commission in its Opinion and Order regarding the other provisions of the Companies' ESP IV and does not include any additional quantitative value for Rider DMR.[181] This analysis fails to consider a number of factors that could impact the ESP v. MRO test.

Pursuant to Section 4928.142(D), Revised Code, "the commission may adjust the electric distribution utility's most recent standard service offer price by such just and reasonable amount that the commission determines necessary to address any emergency that threatens the utility's

[179] Section 4928.143(C)(1), Revised Code; see also *In the Matter of the Application of the Dayton Power and Light Company for Approval of its Electric Security Plan,* Case No. 12-426-EL-SSO, Opinion and Order at 48 (September 4, 2013).

[180] Staff Ex. 14 at 3-4 (Turkenton Rehearing).

[181] Tr. Vol. II at 456; March 31 Order at 118-119.

financial integrity . . ."[182] Further, the provision states that the electric distribution utility has the burden of proof to demonstrate that an adjustment to the most recent standard service offer price is proper.[183] However, there is no evidence to suggest, and Staff is unaware of whether there currently exists, an "emergency" that threatens the financial integrity of the Companies or FirstEnergy Corp. that would permit the recovery of equivalent revenues under an MRO.[184] Given that no emergency exists, such revenues could not be recovered under an MRO; therefore, the costs would be higher under an ESP and an ESP would not be more favorable than an MRO under the statutory test.[185] Additionally, while Staff's proposal includes the potential for a two-year extension of Rider DMR if FirstEnergy Corp. has not improved its credit position after the initial three years of the rider,[186] the proposal includes no monetary limit on the amount of revenue that the Companies could request for the additional two years.[187] Given that these additional undetermined costs would be included as costs in the ESP v. MRO test,[188] it is inaccurate to assume that the costs of Rider DMR under an ESP would be the same as the costs of Rider DMR under an MRO. Therefore, Staff's assertion that quantitatively, Rider DMR does not impact the ESP v. MRO test is wrong.

Staff witness Turkenton also states that from a qualitative analysis, Staff agrees with the qualitative benefits described in the Commission's Opinion and Order regarding other provisions of the Companies' ESP IV.[189] Additionally, Staff believes that Rider DMR provides additional

[182] Section 4928.142(D)(4), Revised Code.

[183] Id.

[184] Tr. Vol. II at 450.

[185] Id. at 447.

[186] Staff Ex. 13 at 7 (Buckley Rehearing).

[187] Tr. Vol. IV at 977.

[188] Tr. Vol. II at 453.

[189] Staff Ex. 14 at 4 (Turkenton Rehearing); Tr. Vol. II at 448-449.

qualitative benefits including modernization of the distribution grid and increased diversity of supply and suppliers per Sections 4928.02(C) and (D), Revised Code.[190] As previously discussed, revenues received from customers under Rider DMR are not required to be used for distribution grid modernization.[191] Additionally, according to Dr. Choueiki, Rider DMR addresses the necessity to provide credit support to FirstEnergy Corp., "not to modernizing the grid."[192] "Forcing customers to provide over $393 million to the Companies in the hopes that they will then invest in grid modernization initiatives provides no guarantee that the actual investment will occur."[193] Therefore, if the Commission chooses not to require the Companies to invest in grid modernization, or if the Companies choose to spend revenues collected under Rider DMR for another purpose as is their prerogative according to Mr. Buckley,[194] this purported qualitative benefit of Rider DMR no longer exists.

Moreover, the purported qualitative benefit regarding diversity of supply and suppliers is also overstated. As previously discussed, the credit support provided under Rider DMR results in an unlawful subsidy and corporate bailout of FirstEnergy Corp. This will actually have the effect of diminishing diversity of supply and suppliers as other generation suppliers may be deterred from entering the market when they see the competitive advantage provided to FirstEnergy Corp. and its competitive subsidiaries.[195] Contrary to Staff's assertion, this is not a

[190] Staff Ex. 14 at 4 (Turkenton Rehearing).

[191] See e.g., Tr. Vol. II at 433; Tr. Vol. III at 584; Tr. Vol. III at 702-703; Tr. Vol. III at 957-958; Tr. Vol. IV at 1001.

[192] Tr. Vol. IV at 960.

[193] OMAEG Ex. 39 at 8 (Lause Rebuttal).

[194] Tr. Vol. III at 584.

[195] OMAEG Ex. 39 at 8 (Lause Rebuttal).

qualitative benefit provided by Rider DMR and actually harms economic development within the state of Ohio.[196]

D. The Companies' modifications to Rider DMR are unreasonable and unlawful and should be rejected.

In response to Staff's proposed Rider DMR, the Companies developed an alternative proposal, which modifies the calculations of Rider DMR to result in an annual cost to customers of $558 million to the Companies for credit support.[197] Additionally, the Companies propose that customers pay an additional annual amount, not to exceed the economic development value outlined by Companies witness Murley of $568 million, associated with maintaining the corporate headquarters and nexus of operations in Akron, Ohio.[198] The Companies also propose that the term of Rider DMR be extended to the eight-year term of the Companies' approved ESP IV and that Rider DMR be implemented immediately, without a requirement that Companies concurrently implement grid modernization.[199] If the full economic development value of $568 million is required to be paid by customers in addition to the $558 million for credit support for the remaining term of the Companies' eight year ESP IV, customers could be exposed to a potential cost of almost $9 billion. These proposed modifications are unreasonable and unlawful and the Commission should reject the Companies' modifications to Staff's proposed Rider DMR in its entirety.

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[196] Id. at 8-9.

[197] Companies Ex. 206 at 14 (Mikkelsen Rebuttal and Surrebuttal).

[198] Id.; Companies Ex. 205 at 4 (Murley Rebuttal).

[199] Companies Ex. 206 at 15-16 (Mikkelsen Rebuttal and Surrebuttal).

1. The Companies' proposed modifications to Staff's calculation of Rider DMR are unreasonable as the Companies have failed to demonstrate that credit support is lawful or necessary.

In its proposed modifications to Rider DMR, the Companies make four changes to Mr. Buckley's calculation including:

- Altering the CFO to Debt goal from 14.5% to 15%
- Changing the calculation of Rider DMR revenue based on a five-year average to a three-year average
- Grossing-up the Rider DMR annual revenue for taxes
- Modifying the allocation factor from 22% to 40%. [200]

As a result of these adjustments, the Companies estimate an annual cost to customers of $558 million.[201] These alterations, as well as the change in the term of Rider DMR from three years to eight years,[202] are unreasonable and result in a significant charge to Ohio ratepayers, who will bear the burden of providing credit support to FirstEnergy Corp. with no guarantee of benefits in the form of grid modernization.

Ms. Mikkelsen states that given Rider DMR will generate more revenue for the Companies, and in turn more income taxes, Rider DMR should be grossed-up for income taxes based on the average tax rate for the Companies of 36 percent.[203] However, in her testimony, Ms. Mikkelsen admits that she did not consider a tax rate other than the 36 percent, which was provided in a Rider DCR update filing from July 1, 2015 and is unaware whether the proposed tax rate accounts for reductions in taxable income that may arise from claiming bonus

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[200] Id. at 9.

[201] Id. at 12.

[202] Id. at 15.

[203] Id. at 11.

depreciation.[204] Thus, the Companies seek to collect an additional 36 percent from customers to account for income taxes when their tax rate and actual tax exposure may be significantly lower due to bonus depreciation. This is an unreasonable request in both the amount being requested as well as the lack of diligence to determine whether the tax percentage being requested is accurate for the Companies' business and whether the Companies actually pay that level of income taxes.

The Companies also propose to significantly increase the allocation factor of CFO to debt shortfall determined by Mr. Buckley and assigned to the Companies from 22 percent to 40 percent. This is wholly unreasonable. Ms. Mikkelsen criticizes Mr. Buckley's use of operating revenues to calculate the allocation factor because the high level of shopping in the Companies' service territory reduces its operating revenues compared to the other subsidiaries of FirstEnergy Corp.[205] Rather, Ms. Mikkslesen argues that a 40 percent allocation figure better reflects the "significance of the Companies to FirstEnergy Corp."[206] and is consistent with the level of credit support the Companies have historically provided to FirstEnergy Corp.[207] This allocation figure does not consider, however, the CFO to debt shortfall assigned to the other subsidiaries of FirstEnergy Corp.[208] Additionally, it nearly doubles the cost of Rider DMR to Ohio ratepayers with little rationale or basis for such a significant increase.

The Companies also propose to modify Rider DMR by extending the term of the rider from Staff's proposed three years to the eight-year term of the ESP IV.[209] This request is

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[204] Tr. Vol. X at 1799-1800.

[205] Companies Ex. 206 at 12 (Mikkelsen Rebuttal and Surrebuttal); Tr. Vol. X at 1719.

[206] Companies Ex. 206 at 13 (Mikkelsen Rebuttal and Surrebuttal)

[207] Tr. Vol. X at 1629-1630.

[208] Id. at 1630.

[209] Companies Ex. 206 at 15 (Mikkelsen Rebuttal and Surrebuttal).

unreasonable and will only serve to hold Ohio ratepayers captive to this rider for an additional five years.

Specifically, Ms. Mikkelsen's assertions that improving credit ratings takes time and that FirstEnergy Corp. has been addressing its financial situation for over three years is unsupported by any specific evidence. Ms. Mikkelsen is admittedly unaware of whether FirstEnergy Corp. executives and management have continued to receive bonuses or taken a reduction in pay in the past three years.[210] Nor is Ms. Mikkelsen aware of whether FirstEnergy Corp.'s short-term and long-term bonus incentive programs or pay reductions will continue in 2016 or beyond.[211] Rather, it appears that FirstEnergy Corp. has failed to take the necessary actions to manage its business and is now seeking a corporate bailout from ratepayers in the form of a credit support rider that could cost customers over one billion dollars annually.

The Companies also request that while Rider DMR be implemented immediately upon Commission approval, the investment in grid modernization initiatives not be simultaneously required.[212] Thus, the Companies seek to begin collecting significant revenues from customers immediately, but do not want to immediately begin investing in the grid modernization initiatives that they purport will benefit customers and that is the stated legal basis for establishment of Rider DMR. This completely undermines Staff's objective under Rider DMR to support grid modernization and develop one of the nation's most intelligent distribution grids.[213]

In addition to the unreasonableness of the Companies' modifications to Rider DMR, the Companies have also failed to demonstrate that credit support for FirstEnergy Corp. is lawful or

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[210] Tr. Vol. X at 1631.

[211] Id. at 1736-1737.

[212] Companies Ex. 206 at 16 (Mikkelsen Rebuttal and Surrebuttal).

[213] Tr. Vol. IV at 960; Staff Ex. 15 at 16 (Choueiki Rehearing).

necessary. As previously indicated, FirstEnergy Corp. is currently at a Baa3 rating by Moody's and a BBB- by Standard & Poor's, which are both above non-investment grade rating.[214] Moreover, the Companies have investment grade ratings as well.[215] As such, there is no immediate need to provide the Companies or FirstEnergy Corp. with such a substantial amount of credit support. There is no evidence that adverse impacts, such as those listed by witness Mikkelsen in her testimony, will actually occur if FirstEnergy Corp. drops below investment grade.[216] In fact, OMAEG witness Lause testified that he was personally aware of a company that does not have an investment grade rating but can borrow money at what is equivalent to investment grade rating.[217]

There is also no guarantee that the Companies' modifications to Rider DMR will result in achieving its purpose of enabling the Companies to access capital on more favorable terms.[218] The Companies propose a 40 percent allocation figure, which means constituents from other jurisdictions would need to provide an additional 60 percent in credit support to meet the 15 percent CFO to debt ratio and provide adequate credit support to FirstEnergy Corp. However, the Companies are unaware of whether FirstEnergy Corp. intends to seek a commitment from other constituents to achieve the targeted CFO to debt ratio.[219] Moreover, while the Companies cite to examples of what they deem "aggressive corporate-wide initiatives" and cases in other jurisdictions related to a variety of ratemaking matters, all of these initiatives and cases commenced prior to the decision by Moody's to downgrade FirstEnergy Corp. and FES to

[214] Staff Ex. 13 at 5 (Buckley Rehearing).

[215] Tr. Vol. I at 185-186; OCC Ex. 46 at 10 (Kahal Rebuttal).

[216] Companies Ex. 206 at 7-8 (Mikkelsen Rebuttal and Surrebuttal).

[217] Tr. Vol. at 1073-1074.

[218] Companies Ex. 206 at 8 (Mikkelsen Rebuttal and Surrebuttal).

[219] Tr. Vol. X at 1738.

negative.[220] As previously stated, Ms. Mikkelsen is unaware of whether FirstEnergy Corp. management has continued to receive bonuses, the amount of those bonuses, or whether management has taken any pay reductions in the past three years, which would all aid in improving FirstEnergy Corp.'s financial situation.[221] There is also no indication of any announcements or initiatives to sell unprofitable business units of FirstEnergy Corp. Thus, it is still speculative whether Rider DMR would actually assist in providing adequate credit support to FirstEnergy Corp. Otherwise, Ohio ratepayers are merely providing the Companies and FirstEnergy Corp. with upwards of one billion dollars annually with no return in the form of economic development or other benefits.

2. The Companies' purported economic development benefits associated with maintaining the corporate headquarters in Akron, Ohio are overstated.

Not only do the Companies propose to increase the revenues collected from customers under Rider DMR for credit support from $131 million annually for three years to $558 million annually for eight years (an additional amount of approximately $4 billion), the Companies also seek to include an additional annual amount in Rider DMR associated with maintaining the FirstEnergy corporate headquarters and nexus of operations in Akron, Ohio.[222] This amount could be an additional cost of up to $568 million per year based on an economic impact analysis conducted by Companies witness Murley.[223] The economic impact analysis conducted by Ms. Murley grossly overstates the impact of maintaining the FirstEnergy Corp. corporate

[220] Companies Ex. 206 at 17-18 (Mikkelsen Rebuttal and Surrebuttal); Tr. Vol. X at 1793-1796; Direct Ex. 1.

[221] Tr. Vol. X at 1631.

[222] Companies Ex. 206 at 14-15 (Mikkelsen Rebuttal and Surrebuttal).

[223] Id.; Companies Ex. 205 at 4 (Murley Rebuttal).

headquarters in Akron, Ohio and fails to account for the negative economic development consequences of such significant costs for customers.

While Ms. Murley acknowledges that economic development includes not only maintaining the FirstEnergy headquarters in Akron, Ohio, but also attracting new companies and expanding existing companies, her analysis and conclusions focus only on the economic and revenue impacts of the headquarters in Akron, Ohio.[224] She did not conduct an analysis of the impact of Rider DMR on the six other Fortune 500 companies located in northeast Ohio; she did not conduct an analysis on the impact of Rider DMR on other manufacturers in the state of Ohio; she did not conduct an analysis on whether the increased costs to customers will impact their ability to invest additional dollars in the state of Ohio; she did not conduct an analysis on whether the increased costs to customers will impact their ability to expand their companies in the state of Ohio; she did not conduct an analysis on whether the increased costs to customers will impact their ability to fund other community projects in the state of Ohio; and she did not conduct an analysis on whether the increased costs to customers will affect whether new companies decide to locate in Ohio.[225] Ms. Murley's analysis does not address any costs to customers associated with Rider DMR, such as lost revenues associated with paying for the credit support portion of the rider or lost opportunity costs,[226] and her analysis does not include a cost-benefit analysis of maintaining the corporate headquarters in Akron, Ohio.[227] Thus, her conclusions fail to consider whether the costs of maintaining the corporate headquarters and

[224] Tr. Vol. IX at 1492.

[225] Id. at 1539-1540.

[226] Id. at 1487-1488.

[227] Id. at 1500-1502.

nexus of operations in Akron, Ohio outweigh the benefits. Given the many deficiencies in her analysis, her conclusions carry little weight.

The methodology used by Ms. Murley to reach her conclusions is incomplete. The IMPLAN modeling used by Ms. Murley to reach her conclusions includes a multitude of hypothetical assumptions related to particular goods and services that the headquarters buys, the amount of output per employee, the amount of personal income per employee, different industries included in the vendor industries, and many others.[228] These assumptions are then inputted into the model to generate various conclusions, which are then relied upon by the Companies in their testimony. Ms. Murley admittedly did not take any independent steps to verify conclusory figures generated by the IMPLAN assumptions with actual figures even though she acknowledged that there is usually a difference between the assumed estimates and the actual results.[229] For example, she did not verify whether actual vendor purchases total $110 million; whether actual vendor purchases support 756 jobs; or whether actual vendor purchases generate $39.8 million in personal income.[230] Thus, her conclusions are based on a number of speculative assumptions that lack any independent verification.

The Companies and Ms. Murley criticize Staff's Rider DMR for failing to include a value associated with the benefit of maintaining the corporate headquarters of FirstEnergy and nexus of operations in Akron, Ohio.[231] However, in assessing what they purport to be significant economic benefits associated with this condition, they ignore important facts related to the corporate headquarters in their analysis. For example, as noted above, the Third Supplemental Stipulation includes a provision that FirstEnergy will maintain its corporate headquarters and

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[228] Id. at 1521-1522.

[229] Id. at 1523.

[230] Id. at 1481-1484.

[231] Id. at 1464; Companies Ex. 206 at 13 (Mikkelsen Rebuttal and Surrebuttal).

nexus of operations in Akron, Ohio for the duration of Rider RRS.[232] Additionally, FirstEnergy Corp. signed an eight and a half-year lease extension on its downtown office headquarters to keep the office location through June 2025.[233] Both Ms. Mikkelsen and Ms. Murley further stated that they have not been informed that FirstEnergy may move its corporate headquarters and are unaware of the likelihood of FirstEnergy Corp. moving its corporate headquarters out of Akron, Ohio.[234] Thus, Ms. Murley's conclusion that the headquarters creates a total economic impact of $568 million on the Ohio economy[235] does not align with the fact that the Third Supplemental Stipulation included an identical provision, with no associated economic development cost to customers. Moreover, it does not align with the fact that FirstEnergy has already signed a lease to maintain its corporate headquarters in Akron, Ohio through 2025.

Therefore, Staff's proposed modifications to Rider DMR, including the costs associated with maintaining the corporate headquarters and nexus of operation in Akron, Ohio, has a much greater negative impact on the state of Ohio than any potential economic development benefits. An additional charge to customers will only increase productivity costs, thereby impeding the ability of current businesses located in Ohio from expanding and deterring new businesses from locating in Ohio. While maintaining FirstEnergy Corp. corporate headquarters in Akron, Ohio may benefit the city of Akron, the detrimental economic impact on the remainder of the state far outweighs any potential benefits.

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[232] Companies Ex. 154 at 17 (Third Supp. Stip).

[233] Dynegy Ex. 1 at 11 (Ellis Direct).

[234] Tr. Vol. IX at 1467-1468; Tr. Vol. X at 1603-1604.

[235] Companies Ex. 205 at 4 (Murley Rebuttal).

3. The Companies' modifications to Rider DMR, combined with the other provisions of the Companies' ESP IV, are not more favorable in the aggregate than an MRO as required by Section 4928.143(C)(1), Revised Code.

Similar to the Companies' Modified Rider RRS proposal and Staff's proposed Rider DMR, the Companies' proposed modifications to Rider DMR, when combined with other provisions of the Commission-approved ESP IV, also fails the ESP v. MRO test.

Companies witness Mikkelsen states that, similar to Staff witness Turkenton, Rider DMR (including the Companies' modifications) is quantitatively neutral for purposes of the ESP v. MRO test given equivalent revenues could be recovered through a similar mechanism to Rider DMR under an MRO.[236] Further, Ms. Mikkelsen posits that the Companies' modifications to Rider DMR present an additional quantitative benefit associated with the economic development condition of maintaining FirstEnergy Corp.'s corporate headquarters and nexus of operations in Akron, Ohio.[237] Therefore, she concludes, the ESP is more favorable in the aggregate than an MRO by at least $51.1 million from shareholder funding, which was recognized in the Commission's Opinion and Order.[238] Ms. Mikkelsen's analysis is flawed as it does not consider relevant statutory requirements regarding what can be included in an MRO, as well as the negative impact of such significant increased costs to customers under the Companies' proposed modifications to Rider DMR.

As previously discussed, Section 4928.142, Revised Code, provides that the Commission may adjust an electric distribution utility's standard service offer price in order to address any emergency that threatens the utility's financial integrity and the electric distribution utility has

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[236] Companies Ex. 206 at 19 (Mikkelsen Rebuttal and Surrebuttal).

[237] Id. at 20.

[238] Id.

the burden to prove that an adjustment is proper.[239] Staff is unaware whether an emergency threatening FirstEnergy Corp.'s financial integrity, as defined within the statutory requirements, currently exists[240] and the Companies have likewise failed to provide any evidence that an emergency exists. Absent this showing, equivalent revenues could not be recovered under an MRO and costs would be higher under an ESP in the ESP v. MRO test. Further, Ms. Mikkelsen reasons that grid modernization expenses should be included as an expense under an MRO because the Companies are *likely* to spend money on grid modernization initiatives under an MRO.[241] However, the Companies have made no firm commitments to invest in grid distribution modernization[242] and have actually requested that they be permitted to begin collecting revenues under Rider DMR prior to commencing any grid modernization initiatives.[243] This request makes it clear that the Companies are more concerned with receiving credit support than modernizing the distribution grid. Thus, the Companies' analysis of the ESP v. MRO test is based on a number of assumptions and potential costs under an MRO, which are unsupported by facts or other evidence.

Additionally, although the Companies state that the qualitative benefits of the Commission-approved ESP IV are not impacted by Rider DMR, Rider DMR does not promote rate stability and certainty or predictably-priced service; does not address the AEP Ohio Order factors; and does not protect against rate volatility and price fluctuations.[244] These benefits were all included as qualitative benefits under the ESP v. MRO test in the Commission's March 31,

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[239] Section 4928.142(D)(4), Revised Code.

[240] Tr. Vol. II at 450.

[241] Tr. Vol. X at 1741.

[242] Id. at 1608.

[243] Companies Ex. 206 at 16 (Mikkelsen Rebuttal and Surrebuttal).

[244] Tr. Vol. X at 1741-1742.

2016 Opinion and Order, finding that the ESP IV was more favorable in the aggregate than an MRO.[245]

Therefore, the Companies have failed to demonstrate that the provisions of the Commission-approved ESP IV, including Rider DMR as modified by the Companies, will be more favorable in the aggregate than an MRO. As the evidence demonstrates, an additional charge to customers of up to $1.126 billion annually is not more favorable to customers.

E. The Commission should reject the Companies' Proposal, Staff's proposed Rider DMR, and the Companies' proposed modifications to Rider DMR.

As presented, the three aforementioned proposals submitted by the Companies and Staff are nothing more than unreasonable and unlawful corporate bailouts provided to FirstEnergy Corp., who has failed to operate in a fiscally responsible manner, thus placing it in the financial condition it finds itself today.[246] When Ohio restructured its energy market to a deregulated market-based approach under Senate Bill 3 in 1999, utility companies became wholly responsible for their competitive positions in the marketplace and customers were removed from the position of protecting utility companies from competitive-generation-market risks or losses.[247]

The proposals put forward by the Companies and Staff hold customers captive to an unlawful subsidy, either through the proposed Modified Rider RRS, Rider DMR, or the Companies' proposed modifications to Rider DMR. Regardless of the proposal, the result is the same: customers are forced to pay substantial monies to the Companies with no justification, purpose or rationale.[248] Moreover, the proposals result in significant harm to the economic

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[245] March 31 Order at 118-120.

[246] OMAEG Ex. 39 at 9 (Lause Rebuttal).

[247] OCC Ex. 45 at 7 (Rose Rehearing).

[248] OMAEG Ex. 37 at 13 (Lause Rehearing).

development of the state of Ohio given the detrimental impacts on manufacturing companies, which will ultimately harm customers and deter new investment in the state.[249] This is bad public policy and does not benefit the public interest.[250]

The three proposals do not meet the statutory requirements for an ESP as described in Section 4928.143, Revised Code, and, when combined with the other provisions of the Companies approved ESP IV, are not more favorable in the aggregate than an MRO under Section 4928.143(C)(1), Revised Code. Therefore, the Companies' Proposal, Staff's Proposal, and the Companies' proposed modifications to Staff's Proposal are all unreasonable and unlawful and should be rejected by the Commission.

IV. CONCLUSION

The Companies' Proposal, Staff's Proposal, and the Companies' modifications to Staff's Proposal will all burden distribution customers with additional charges, fail to satisfy the ESP v. MRO test, undermine the Commission's mission to safeguard Ohio's competitiveness in the global economy, are unlawful and unreasonable, and are not in the public interest.

The Commission should vigorously deny all of these proposals as they could result in costing customers billions of dollars. Moreover, by offering credit support to FirstEnergy Corp. through the proposed riders, the Commission would effectively be "picking winners and losers of businesses and industries operating in Ohio," which sends an improper message to businesses currently located in the state as well as to businesses who are considering starting operations in

[249] Id.; OMAEG Ex. 39 at 11 (Lause Rebuttal).

[250] OMAEG Ex. 37 at 4 (Lause Rehearing).

the state.[251] Allowing the competitive market to drive economic development creates a more appropriate outcome for all entities and customers involved.

Finally, the Companies' proposed modifications to Staff's Proposal, which includes an additional charge for economic development based on maintaining the FirstEnergy corporate headquarters and nexus of operations in Akron, Ohio is merely an attempt to charge customers additional monies with no logical rationale or purpose. Again, if adopted by the Commission, customers would be forced to support one company, through both credit support and purported economic development benefits, to the detriment of all other companies within the state of Ohio. This is hardly just, reasonable, or lawful and flies in the face of the state's policy to further competitive markets.

Therefore, the Commission should deny the Companies' Proposal, Staff's Proposal, and the Companies modifications to Staff's Proposal in their entirety. They are unreasonable and unlawful, and will harm customers and are not in the public interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on August 15, 2016.

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