FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter 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

REHEARING REPLY BRIEF OF THE CLEVELAND MUNICIPAL SCHOOL DISTRICT

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TABLE OF CONTENTS

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I. INTRODUCTION

As the Cleveland Municipal School District ("CMSD") sees it, the rehearing briefs submitted in this proceeding present the Commission with six possible outcomes: (1) The Commission could adopt FirstEnergy's[1] modified Rider RRS proposal (the "FE Proposal") as advocated by FirstEnergy witness Mikkelsen in testimony submitted in conjunction with the Companies' application for rehearing. (2) The Commission could replace Rider RRS with the distribution modernization rider ("Rider DMR") proposal recommended by the Staff witness Buckley. (3) The Commission could approve the modified version of the Staff's Rider DMR proposal offered by FirstEnergy as an alternative to the FE Proposal. (4) The Commission could reject the FE Proposal, the Staff's Rider DMR proposal, and First Energy's modified Rider DMR proposal and affirm ESP IV as previously approved, sans Rider RRS. (5) The Commission

[1] Consistent with the convention established by the presiding attorney examiner at the outset of the initial hearing in this matter, the applicants – Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison – are referred to herein collectively as "FirstEnergy," "FE," or the "Companies."

could dismiss the Companies' application for approval of an ESP-based SSO based on the legal arguments presented in the briefs of various intervenors. (6) The Commission could approve the FE Proposal, but make the Rider RRS hedging arrangement and opt-in arrangement for customers that elect to participate as advocated by CMSD in its rehearing brief.

CMSD intervened in this proceeding to oppose the Rider RRS arrangement proposed in the application, which, even under the most optimistic forecast presented in the case, would have cost CMSD hundreds of thousands of dollars over the early years of ESP IV. Although delinking the Rider RRS arrangement from an actual First Energy Solutions, Corp. ("FES") PPA renders moot CMSD's argument that the Commission was preempted from approving Rider RRS by the Federal Power Act, CMSD continues to believe that the Commission lacks the statutory authority to approve a rider of this type for those reasons stated in its briefs and application for rehearing. Moreover, the new FE Proposal remains problematic from a substantive standpoint because, like its predecessor, it would force CMSD to gamble the scarce taxpayer dollars that represent its sole source of revenue on a high-risk derivative of the type that it would be precluded by law from investing in on its own,[2] and would impair CMSD's ability to manage the risks of volatility and future increases in the market price of wholesale electricity in a manner that reflects CMSD's tolerance for risk and its need for certainty in connection with its budgeting process. Thus, CMSD opposes approval of the modified RRS arrangement embodied in the FE Proposal.

CMSD also opposes the second possible outcome – adoption of the Staff's Rider DMR proposal – which, by any measure, is a worse deal for customers than the FE Proposal as

[2] *See* R.C. 135.144(B) and (C).

explained by CMSD in its initial rehearing brief.[3] As demonstrated herein, nothing that Staff has to say in its rehearing brief should convince the Commission otherwise. The third possible outcome – approval of FirstEnergy's modified version of the Rider DMR – would cost ratepayers some $4.5 billion over the term of ESP IV.[4] This FirstEnergy proposal suffers from all the same infirmities that attend Staff's Rider DMR proposal and should be rejected by the Commission out of hand. Because CMSD has limited its participation in this proceeding to the Rider RRS issue, and, by extension, to the Staff's proposed alternative to Rider RRS, CMSD has no objection to the fourth possible outcome under which the Commission would simply reaffirm ESP IV as previously approved, but without Rider RRS. CMSD takes no position with respect to the fifth possible outcome – outright dismissal of the application – although CMSD does share the view that the rehearing process adopted by the Commission in this case was questionable from a legal standpoint.

This brings us to the outcome advocated by CMSD in its rehearing brief – approval of the FE Proposal, but making participation in the Rider RRS arrangement optional – which CMSD believes represents an effective solution for both the Companies and its customers. Although Rider RRS will not work for CMSD, there may well be customers that share the Commission's view that there is significant value in the Rider RRS hedging arrangement in terms of the rate stability it is intended to provide. Consistent with state policy of providing electric customers with options to meet their respective needs,[5] customers that perceive that the Rider RRS hedging

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[3] *See* CMSD Rehearing Brief, 13-14.

[4] Indeed, the total cost to ratepayers could exceed $9 billion if the Commission were to agree with FirstEnergy witness Mikkelsen's suggestion that Rider DMR should also recognize the economic value of maintaining FirstEnergy's headquarters in Akron. *See* Co. Ex. 206 (Mikkelsen Rehearing Rebuttal/Surrebuttal Testimony), 14-15.

[5] *See* R.C. 4928.02(B).

arrangement may provide them with a net financial benefit over the term of ESP IV should have the opportunity to participate in the arrangement, assuming, of course, that they are provided with the information necessary to make an informed choice.

Because the FE Proposal is no longer linked to an actual FES PPA, there are no actual costs that must be recovered through Rider RRS, which means that all the revenues derived from Rider RRS will be available to the Companies for the purposes described in Ms. Mikkelsen's testimony.[6] By the same token, because, under the FE Proposal, there will be no actual revenue stream from selling generation into the PJM market to support the projected customer credits in the out-years of ESP IV, making participating in the Rider RRS hedging arrangement optional will serve to reduce the anticipated revenue shortfall that FirstEnergy would otherwise experience when the Rider RRS rate converts from a charge to a credit. Thus, although it is reasonable to assume that an opt-in Rider RRS will generate less revenue for the Companies than a mandatory Rider RRS, this reduction in revenue should be more than offset by the reduction in the revenue shortfall associated with the projected customer credits in the out-years of ESP IV, assuming, of course, that the Commission's projection of the net benefit proves to be reasonably accurate.

Because an optional Rider RRS would substantially reduce the Companies' exposure to the projected revenue shortfall resulting from the customer credits, it is difficult to envision why FirstEnergy would oppose CMSD's proposal. FirstEnergy's perception of Rider RRS as an economic development tool will not be undercut, because any major customers that find the Rider RRS hedging arrangement attractive would have the option to participate. Moreover, the $256 million quantitative benefit that the Commission ascribed to the Rider RRS hedging

[6] *See* Co. Ex. 197 (Mikkelsen Rehearing Testimony), 12.

arrangement would remain the potential quantitative benefit of an opt-in Rider RRS hedging arrangement, which means that ESP IV would continue to pass the ESP v. MRO test by a substantial margin.

As noted above, the CMSD would not oppose an outcome under which the Commission would simply reaffirm ESP IV as previously approved, but without Rider RRS. However, because providing customers that see value in the Rider RRS arrangement the opportunity to opt in would come at no cost to customers that elect not to participate, CMSD believes that approval of an opt-in Rider RRS represents a better result. However, CMSD would again emphasize that, by proposing this alternative, CMSD does not waive or withdraw any of the grounds for rehearing set out in its application for rehearing.

FirstEnergy's rehearing brief is basically a summary of Ms. Mikkelsen's testimony, and does not raise anything that CMSD has not adequately addressed in its rehearing brief or in its earlier briefs in this matter. Thus, there is nothing in the FirstEnergy rehearing brief that requires an additional reply. The same cannot be said for the Staff's rehearing brief. Accordingly, this reply brief will focus on the arguments raised in the Staff's rehearing brief regarding its Rider DMR proposal, which, in essence, is a mechanism for providing the Companies with a $131 million distribution rate increase that FirstEnergy did not ask for and does not need.

II. ARGUMENT

A. NO PARTY TO THIS PROCEEDING ENDORSES THE STAFF'S RIDER DMR PROPOSAL.

As a review of the rehearing briefs will quickly show, with the exception of Staff itself, not one party to this proceeding supports Staff's Rider DMR proposal. Two intervenors – Industrial Energy Users-Ohio ("IEU-Ohio") and Nucor Steel Marion, Inc. ("Nucor") – take no position with respect to the Staff's Rider DMR proposal,[7] and a third, the Ohio Energy Group ("OEG"), takes no position "at this time."[8] Thus, although all three members of this trio of industrial representatives staked out positions with respect to the appropriate rate design for Rider DMR in the event it were to be approved by the Commission,[9] none of the three contends that Rider DMR should be approved. FirstEnergy and Material Sciences Corporation ("MSC") continue to endorse the FE Proposal on the ground that it provides more benefit to ratepayers than the Staff's alternative, and both oppose Rider DMR as formulated by Staff on the grounds that, among other things, the $131 million in annual revenue it would generate and the period it would remain in effect would be insufficient to accomplish the Staff's stated objective of shoring up the credit rating of the Companies' parent, FirstEnergy Corp.[10] Every other party submitting a rehearing brief in this matter, with the exception of Monitoring Analytics, LLC, which did not address the issue, roundly criticized Staff's Rider DMR proposal on numerous counts. Obviously, the Commission does not decide issues based on a vote of the parties, but it should certainly give the Commission pause, that, despite the wide variety of stakeholder interests represented by the parties to this proceeding, there is not a single party that endorses the Staff's proposal.

[7] *See* IEU-Ohio Rehearing Brief, 2; Nucor Rehearing Brief, 2. To be completely accurate, IEU-Ohio takes no position with respect to either FirstEnergy's modified Rider RRS proposal or the Staff's Rider DMR alternative, while Nucor endorses the FE Proposal.

[8] *See* OEG Rehearing Brief, 3. CMSD finds this to be a rather curious reservation in view of the fact that the proceeding is now in its final phase, at least at the Commission level

[9] *See* IEU-Ohio Rehearing Brief, 5-8; Nucor Rehearing Brief, 6-7; OEG Rehearing Brief, 5-9.

[10] FE Rehearing Brief, 3-4; MSC Rehearing Brief., 17, 21-25.

B. STAFF'S RIDER DMR PROPOSAL WILL NOT ACHIEVE STAFF'S STATED OBJECTIVE.

CMSD submits that, in considering the Staff's Rider DMR proposal, the first question the Commission should address is whether the Rider DMR proposal as formulated by Staff will accomplish Staff's stated objective of jumpstarting the Companies' grid modernization efforts. If the record will not support a finding that Rider DMR will achieve its intended result, the Commission should reject the Staff proposal out of hand and need not consider the numerous legal impediments to its approval cited by CMSD and other parties opposing Rider DMR.

In addressing this threshold question, it is critical that the Commission understand that the revenues generated by Rider DMR will not be used to fund the capital expenditures or expenses associated with grid modernization. Rather, as envisioned by Staff, the cash infusion resulting from Rider DMR is intended to preserve the investment-grade credit rating of First Energy Corp., an outcome that would enable the Companies to obtain the capital funding required for grid modernization at a lower cost than would result if FirstEnergy Corp.'s credit rating were to be downgraded to below investment grade.[11] Although no one would dispute that grid modernization is a worthy objective, the problem is that there is no assurance that the additional $131 million in annual revenues that Rider DMR is designed to generate will stave off a downgrade of FirstEnergy Corp's credit rating. Moreover, the evidence shows that approval of Rider DMR will not jumpstart the Companies' grid modernization efforts as posited by Staff witness Choueiki.[12] CMSD would offer the following observations.

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[11] *See* Staff Rehearing Brief, 6-7.

[12] Staff Ex. 15 (Choueiki Rehearing Testimony), 15.

First, as CMSD pointed out in its initial rehearing brief, the excerpt from the April 28, 2016 research update issued by Standard and Poor's Financial Service, LLC ("S&P") set out in Staff witness Buckley's testimony makes clear that the factor S&P regards as responsible for FirstEnergy Corp.'s precarious credit rating is not the financial performance of its regulated Ohio distribution subsidiaries.[13] Rather, S&P states that, in general, FirstEnergy Corp.'s credit outlook will improve "(i)f the company's business risk materially improves by reducing the size of its higher risk competitive business,"[14] *i.e.*, FirstEnergy Corp.'s unregulated generation subsidiaries. Similarly, in the January 20, 2016 credit opinion on FirstEnergy Corp. provided by Mr. Buckley, Moody's Investors Service ("Moody's") also cited its concern regarding a continued weakening of the merchant markets causing the company's financial ratios to fall below its investment-grade benchmarks.[15] Plainly, approval of Rider DMR will do nothing to address rating agency concerns regarding the threat to FirstEnergy Corp.'s creditworthiness posed by the business risks associated with its unregulated generation subsidiaries.

On brief, Staff, in response to testimony of OCC witness Kahal making this very point,[16] characterizes this objection to Rider DMR as "meaningless," and goes on to state that "(t)he financial situation is what it is and it creates an impediment to the important goal of bringing the distribution system of the companies into the twenty first century."[17] So, according to Staff, the Commission should exact from Ohio distribution ratepayers whatever revenue increase it takes to preserve the investment-grade rating of FirstEnergy Corp. in order to clear the way for grid

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[13] *See* Staff Ex. 13 (Buckley Rehearing Testimony), 5.

[14] *Id.*

[15] *See* Staff Ex. 13 (Buckley Rehearing Testimony), 4.

[16] *See* OCC Ex. 46 (Kahal Rehearing Rebuttal Testimony), 5.

[17] *See* Staff Rehearing Brief, 9.

modernization, notwithstanding that this Commission has no responsibility for – and no control over – the performance of the generation subsidiaries of FirstEnergy Corp. or the management decisions of their parent. This is nonsense. Far from being "meaningless," the objection to requiring Ohio distribution ratepayers to provide a cash infusion to the Companies via Rider DMR to ward off the threat to the investment-grade rating of FirstEnergy Corp. caused by the underperformance of its unregulated generation subsidiaries is not only material, but is supported by fundamental principles of fairness, not to mention Ohio law. Indeed, approval of Rider DMR would effectively place the Companies' distribution ratepayers back into the position of subsidizing FES, which, as the Commission well knows, was one of the principal objections to the previously-approved version of Rider RRS.

Second, not only does Staff ignore the role the business risk associated with FirstEnergy Corp.'s generation business plays in the FirstEnergy Corp. credit rating, but, with respect to financial risk, Staff has also failed to show that approval of its Rider DMR proposal will forestall a downgrade by Moody's resulting from a failure to meet its cash from operations ("CFO") pre-working capital to debt benchmark for an investment-grade rating.[18] As Staff specifically acknowledges on brief, the CFO-to-debt ratio "is a company-wide problem," and, as such, "it will require a company-wide effort to accomplish it."[19] Noting that Ohio ratepayers should only be called upon to provide a portion of the additional revenues necessary to prevent a downgrade by Moody's based on its CFO-to-debt metric, Staff cites the analysis presented by Mr. Buckley for the proposition that the $131 million that would be generated annually by Rider DMR

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[18] *See* Staff Ex. 13 (Buckley Rehearing Testimony), 4, citing Moody's January 20, 2016 credit opinion on FirstEnergy Corp.

[19] Staff Rehearing Brief, 7.

represents the Ohio customers' fair share.[20] Leaving aside that FirstEnergy takes issue with Mr. Buckley's methodology and asserts that the Ohio distribution ratepayers' fair share it actually \$558,[21] the fact remains that the Staff's objective of shoring up FirstEnergy Corp.'s credit rating cannot be achieved unless other FirstEnergy Corp. revenue-producing subsidiaries also contribute their proportional share in terms of new revenues. Plainly, this is also something over which this Commission has absolutely no control.

Although Staff agrees that other FirstEnergy Corp. entities must also generate proportional additional revenues if the objective of Rider DMR it so be achieved,[22] Staff, which presented no evidence as to how these additional revenues would be derived, points to the testimony of FirstEnergy witness Mikkelsen for the proposition that FirstEnergy Corp. "has taken and continues to a number of significant steps to improve the financial position of the entire enterprise."[23] However, the record is devoid of any evidence that would permit the Commission to quantify the aggregate impact of measures such as cutting the dividend, issuing new equity, and reducing jobs and employee benefits upon FirstEnergy Corp.'s CFO-to-debt ratio,[24] let alone evidence showing how these measures would play into the proportionate shares of FirstEnergy Corp. revenue-producing subsidiaries for purposes of determining if approval of

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[20] *See* Staff Rehearing Brief, 7.

[21] *See* Co. Ex. 206 (Mikkelsen Rehearing Rebuttal/Surrebuttal Testimony), 12.

[22] *See* Staff Rehearing Brief, 7.

[23] *See* Staff Rehearing Brief, 9-10, citing Co. Ex. 206 (Mikkelsen Rehearing Rebuttal/Surrebuttal Testimony), 17-18.

[24] Although Ms. Mikkelsen did testify that the dividend reduction equated to over \$300 million on an annual basis (*see* Co. Ex. 206 (Mikkelsen Rehearing Rebuttal/Surrebuttal Testimony), 17), it is important to note that this dividend reduction was made in November of 2013 (*see http://www.nasdaq.com/symbol/fe/dividend-history*), which is well over two years earlier than the January 2016 Moody's credit opinion on FirstEnergy Corp. that was the driver for the Staff's Rider DMR proposal. Plainly, the dividend cut did not result in a rating upgrade by Moody's.

Rider DMR will achieve Staff's stated objective. Moreover, although Staff cites rate proceedings initiated by FirstEnergy Corp. distribution companies in other states as a source of additional revenue that would contribute to those companies' fair share in terms of satisfying the Moody's CFO-to-debt benchmark,[25] to the extent these filings were designed to recognize certain specific costs, the resulting revenues would net out with the underlying expense (or would be temporary in nature). Thus, the revenues that would ultimately be generated as a result of these proceedings would have little or no effect on the CFO-to-debt ratio issue identified by Moody's. Further, with respect to the rate cases filed in other jurisdictions, only the portion of the requested increases that represent an increase in the dollar return on rate base would serve to provide incremental revenue that would figure into the CFO-to-debt metric. Thus, notwithstanding the pending rate proceedings alluded to by Staff, the only way these other FirstEnergy Corp. subsidiaries could contribute their proportionate share as a practical matter is if the commissions in these other jurisdictions were to approve a non-cost based revenue increase to provide a cash infusion of the type Staff recommends here. Otherwise, by Staff's own admission, Rider DMR cannot achieve its objective. CMSD would suggest that the chance that the state commissions in question would do this is nil.

Third, Staff implicitly recognizes that its Rider DMR proposal may not accomplish its stated objective in recommending the possibility of a two-year extension of Rider DMR's initial three-year term.[26] Although Staff suggests that three years should be "sufficient time to allow for the other additional steps to be taken" to solidify FirstEnergy Corp.'s rating,[27] it is far from

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[25] *Id.*

[26] *See* Staff Rehearing Brief, 7.

[27] *Id.*

clear what additional steps Staff has in mind. Is Staff recommending that FirstEnergy Corp. cut its dividend again, lay off more staff, and further reduce employee benefits? It that is the case, not only Staff should have stepped up and said so, but it should have quantified the savings associated with such measures. Or, perhaps, Staff is referring to actions by regulatory commissions in other states that would provide non-cost based cash infusions to other FirstEnergy Corp. revenue-producing subsidiaries. If it is the latter, Staff should not hold its breath. However, Staff's optimism notwithstanding, the fact is that, if Rider DMR does not accomplish its stated objective within the three-to-five year window proposed by Staff, the Companies' distribution customers will be out from $393 million to $655 million and will have absolutely nothing to show for it.

Finally, Staff does not have a coherent vision as to how its Rider DMR proposal would achieve its stated objective in actual practice. On brief, Staff recognizes that a grid modernization program "will require significant investment," and asserts that the weak financial position of the Companies and FirstEnergy Corp. will mean that "sufficient funds will not be available on reasonable terms to support the rollout of grid modernization infrastructure in the companies' service territories."[28] Thus, Staff sees Rider DMR as a mechanism to provide credit support that will "assist the Companies in receiving more favorable terms when accessing the capital market," which "in turn, will enable the Companies to procure funds to jumpstart their distribution grid modernization initiatives."[29] Thus, under this rationale, the FirstEnergy Corp. rating would have to be solidified before the Companies seek new debt financing to fund the grid modernization program if the financing is to be on more favorable terms. However, Staff

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[28] Staff Rehearing Brief, 6-7.

[29] Staff Ex. 15 (Choueiki Rehearing Testimony), 15.

witness Choueiki testified at hearing that the Commission should direct the Companies to embark on the grid modernization program and that Rider DMR should not take effect until grid modernization commences.[30] As FirstEnergy witness Mikkelsen pointed out, under this sequence, the Rider DMR revenues would have no effect on the cost of the new debt issued to fund grid modernization, which would defeat the purpose of Staff's Rider DMR proposal.[31] In so stating, CMSD in no way intends to suggest that Rider DMR would be acceptable if approved effective immediately. CMSD raises this point only to show that the Staff has not thought through the ramifications of its proposal, which will not achieve its stated objective in any event.

C. APPROVAL OF RIDER DMR WILL CAUSE ESP IV TO FAIL THE ESP V. MRO TEST ON BOTH A QUANTITATIVE AND QUALITATIVE BASIS.

1. Staff's Contention that Replacing Rider RRS with Rider DMR Will Not Cause ESP IV to Fail the ESP v. MRO Test Is Based upon a Flawed Analysis.

As CMSD anticipated,[32] Staff cites the testimony of witness Turkenton in arguing that approval of Rider DMR in lieu of the FE Proposal would still result in ESP IV passing the R.C. 4928.143(C) more-favorable-than-an MRO test on a quantitative basis.[33] However, rather than doing the math – an exercise that would require subtracting the $256 million quantitative benefit the Commission ascribed to Rider RRS and adding the $393 million to $655 million in costs associated with Rider DMR – Staff blithely claims that, because it would "advocate the equivalent of Rider DMR through either or both an MRO or base rate proceeding for these

[30] *See* Choueiki Cross, Reh. Tr. V, 1209-1211.

[31] *See* Co. Ex. 206 (Mikkelsen Rehearing Rebuttal/Surrebuttal Testimony), 16.

[32] *See* CMSD Rehearing Brief, 23.

[33] *See* Staff Rehearing Brief, 8.

companies, Rider DMR is essentially a wash between the two potential options."[34] Although Staff might advocate the equivalent of Rider DMR in either an MRO or a base rate proceeding, that most certainly does not mean that the Commission would have the authority to approve such a proposal in conjunction with an MRO-based SSO or a distribution rate case.

Ms. Turkenton opined that revenues equivalent to Rider DMR could potentially be recovered in the context of an MRO pursuant to R.C. 4928.142(D)(4),[35] which provides as follows:

> Additionally, 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 financial integrity or to ensure that the resulting revenue available to the utility for providing the standard service offer is not so inadequate as to result, directly or indirectly, in a taking of property without compensation pursuant to Section 19 of Article I, Ohio Constitution. The electric distribution utility has the burden of demonstrating that any adjustment to its most recent standard service offer price is proper in accordance with this division.

Although this provision authorizes the Commission to adjust the utility's SSO price by the amount the Commission determines to be necessary to address an emergency that threatens the utility's financial integrity or to ensure the SSO price is not so inadequate as to result in an unconstitutional taking of the utility's property, neither Ms. Turkenton nor any other witness in the proceeding presented an analysis showing that the Companies' financial integrity would be imperiled if FirstEnergy does not receive a $131 million annual increase in revenues.

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[34] *Id.*

[35] *See* Staff Ex. 14 (Turkenton Rehearing Testimony), 3-4. In its rehearing brief, CMSD incorrectly stated that Ms. Turkenton did not identify the statutory basis for her opinion that Rider DMR could potentially be included as a part of an MRO in her written testimony. Ms. Turkenton did, in fact, cite R.C. 4928.142(D)(4) in her prefiled testimony, and CMSD apologizes for this error.

In structuring the RC 4928.143(C)(1) ESP v. MRO test to require the Commission to determine that the ESP, "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," the legislature clearly contemplated that the "expected results" of an MRO would be those associated with a contemporaneous MRO. Thus, it is not enough to say that the Commission has the authority to adjust SSO rates under an MRO to address a threat to an electric distribution utility's financial integrity or prevent a taking of its property. For the costs associated with Rider DMR to be deemed a wash for purposes of the statutory ESP v. MRO test, there must be a showing in the ESP case that equivalent revenues would be authorized in a contemporaneous MRO to address a threat to the Companies' financial integrity or prevent a taking of its property.[36] As noted above, there has been no such showing in this case. In fact, FirstEnergy has committed to freeze its distribution rates for the eight-year term of the ESP and, with its modified Rider RRS proposal, which would provide no revenue stream to support customer credits in the out-years of ESP IV, FirstEnergy has agreed to absorb the net revenue shortfall of $256 million projected by the Commission, an amount that could be as much as $561 million if First Energy's forecast proves to be accurate.[37] Plainly, these are not the actions of an electric distribution utility whose financial integrity is threatened. Contrary to the Staff's claim that the $393 million to $655 million in customer revenues that would be generated by Rider DMR are a wash for purposes of the ESP v. MRO test, these revenues can only be placed in the ESP cost

[36] In this connection, CMSD would again point out that, as noted in its initial rehearing brief, the Commission's authority to adjust prices under an MRO is limited to the SSO offer price. *See* CMSD Rehearing Brief, 25. This would mean that if Staff were to "advocate the equivalent of Rider DMR" in an MRO, the revenues in question could only be collected from SSO customers.

[37] *See* Co. Ex. 197 (Mikkelsen Rehearing Testimony), 4.

column, an entry that will cause ESP IV to fail the R.C. 4928.143(C)(1) more-favorable-than-an-MRO test on a quantitative basis.

CMSD is not sure what to make of Staff's statement that, because it would also "advocate the equivalent of Rider DMR . . . through a base rate proceeding, Rider DMR is essentially a wash between the two options." The statutory test specifically requires the Commission, in evaluating an ESP, to compare the results of the ESP with the expected results under an MRO and makes no mention of a base rate proceeding. Thus, what Staff would advocate in a distribution rate case is irrelevant for purposes of the ESP v. MRO test.

Although not articulated by Staff in its rehearing brief, it may be that, in referring to advocating an equivalent to Rider DMR in a base rate proceeding, Staff is attempting to suggest that its Rider DMR proposal qualifies for inclusion in an ESP as a single-issue ratemaking mechanism, which is a permissible component of an ESP under R.C. 4928.143(B)(2)(h). As the name implies, single-issue ratemaking entails replicating the ratemaking treatment an item would be accorded if it were proposed for inclusion in the revenue requirement in a R.C. 4909.18 rate case, then translating the resulting annual revenue target into a separate rider rate that would recover the cost or expense in question. Historically, single-issue ratemaking was not viewed favorably by regulators and the courts because considering cost changes in isolation outside the confines of a rate case ignores the potential for offsetting cost changes that could impact the utility's overall revenue requirement.[38] Thus, where single-issue ratemaking is permitted by statute, it has typically been confined to instances where the utility is confronted with an extraordinary, volatile expense that is beyond its control, and which, if passed through to

[38] *See, e.g., Citizens Utility Board v. Illinois Commerce Comm'n,* 166 Ill. 2d 111, at 137-138, 651 N.E. 2d 1089, at 209 (1995).

customers through a rider, does not increase net income or otherwise impact the utility's rate of return.[39]

As discussed in detail in CMSD's initial rehearing brief, this Commission has squarely held that there is far more to determining the earnings opportunity to be accorded an applicant utility than a mechanical calculation designed to satisfy the ratings agencies' coverage tests.[40] Thus, a Staff proposal in an R.C. 4909.18 base rate proceeding that the approved dollar return include an identified component intended to provide a cash infusion to shore up the applicant utility's credit rating would fly in the face of longstanding Commission precedent and would be summarily rejected by the Commission. Moreover, Rider DMR is not intended to address an extraordinary, volatile cost that is beyond the Companies' control, but, rather, is specifically designed to hand over additional annual revenue to FirstEnergy to increase net income, a measure that obviously impacts the Companies' rate of return. Accordingly, CMSD adamantly disagrees that Staff's Rider DMR qualifies for inclusion in ESP IV as single-issue ratemaking, but, even if did, the fact remains that inclusion of Rider DMR in lieu of Rider RRS would cause ESP IV to fail the ESP v. MRO test on a quantitative basis by replacing a $256 million benefit in the ESP column with a cost of $393 million to $655 million.

R.C. 4928.143(B)(2)(h) also permits the Commission to authorize provisions for incentive ratemaking as a part of an ESP. Although the Staff makes no mention of incentive ratemaking in its attempt to defend its Rider DMR proposal, OEG attempted to suggest through its cross examination of Staff witness Turkenton that Rider DMR would qualify for inclusion in

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[39] *Id.*

[40] CMSD Rehearing Brief, 20, citing *In the Matter of the Application of The Cleveland Electric Illuminating Company for Authority to Amend and Increase Certain of its Filed Schedules Fixing Rates and Charges for Electric Service,* Case No. 19-537-EL-AIR (Opinion and Order dated July 10, 1980), at 34.

ESP IV as incentive ratemaking.[41] As the Commission well knows, incentive ratemaking comes in a variety of flavors, but its underlying objective is to address certain disincentives to efficient operation that exist under the traditional ratemaking paradigm, which, in the case of the electric industry, have included rewarding utilities for taking actions that promote energy efficiency and conservation that would otherwise adversely impact their bottom line. Staff's Rider DMR proposal has nothing to do with these considerations. Instead, Rider DMR is intended to exact additional revenue from Ohio distribution ratepayers for the sole purpose of shoring up the credit rating of FirstEnergy Corp. Although Staff hopes that Rider DMR will ultimately make it possible for FirstEnergy to secure capital on more favorable terms in order to jumpstart grid modernization, Rider DMR provides no additional incentive to the Companies to operate more efficiently[42] or to undertake conservation initiatives, nor does it reward the Companies for taking actions that would otherwise adversely affect earnings. Thus, CMSD disagrees that Rider DMR represents a form of incentive ratemaking. However, be that as it may, regardless of the source of the Commission's authority to include Rider DMR in ESP IV, removing the benefits the Commission ascribed to Rider RRS and replacing those benefits with the costs associated with Rider DMR will cause ESP IV to fail the ESP v. MRO test on a quantitative basis.

Before leaving this topic, two additional points bear mention. First, as CMSD pointed out in its initial rehearing brief, Staff made no attempt to quantify the customer benefit associated with preventing FirstEnergy Corp.'s credit rating from being downgraded to below investment grade.[43] In its rehearing brief, Staff professes to be puzzled by the suggestion that a cost/benefit

[41] *See* Turkenton Cross, Reh. Tr. II, 426-427.

[42] Indeed, in view of their relatively weak financial position, the Companies already have plenty of incentive to cut costs and, as described in Ms. Mikkelsen's testimony, have already undertaken efforts to do so. *See* Co. Ex. 206 (Mikkelsen Rehearing Rebuttal/Surrebuttal Testimony), 17.

[43] *See* CMSD Rehearing Brief, 23.

analysis should have been performed to establish that the benefit to ratepayers of preventing a downgrade is greater than the cost of Rider DMR, basically simply stating that everyone knows that a downgrade to below investment grade would add to the cost of securing debt financing.[44] Although this proposition is certainly true, one would think that the Commission would like to know the quantitative benefit to customers before requiring customers to pony up $393 million to $655 million by approving the Rider DMR.

In this connection, it is important that the Commission recognize that any savings resulting from lower financing costs would not be realized by customers until after the Companies' next distribution rate case, which, with the distribution rate freeze, will not occur until the eight-year term of ESP IV expires. And, even then, customers would realize a savings only to the extent that the higher interest cost associated with a post-downgrade debt issue would impact the overall embedded cost of debt utilized in the cost of capital analysis for purposes of establishing the fair rate of return. In view of the magnitude of FirstEnergy's existing long-term debt, there is zero chance that a post-downgrade debt issue would add $131 million to the Companies' combined annual revenue requirement. Because there can be no measurable quantitative benefit to offset the cost of Rider DMR during the term of ESP IV, approval of Rider DMR will, perforce, cause ESP IV to fail the ESP v. MRO test on a quantitative basis.

Second, CMSD fears that the Commission, in view of the fact that Rider DMR would cost customers $393 million to $655 million while providing no quantifiable benefit over the term of ESP IV, may be tempted to count the $568 million that FirstEnergy witness Muhey claims is the annual impact that maintaining FirstEnergy's headquarters in Akron has on Ohio's

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[44] *See* Staff Rehearing Brief, 11.

local economy[45] as a quantifiable benefit of the Staff's proposal. This would be wrong for several reasons.

Although Staff characterizes maintaining FirstEnergy's headquarters in Akron as a "condition" of Rider DMR,[46] Staff witness Buckley's actual recommendation is that FirstEnergy be required to refund amounts collected if it moves its headquarters from Akron within the term of ESP IV.[47] Thus, unlike the FirstEnergy commitment to maintain its headquarters in Akron that is already a provision of ESP IV, Staff's proposal merely imposes a penalty for moving the headquarters rather than providing a guarantee that the headquarters will not be moved. Plainly, this significantly dilutes any value that might be ascribed to this Staff condition.

More to the point, there is no logical nexus between the cost of Rider DMR and the benefit of maintaining FirstEnergy's headquarters in Akron. Although not articulated by Mr. Buckley or by Staff on brief, it appears that the reason the Staff believed it was necessary to include the penalty for moving FirstEnergy's headquarters during the term of ESP IV was that the FirstEnergy commitment not to move its headquarters that is currently a part of ESP IV was expressly tied to the term of Rider RRS rather than to the term of the ESP.[48] However, as explained in CMSD's rehearing brief, FirstEnergy's commitment to maintain the headquarters in Akron first appeared in a stipulation that predated the Third Supplemental Stipulation, which made the terms of Rider RRS and ESP IV coterminous.[49] Because the term of

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[45] *See* Co. Ex. 205 (Muhey Rehearing Rebuttal Testimony), 3-4.

[46] *See* Staff Rehearing Brief, 18.

[47] *See* Staff Ex. 13 (Buckley Rehearing Testimony), 7.

[48] At least this is the rationale offered at hearing by the presiding attorney examiner. *See* Reh. Tr. X, at 1593.

[49] *See* CMSD Rehearing Brief, 17.

Rider RRS was subsequently reduced and the term of ESP IV was increased so that they are now both eight years, CMSD believes that Rider RRS and ESP IV should be regarded as interchangeable for purposes of FirstEnergy's headquarters commitment. This interpretation is consistent with FirstEnergy witness Mikkelsen's testimony that FirstEnergy is committed to maintaining its headquarters in Akron, needs no incentive to do so, and that the provision of the Third Supplemental Stipulation memorializing this commitment is not tied to a "particular incentive" provided via another provision of ESP IV.[50] Thus, the Commission should not count the purported value of maintaining FirstEnergy's headquarters in Akron as a benefit of Rider DMR to be offset against the Rider DMR costs for purposes of the ESP v. MRO test based on the notion that significance should be attached to the fact that the duration of the headquarters commitment in the Third Supplemental Stipulation was expressed in terms of the duration of Rider RRS rather than in terms of the duration of ESP IV itself.

In this same vein, CMSD would point out that neither Staff nor FirstEnergy claim that the impact on the local economy of maintaining the headquarters in Akron, whatever it may be, should be regarded as a quantitative benefit of Rider DMR. Indeed, FirstEnergy's position is that its modified version of Rider DMR should include, above and beyond the rate necessary to generate the $558 million in annual revenues it claims is required to achieve Staff's objective, an additional increment up to the $568 million identified by Ms. Muhey to reflect the annual economic development value of maintaining FirstEnergy's headquarters and nexus of operations in Akron.[51] Although the presiding attorney examiner appeared to believe that this was not the

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[50] Mikkelsen Cross, Reh. Tr. X, at 1744.

[51] *See* Co. Ex. 206 (Mikkelsen Rehearing Rebuttal/Surrebuttal Testimony), 14-15.

FirstEnergy proposal,[52] this is, in fact, precisely what FirstEnergy witness Ms. Mikkelsen advocated. The attorney examiner's confusion is understandable. Who could imagine that a utility would have the nerve to propose that customers, who already pay the cost of its headquarters through rates, should also pay the utility for the economic value of maintaining the headquarters in its current location?

Staff apparently gets that "the companies are already recompensed adequately for the presence of the headquarters," but, inexplicably, goes on to suggest the FirstEnergy has a colorable argument for requiring ratepayers to pay for the benefits of maintaining the headquarters in Akron.[53] With all due respect, CMSD submits that there is no logic, ratemaking principle, or legal authority that would support such a charge. However, the takeaway from all this is that neither the Staff nor FirstEnergy have suggested that the economic impact of maintaining the headquarters in Akron should be considered as a quantifiable benefit of Rider DMR for purposes of the ESP v. MRO test. Moreover, as discussed below, it would be improper, at this juncture, for the Commission to consider the economic value of the commitment to maintain FirstEnergy's headquarters in Akron as a quantitative benefit of ESP IV itself.

R.C. 4903.10(B) prohibits the Commission from taking any evidence in the context of a rehearing, "that, with reasonable diligence, could have been offered upon the original hearing." FirstEnergy's commitment to maintain its headquarters was a part of the Third Supplemental Stipulation that was before the Commission in the original hearing in this case. If FirstEnergy

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[52] *See* Reh. Tr. X, at 1756, wherein the attorney examiner states that "she [Ms. Mikkelsen] is not saying charge $568 million."

[53] *See* Staff Rehearing Brief, 18.

wished to propose that the Commission recognize the annual economic impact of maintaining its headquarters in Akron as a quantitative benefit of the proposed ESP IV, it clearly could have presented evidence of that impact in the original hearing.[54] FirstEnergy did not do so, and the Commission did not ascribe a quantitative benefit to this commitment in its Order.[55] However, the modified version of the Staff's Rider DMR proposal presented a problem for FirstEnergy in terms of the ESP v. MRO test because it would add on the order of $4.5 billion in costs in the ESP column, while producing no identifiable, quantifiable benefit. Thus, FirstEnergy set about to present evidence of the economic impact on the Ohio economy of maintaining its headquarters in Akron under the guise that, in addition to the $558 million in annual revenues it was seeking under its version of Rider DMR, it should also be entitled to collect up to the $568 million identified by Ms. Muhey[56] because FirstEnergy knew that the evidence could not come in due to the R.C. 4903.10 prohibition if it were offered to show an additional quantitative benefit of ESP IV. CMSD strongly disagrees with the attorney examiner's denial of the motion to strike Ms. Muhey's testimony[57] and urges the Commission to overturn that ruling in its order on rehearing. However, if the testimony is allowed to stand, the Commission should consider it solely for the purpose it was offered, *i.e.*, to support Ms. Mikkelsen's proposal that, in addition to the $558 million in annual revenues FirstEnergy seeks under its version of Rider DMR the rider rate should also include an additional increment to recover up to the $568 million identified by Ms.

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[54] Of course, to qualify as a benefit of the ESP, there would also have to be a showing that FirstEnergy would move its headquarters if the ESP provided no incentive to maintain its headquarters in Akron.

[55] *See* Order, 118-119. If fact, the Commission did not identify this commitment in its discussion of the qualitative benefits of the proposed ESP. *See* Order, 119-120.

[56] *See* Reh. Tr. IX, at 1425.

[57] *See* Reh. Tr. IX, at 1434.

Muhey. In no event should the Commission count this $568 million as a quantitative benefit of ESP IV for purposes of the ESP v. MRO test.

2. Inclusion of Rider DMR in lieu of Rider RRS Will also Cause ESP IV to Fail the ESP v. MRO Test on a Qualitative Basis.

In its rehearing brief, Staff opines that even if the costs associated with its Rider DMR proposal are not considered a wash for purposes of the ESP v. MRO test (*i.e.*, even if Rider DMR would cause EXP IV to fail the test on a quantitative basis – which it will), Rider DMR should, nonetheless, be approved because the qualitative benefits it provides will result in ESP IV passing the ESP v. MRO test on a qualitative basis.[58] CMSD disagrees. Although the Ohio Supreme Court has recently reaffirmed that the R.C. 4928.143(C)(1) more-favorable-than-an MRO test does not strictly limit the Commission to a comparison of the quantitative benefits of the ESP under consideration and the expected results of an MRO,[59] this does not mean that the Commission is free to impose hundreds of millions of dollars in additional costs on ratepayers without examining the claim that Rider DMR will produce a qualitative benefit that would tilt the scales to the ESP side.

No one would dispute Staff's assertions that grid modernization is a worthy objective and that customers would benefit from increased reliability, efficiency, and competitive options that could become available as a result of a grid modernization initiative.[60] However, the fundamental problem here is that Rider DMR is not designed to pay for grid modernization. Rather, Rider DMR is specifically designed to provide a cash infusion to the Companies in the

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[58] *See* Staff Rehearing Brief, 8.

[59] *See In re Application of Ohio Edison Co.*, 146 Ohio St.3d. 222, at 226, 2016-Ohio-3021, citing *In re the Application of Columbus S. Power Co.*, 128 Ohio St.3d. 402, 2011-Ohio-958.

[60] *Id.*

hope that the additional revenues will stave off a downgrade of FirstEnergy Corp.'s credit rating, thereby allowing access to the capital markets on more favorable terms than would be accorded an enterprise with a below-investment grade rating. Thus, there is no direct link between Rider DMR and grid modernization. Moreover, if the revenues generated by Rider DMR were actually expended on grid modernization, these additional revenues would not be available for purposes of improving the CFO-to-debt ratio, thereby defeating the stated purpose or Rider DMR. The second problem is that, for reasons previously discussed, there is no assurance that Rider DMR as formulated by Staff will prevent a downgrade of FirstEnergy Corp.'s credit rating. Indeed, common sense suggests that, as a stand-alone measure, it will not affect FirstEnergy Corp.'s credit rating, which makes any connection between Rider DMR and grid modernization even more tenuous. Under these circumstances, the Commission cannot reasonably count the benefits of grid modernization as a qualitative benefit for purposes of the ESP v. MRO test. In addition, *the Commission must consider the qualitative benefits that will come out of the ESP column if* Rider DMR replaces Rider RRS.

Staff claims that, because, under the modified version of Rider RRS proposed by FirstEnergy, there is no longer an actual underlying FES PPA, two of the qualitative benefits relied upon by the Commission in approving ESP IV no longer exist.[61] Although Staff is correct that "preserving resource diversity and avoidance of the negative economic effects of power plant closures" are no longer present under the new FE Proposal,[62] Staff totally ignores that approval of Rider DMR in lieu of Rider RRS will totally eliminate or significantly reduce other

[61] *See* Staff Rehearing Brief, 2. CMSD would argue that, because the means to produce these benefits – *i.e.*, requiring the Companies' distribution customers to subsidize FES' uneconomic generation facilities – was unlawful, these benefits should never have been part of the calculus in the first place.

[62] *Id.*

benefits of ESP IV cited by the Commission in finding that ESP IV passed the ESP v. MRO test on a qualitative basis.

First, approval of Rider DMR would negate the benefits of the distribution rate freeze component of ESP IV. In finding that the proposed ESP IV was more favorable qualitatively than an MRO, the Commission specifically identified the "continuation of the distribution rate increase freeze until June 1, 2024" as a qualitative benefit of ESP IV that would not exist under an MRO.[63] Rider DMR, which is unquestionably a distribution rate, would result in customers paying an additional $131 million annually for distribution service over the next three years, and, potentially, for the next five years, an annual increase that in nearly equals the total $132.6 million revenue increase granted to the three Companies in their last distribution rate case.[64] Thus, the qualitative benefit of the distribution rate freeze would go by the wayside if Rider DMR is approved.

Second, although, as noted above, the Commission did not actually identify the FirstEnergy commitment to maintain its headquarters and nexus of operations in Akron as a qualitative benefit of ESP IV,[65] this guarantee that FirstEnergy's headquarters will remain in Akron for eight years represents a far more significant qualitative benefit than the condition Staff attached to the Rider DMR proposal, which merely requires that FirstEnergy refund the amounts collected via Rider DMR if it moves its headquarters out of Akron before the end of the eight-year term of ESP IV.

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[63] Order, 119.

[64] *See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices, and for Tariff Approvals,* Case No. 07-551-EL-AIR (Opinion and Order dated January 21, 2009), at 22-23.

[65] *See* Order, 119-120.

Finally, without the Rider RRS hedging arrangement, the benefit of protecting customers against rate volatility and price fluctuations by promoting rate stability – one of the principal benefits of ESP IV cited by the Commission – will be eliminated.[66] It appears that Staff now has misgivings regarding the quantitative benefit that the Commission ascribed to hedging arrangement,[67] notwithstanding the confidence of certain Commissioners that the hedging arrangement will ultimately result in a net credit to customers.[68] However, be that as it may, Rider DMR does nothing to promote rate stability. Indeed, the only rate certainty Rider DMR provides is the certainty that customers will pay an extra $131 million per year if it is approved.

Although the Commission may consider both quantitative and qualitative benefits in determining if the results of a proposed ESP are more favorable than the expected results under a contemporaneous MRO, the Commission must evaluate the actual impact on ratepayers in making this determination. In this instance, there is no question that approval of Rider DMR will cause ESP IV *to fail* the ESP v. MRO *test on a quantitative basis.* Rider DMR will add $393 million to $655 million to customer bills during the term of ESP IV, while the quantifiable benefit, if any, will not only be far less than the cost, but, due to the distribution rate freeze, any savings resulting from preventing a downgrade of FirstEnergy Corp. to below investment grade cannot be possibly be realized until after the term of ESP IV expires. From a qualitative standpoint, Rider DMR will not provide the benefits of grid modernization extolled by the Staff because it is not designed to pay for grid modernization. Thus, grid modernization cannot

[66] *See* Order, 118.

[67] *See* Staff Rehearing Brief, 3, wherein Staff notes that "(w)e now have the results of more capacity auctions and while the effect of these auctions on the estimated hedge benefit provided by the Modified Rider RRS is confidential, the direction is public and clearly negative." (citation omitted).

[68] *See* Concurring Opinion of Commissioner Asim Z. Haque, 4; Concurring Opinion of Commissioner M. Beth Trombold, 2.

reasonably be viewed as a qualitative benefit of Rider DMR for purposes of the ESP v. MRO test. Instead, Rider DMR is designed to provide the Companies with a cash infusion in the hope that these additional revenues will provide credit support that will enable FirstEnergy to access the capital markets on more favorable terms. However, because there is no guarantee that this will happen, there is no basis for the Commission to determine that Rider DMR will provide any qualitative benefits to customers at all. Moreover, approval of Rider DMR in lieu of Rider RRS will eliminate the qualitative benefits of the distribution rate freeze and the rate stability ascribed to the Rider RRS hedging arrangement, and will replace the guarantee that FirstEnergy will maintain its headquarters in Akron for the next eight years with a penalty provision for moving that provides no such assurance. Thus, if Staff's Rider DMR proposal were approved, the Commission cannot reasonably find that ESP IV will pass the ESP v. MRO test on either a quantitative or qualitative basis or a hybrid mixture of the two.

3. <u>No Purpose Would Be Served by Analyzing Staff's Response to FirstEnergy's Criticisms of Staff Witness Buckley's Rider DMR Calculations Because Neither the Staff's Rider DMR Proposal Or FirstEnergy's Modified Version of the Staff's Proposal Are Designed to Pay for Grid Modernization</u>.

Staff devotes several pages of its rehearing brief to responding to Ms. Mikkelsen's criticism of Mr. Buckley's methodology to support her assertion that the $131 million in additional revenues that the Staff's version of Rider DMR is designed to produce and the three-to-five and the term of Rider DMR Mr. Buckley recommends will be insufficient to avert a downgrade by Moody's based on its CFO-to-debt benchmark.[69] The Commission should allow itself to be drawn into refereeing this debate because, as CMSD has explained, the Commission

[69] *See* Staff Rehearing Brief, 14-17.

cannot predicate a rate increase on the amount necessary to satisfy rating agency metrics in any event. If the Commission is going to give away ratepayer money without the need for an R.C. 4909.18 distribution rate case, FirstEnergy would obviously prefer to be handed $4.5 billion rather than the $393 million to $655 million that would result under the Staff proposal. However, the fact remains that neither version of Rider DMR is intended to generate revenues to pay for grid modernization, the qualitative benefit Staff ascribes to its Rider DMR proposal. Interestingly, Ms. Mikkelsen indicated that if the FE Proposal is approved, one of the purposes to which the revenues generated by Rider RRS could be put would be "state-of-the-art advancements such as grid modernization and/or battery technology."[70] In other words, the Rider RRS revenues could actually be spent on these items, as opposed to the Rider DMR revenues, which if expended to pay for grid modernization, would not contribute to achieving the Moody's CFO-to-debt benchmark. Thus, approval of CMSD's recommendation that the Commission approve the modified Rider RRS proposal subject to making it optional could actually do more to jumpstart FirstEnergy's grid modernization program than the Staff's Rider DMR proposal.

III. CONCLUSION

The Staff's Rider DMR proposal, which is not endorsed by any other party to this proceeding, will not achieve its stated objective, and, if approved, will cause ESP IV to fail the ESP v. MRO test on both a quantitative and qualitative basis. On the other hand, if the Commission's projections prove to be accurate, the FE Proposal will provide a net benefit to customers of $256 million. However, the modified version of Rider RRS embodied in the new FE proposal, like its predecessor, still forces customers to accept the Commission's judgment as

[70] *See* Co. Ex. 197 (Mikkelsen Rehearing Testimony), 12.

to what is best for them in terms of managing the risk of volatility and future increases in wholesale electric prices. This is not the role of this Commission, and forcing customers to participate in the Rider RRS hedging arrangement would impair the ability of customers to manage these risks in a manner that reflects their individual tolerance for risk and budgeting requirements. CMSD's recommendation that the Commission approve the FE proposal, but make participation in the Rider RRS hedging arrangement optional, eliminates these problems while preserving the quantitative benefit the Commission previously ascribed to Rider RRS. For those reasons previously stated, establishing Rider RRS as an opt-in rider available to both shopping customers and SSO customers checks all the boxes for both the Companies and its customers. In CMSD's view, this recommendation represents the best of all the possible outcomes identified at the outset of this brief. Accordingly, CMSD urges the Commission to adopt this proposal as its resolution of the issues before it on rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 29th day of August 2016.

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