FILE

29

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

APPLICATION FOR REHEARING OF THE CLEVELAND MUNICIPAL SCHOOL DISTRICT

Pursuant to R.C. 4903.10 and Rule 4901-1-35, Ohio Administrative Code ("OAC"), the Cleveland Municipal School District ("CMSD") hereby applies for rehearing from the Commission's Fifth Entry on Rehearing issued on October 12, 2016, whereby the Commission modified the version of ESP IV approved in its March 31, 2016 Opinion and Order ("Order") by replacing the Retail Rate Stability Rider ("Rider RRS") with the Distribution Modernization Rider ("Rider DMR") proposed by the Commission's staff ("Staff") on rehearing, subject to certain modifications. As its grounds for rehearing, CMSD respectfully submits that the Fifth Entry on Rehearing is unreasonable and unlawful in the following particulars:

1. The Commission's determination that revenues equivalent to those that would be generated by Rider DMR could be authorized in a contemporaneous MRO proceeding is based on an erroneous interpretation of the criteria for granting emergency rate relief, ignores the distinction between R.C. 4909.16 and the emergency provision of R.C 4928.142(D)(4), and is not supported by the record in this case.

2. The Commission's finding that ESP IV is more favorable than a contemporaneous MRO by $51.1 million on a quantitative basis is based on the improper exclusion of the $397.5 million in costs associated with Rider DMR from the comparison.

3. The Commission's determination that ESP IV, as modified on rehearing, passes the ESP v. MRO test on a qualitative basis is based on

an incorrect interpretation of the applicable judicial precedent, ignores the actual objective of Rider DMR and the extremely tenuous connection between Rider DMR and the qualitative benefits the Commission ascribes to grid modernization, and fails to consider that the costs of Rider DMR are disproportionate to any conceivable financial benefit to customers.

4. The Commission's approval of Rider DMR violates longstanding Commission precedent against determining the amount of a rate increase based upon the amount of revenue necessary to satisfy rating agency metrics.

Pursuant to Rule 4901-1-35(A), OAC, a memorandum in support more fully explaining these grounds for rehearing is attached hereto.

WHEREFORE, CMSD respectfully requests that the Commission grant its application for rehearing.

Respectfully submitted,

Barth E. Royer
Barth E. Royer, LLC
2740 East Main Street
Bexley, Ohio 43209
(614) 385-1937 – Phone
(614) 360-3529 – Fax
BarthRoyer@aol.com – Email

Adrian Thompson
Taft Stettinius & Hollister LLP
200 Public Square, Suite 3500
Cleveland, OH 44114-2302
(216) 241-3141 – Phone
(216) 241-3707 – Fax
athompson@taftlaw.com – Email

Attorneys for
The Cleveland Municipal School District

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

MEMORANDUM IN SUPPORT
OF
APPLICATION FOR REHEARING
OF
THE CLEVELAND MUNICIPAL SCHOOL DISTRICT

INTRODUCTION:

As CMSD observed in its application for rehearing from the March 31, 2016 Order, it was painfully obvious that the Commission's approval of Rider RRS was driven by its view that the public interest required that the Sammis and Davis-Besse plants remain in service and that the only way to guarantee the future of these plants was to require FirstEnergy[1] distribution customers to subsidize their operation.[2] The problem, of course, was that the Commission has no jurisdiction over wholesale pricing or the plants' owner, First Energy Solutions Corp. ("FES"). Thus, to achieve its objective, the Commission attempted to do indirectly what it could not do directly by finding that Rider RRS hedging arrangement was a permissible element of an ESP under R.C. 4928.143(B)(2)(d) based on the theory that Rider RRS constituted a limitation on

---

[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 Company – are referred to herein collectively as "FirstEnergy," "FE," or the "Companies."

[2] *See* CMSD Application for Rehearing dated May 2, 2016, at 2.

retail shopping that would provide retail rate stability and certainty. However, as CMSD and other intervenors correctly predicted, FERC effectively pulled the plug on the Commission-approved version of Rider RRS with its April 27, 2016 order in Docket No. EL16-34-000, granting the complaint of the Electric Supply Association, *et al.*, against FES and the Companies and rescinding the waiver of the affiliate power sales restrictions previously granted to FirstEnergy's market-regulated power sales affiliates as it related to the underlying FirstEnergy-FES purchased power agreement ("PPA") that would have been funded by the Companies' distribution customers through Rider RRS.

The FERC decision, which was issued just before rehearing applications from the Commission's March 31, 2016 Order were due, sent FirstEnergy back to the drawing board. As a result, as a part of its application for rehearing, FirstEnergy came up with a proposal (the "FE Proposal") to get around the constitutional roadblock that was at the heart of the FERC decision by replacing the actual PPA with a virtual PPA designed to preserve the $256 million customer benefit the Commission ascribed to Rider RRS in approving ESP IV, notwithstanding that, without an actual PPA, there would be no revenue stream to support the projected Rider RRS credits that were anticipated in the out years of ESP IV. However, the Commission nixed the FE Proposal in its October 12, 2016 Fifth Entry on Rehearing, finding that the "secondary benefits related to reliability, resource diversity, and economic development" that it had attributed to Rider RRS would no longer be present if Rider RRS were not tied to an actual FirstEnergy-FES PPA.[3] With respect to the $256 million projected financial benefit to customers that would go by the boards with the rejection of the FE Proposal, the Commission found that FirstEnergy had not demonstrated that it would have the financial wherewithal to pay the projected net credits to

[3] Fifth Entry on Rehearing, ¶ 93, ¶¶ 103-108.

customers without the revenue stream that would be produced under the PPA despite the testimony of FirstEnergy witness Mikkelsen that the funds necessary to support the credits would, in fact, be available from a variety of sources.[4]

Although rejection of the FE Proposal removed $256 million in customer benefits from the ESP side of the ledger for purposes of the RC 4928.143(C)(1) more-favorable-than-an-MRO test, because the other 51.1 million in quantitative benefits the Commission ascribed to ESP IV would remain intact, the Commission-approved version of ESP IV, sans Rider RRS, would continue to pass the ESP v. MRO test by a comfortable margin. Thus, the Commission could have simply directed FirstEnergy to withdraw the placeholder Rider RRS and reaffirmed the other provisions of ESP IV, thereby bringing this tortuous proceeding to an end. Instead, the Commission replaced Rider RRS with the Staff-recommended Rider DMR, which, as modified by the Commission, will cost the Companies' customers $132.5 million per year for the next three years, and potentially for the next five years if an extension is granted.[5]

Although the attorney examiner's June 3, 2016 entry establishing the scope of the rehearing contemplated consideration of alternatives to the FE Proposal,[6] CMSD assumed that the expectation was that proposed alternatives would simply be tweaks to the FE Proposal that would be designed to provide a financial benefit to customers that was at least roughly equivalent to the projected financial benefit associated with the stipulated Rider RRS as originally approved by the Commission so as to preserve the balance between competing interests the Commission cited in approving the Third Supplemental Stipulation as the

[4] Fifth Entry on Rehearing, ¶ 110.

[5] Fifth Entry on Rehearing, ¶ 202.

[6] Entry dated June 3, 2016, ¶ 15.

framework for ESP IV. It never occurred to CMSD that the Commission's willingness to entertain alternatives to the FE Proposal would be perceived as a license to introduce an entirely new, unrelated proposal that could have been advanced during the initial hearings in this matter, particularly in view of the R.C. 4903.10(B) prohibition against the Commission taking evidence in the context of a rehearing "that, with reasonable diligence, could have been offered upon the original hearing." Thus, CMSD was astounded when the Staff's Rider DMR proposal, which did not surface until the Staff submitted its rehearing testimony on June 29, 2016, not only addressed an entirely new issue – the credit rating of the Companies' parent, FirstEnergy Corp. – but also replaced the projected $256 million benefit the Commission ascribed to the Rider RRS hedging arrangement with $393 million – and potentially as much as $655 million – in costs to customers,[7] thereby destroying the balance between competing interests the Commission claimed to have struck in approving the Third Supplemental Stipulation in its March 31, 2016 Order in this case.

Although styled as the "Distribution Modernization Rider," it cannot be overemphasized that Rider DMR is not a mechanism for funding capital expenditures associated with the Companies' grid modernization efforts. Rather, the stated objective of Rider DMR is to provide a cash infusion to the Companies in the hope that these additional revenues will alleviate rating agency concerns regarding the cash flow from operations ("CFO") pre-working capital to debt ratio of First Energy Corp., and thereby prevent the credit rating of FirstEnergy Corp. from being downgraded to below investment grade.[8] According to Staff witness Choueiki, the connection of

[7] With the modifications to the Rider DMR proposal approved by the Commission, these costs grow to $397.5 million and $662.5 million, respectively, on a pre-tax basis. Because the Commission agreed with FirstEnergy that an allowance for taxes should also be included in the Rider DMR rate, these numbers will obviously become even larger, but the Commission made no attempt to quantify the additional amount attributed to the recovery of the related tax liability. *See* Fifth Entry on Rehearing, ¶ 202.

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

Rider DMR to distribution modernization is that the revenue generated by this rider "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."[9]

It is also important to recognize that Rider DMR is not the subject of any stipulation submitted in this case. In fact, as CMSD pointed out on brief, no party to the proceeding supported Rider DMR as proposed by the Staff.[10] The Commission incorrectly translated this observation into a CMSD claim that the first prong of the three-prong test – whether the stipulation is the product of serious bargaining among capable, knowledgeable parties – cannot be satisfied in the event that no party to the proceeding endorses Rider DMR.[11] CMSD made no such claim. Plainly, because Rider DMR is not the subject of a stipulation, the familiar three-prong test for evaluating stipulations does not apply, and Rider DMR must be evaluated strictly on its own merits. CMSD offered this observation merely to suggest that, before taking the unprecedented action of authorizing a multi-million dollar rate increase that the applicant utilities did not request and which could not be justified in either an R.C. 4909.18 general rate case or an R.C. 4909.16 emergency rate proceeding in light of longstanding precedent, the Commission should not turn a blind eye to the fact that, despite the wide variety of stakeholder interests represented by the parties to this proceeding, there is not a single party that endorses Rider DMR as proposed by Staff.

---

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

[10] CMSD Rehearing Reply Brief, 5-6.

[11] Fifth Entry on Rehearing, ¶ 224.

To be sure, FirstEnergy's opposition to the Staff proposal was based on its assessment that the revenues that would be generated by the Staff's version of DMR would be insufficient to accomplish the stated objective of shoring up its parent's credit rating.[12] However, this points up another major concern that the Commission should have taken into account before deciding to exact an additional $132.5 million per year from the Companies' ratepayers via Rider DMR. There is no guarantee that approval of Rider DMR will prevent a downgrade of FirstEnergy Corp. to below investment grade. In fact, as the excerpt from the April 28, 2016 research update issued by Standard and Poor's Financial Service, LLC ("S&P") presented in Staff witness Buckley's testimony makes clear, 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, but the risks posed by the underperformance of FirstEnergy Corp.'s unregulated generation subsidiaries.[13] What will the Commission say to customers if, after authorizing a rate increase that FirstEnergy did not request to shore up FirstEnergy Corp.'s credit rating, FirstEnergy Corp. is downgraded due to factors other than a failure to satisfy Moody's CFO-to-debt metric for an investment-grade rating?

The Commission already dodged a similar bullet once in this case when FERC effectively put the kibosh on Rider RRS before the Rider RRS rate could be charged to customers. Because there can be no refund of amounts paid by customers pursuant to rates authorized by the Commission if the decision imposing the rate is subsequently overturned on appeal,[14] customers were, indeed, fortunate that they did not have to wait for the courts overturn

---

[12] *See* Co. Ex. 206 (Mikkelsen Rehearing Rebuttal/Surrebuttal Testimony), 15-16.

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

[14] *See Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 257 (1957) and *Green Cove Resort I Owners' Assn. v. Pub. Util. Comm.*, 103 Ohio St.3d 125 (2004).

Rider RRS on constitutional grounds. Does the Commission really want to subject ratepayers to this risk again by approving Rider DMR even though there is no guarantee that it will achieve its stated objective and even though the decision, which Chairman Haque conceded was "unconventional"[15] is on what is, at best, very shaky legal ground? There is nothing that compels the Commission to replace Rider RRS with any alternative. The Commission should reverse its approval of Rider DMR in the Fifth Entry on Rehearing on the grounds set forth below, and should affirm the remainder of ESP IV as initially approved.

FIRST GROUND FOR REHEARING:

> **The Commission's determination that revenues equivalent to those that would be generated by Rider DMR could be authorized in a contemporaneous MRO proceeding is based on an erroneous interpretation of the criteria for granting emergency rate relief, ignores the distinction between R.C. 4909.16 and the emergency provision of R.C 4928.142(D)(4), and is not supported by the record in this case.**

On brief, CMSD joined a number of other intervenors in arguing that, with the elimination of $256 million benefit the Commission attributed to Rider RRS, approval of Rider DMR would cause ESP IV to fail the R.C. 4928.143(C)(1) more-favorable-than-an-MRO test on a quantitative basis because it would add $393 million – and potentially as much as $655 million – in costs to the ESP column,[16] with no measurable offsetting benefit.[17] The Commission dismissed this argument, relying on the proposition that equivalent revenues could be authorized

---

[15] *See* Concurring Opinion of Chairman Asim Z. Haque, ¶ 4.

[16] As previously noted, with the modifications to the Rider DMR proposal approved by the Commission, these costs grow to $397.5 million and $662.5 million, respectively, without consideration of the tax effect, for which the Commission also allowed recovery. *See* Fifth Entry on Rehearing, ¶ 202.

[17] The only conceivable measurable financial benefit to ratepayers from Rider DMR would be the rate impact do to the use of a lower embedded cost of debt in the cost of capital calculation in a subsequent R.C. 4909.18 rate case. However, because of the stipulated distribution rate freeze, there can be no permanent rate case until after the eight-year term of ESP IV expires.

in an MRO proceeding under R.C. 4928.142(D)(4), which would mean that these costs would be added to both the ESP and MRO cost columns for purposes of the ESP v. MRO test, thereby resulting in a wash.[18] CMSD respectfully disagrees.

R.C. 4928.142(D)(4) provides, in pertinent part, 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.

The Commission found that, for purposes of the ESP v. MRO test, it must assume that a hypothetical request for an adjustment to address an emergency under this provision had been submitted in a contemporaneous MRO proceeding and that the request was based on the same facts that are before the Commission in this case.[19] CMSD agrees that this is the appropriate standard. However, the Commission's finding that revenues equivalent to those that would be generated by Rider DMR could have been authorized under this provision of R.C. 4928.142(D)(4) in a contemporaneous MRO case is fatally flawed in several respects.

First, the Commission, although declining to interpret R.C. 4928.142(D)(4) as "simply replicating or being redundant to" the emergency rate case statute, R.C. 4909.16, went on to state that "the factors specified by the Commission for cases brought under R.C. 4909.16 provide guidance for factors the Commission may examine in a hypothetical application for a charge

---

[18] Fifth Entry on Rehearing, ¶ 357.

[19] *See* Fifth Entry on Rehearing, ¶ 354.

under R.C. 4928.143 *[sic]*."[20] The Commission then cited *In Re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, et al., as a source for such guidance. However, as a review of the order in the *CEI* case will quickly show,[21] this decision does not stand for the proposition for which it was cited by the Commission.

During the pendency of their respective R.C. 4909.18 applications for a permanent rate increases in Case Nos. 88-170-EL-AIR and 88-171-EL-AIR, The Cleveland Electric Illuminating Company and The Toledo Edison Company filed motions for interim emergency rate relief pursuant to R.C. 4909.16.[22] In support of these motions, the applicants alleged that they faced a financial emergency due to the fact that two major nuclear units had come on line nearly simultaneously since the date certain in their last rate cases, thereby rendering the rates authorized in those cases inadequate to meet the units' costs of operation and the interest expense associated with the investment in the units.[23]

In its order addressing the motions, the Commission recounted the longstanding criteria by which it is guided in considering requests for emergency rate relief:

> First, the existence of an emergency is a condition precedent to any grant of temporary rate relief. Second, applicant's evidence will be reviewed with the strictest scrutiny and that evidence must clearly and convincingly demonstrate the presence of extraordinary circumstances which constitute a genuine emergency situation.

---

[20] Fifth Entry on Rehearing, ¶ 355. The Commission inadvertently identified the MRO emergency provision as R.C. 4928.143(D) rather that R.C. 4928.142(D) in ¶ 354, and then repeated this error in its references to this provision throughout ¶ 355.

[21] *See In the Matter of the Application of The Cleveland Electric Illuminating Company for Authority to Amend and to Increase Certain of its Filed Schedules Fixing Rates and Charges for Electric Service*, Case No. 88-170-EL-AIR and *In the Matter of the Application of The Toledo Edison Company for Authority to Amend and to Increase Certain of its Filed Schedules Fixing Rates and Charges for Electric Service*, Case No. 88-171-EL-AIR (Opinion and Order on Interim Rate Relief dated August 23, 1988), 1988 WL 1617994 (Ohio P.U.C.) (hereinafter, the "*CEI Order*").

[22] *See CEI Order*, 2.

[23] *See CEI Order*, 2, 5-6.

> Next, emergency rate relief will not be granted under Section 4909.16, Revised Code, if the emergency request was filed merely to circumvent, and as a substitute for, permanent rate relief under Section 4909.18, Revised Code. Finally, the Commission will grant temporary rate relief only at the minimum level necessary to avert or relieve the emergency. The ultimate question for the Commission is whether, absent emergency relief, the utility will be financially imperiled or its ability to render service will be impaired. If the applicant utility fails to sustain its burden of proof on this issue, the Commission's inquiry is at an end.[24]

However, in its October 12, 2016 Fifth Entry on Rehearing in this case, the Commission ignored the emergency rate case standards set out above and, instead, seized upon a passage in the *CEI Order* wherein the Commission mentioned the applicants' current bond ratings – which, coincidentally, were then also "rated BBB- by Standard and Poor's" – for the proposition that the fact that the Companies' bond ratings are again hovering just above the investment grade threshold is a financial indicator that the Commission would consider in an R.C. 4909.16 emergency rate case proceeding.[25] Can the Commission consider the bond ratings of an applicant utility in an emergency rate case proceeding as an indicator of its financial condition? Sure it can, but this does not mean, as the Commission would have it, that a precarious bond rating is sufficient, of itself, to establish that a utility faces a genuine financial emergency, nor is it sufficient to establish that an applicant utility is entitled to emergency rate relief. Had the Commission applied the actual criteria governing emergency applications set out in the *CEI Order* in the context of this case, the Commission would have been forced to conclude that no genuine financial emergency exists and that, consequently, the additional revenues that would be generated by Rider DMR would not be authorized in a contemporaneous MRO proceeding.

---

[24] *CEI Order*, 4.

[25] *See* Fifth Entry on Rehearing, ¶ 356, citing *CEI Order*, 8.

As stated in the *CEI Order*, "the existence of an emergency is a condition precedent to any grant of temporary rate relief."[26] The *CEI Order* also teaches that, in ruling upon a request for an emergency rate increase, the "applicant's evidence will be reviewed with the strictest scrutiny" and that the "evidence must clearly and convincingly demonstrate the presence of extraordinary circumstances which constitute a genuine emergency situation."[27] To suggest that the record in this case clearly and convincingly demonstrates the presence of extraordinary circumstances which constitute a genuine emergency situation – the condition precedent to granting emergency rate relief in a contemporaneous MRO proceeding – is almost laughable. Indeed, FirstEnergy, which would have the burden of proof on this issue in such a proceeding, has not only agreed to freeze its base distribution rates for the eight-year term of ESP IV but, under the modified Rider RRS hedging arrangement advanced in its rehearing application, also agreed to absorb the revenue shortfall that would result from the fact that there would be no revenue stream to support the projected $256 million in net customer credits under the FE Proposal. In addition, FirstEnergy agreed to provide $51.1 million in shareholder-funded benefits as a part of the stipulations presented in this case. Plainly, a utility whose financial integrity is imperiled would never agree to freeze its base rates for eight years, absorb a projected revenue shortfall of $256 million, or hand out $51.1 million in shareholder-funded benefits. Further, as previously noted, FirstEnergy witness Mikkelsen specifically testified that the funds necessary to support the projected $256 million in net credits would, in fact, be available from a variety of sources.[28]

---

[26] *CEI Order*, 4.

[27] *Id.*

[28] Fifth Entry on Rehearing, ¶ 110, citing Reh. Tr. I, at 84-85.

In citing the comment in the *CEI Order* regarding applicants' BBB- bond rating to justify the notion that the revenues generated by Rider DMR could have been authorized under R.C. 4928.142(D)(4) in a contemporaneous MRO proceeding, the Commission failed to mention that the bond rating was only one of the factors identified by the Commission, which, taken together, led the Commission to conclude that the applicants "were in an emergency as contemplated by Section 4909.16, Revised Code."[29] As discussed in the *CEI Order*, the evidence in that case also showed that "the companies have a negative cash flow and, as a result, are unable to pay their bills with current revenue receipts" and that "the coverage ratios of the utilities are imperiled."[30] Here, there is no evidence that the Companies do not have sufficient cash flow to pay their bills or that the earnings coverage ratios specified by their indentures, which are legal obligations, not merely rating agency benchmarks, are threatened. Indeed, if, as the Commission implies, a precarious bond rating were enough to support a finding of a genuine financial emergency, the Companies would have filed an application for emergency rate relief long ago and any other Commission-regulated utilities with poor credit ratings would be lining up a the Commission's door seeking such relief.

The next standard set out in *CEI Order* is that "emergency rate relief will not be granted under Section 4909.16, Revised Code, if the emergency request was filed merely to circumvent, and as a substitute for, permanent rate relief under Section 4909.18, Revised Code."[31] Here, not only is there no R.C. 4909.18 application for a permanent rate increase pending as was the case in *CEI*, but the Companies have agreed not to file such an application during the eight-year term

---

[29] *CEI Order*, 8.

[30] *Id.*

[31] *CEI Order*, 4.

of ESP IV. If FirstEnergy believed that the Companies' earnings were inadequate, it was free to file an R.C. 4909.18 rate application to establish rates that would provide its shareholders with a reasonable return on their investment. Indeed, FirstEnergy would have a fiduciary obligation to its shareholders do so. For the Commission to grant emergency rate relief that the Companies have not asked for where there is no record evidence showing that their current earnings are inadequate runs afoul of this guideline.

The *CEI Order* goes on to state that "the Commission will grant temporary rate relief only at the minimum level necessary to avert or relieve the emergency."[32] Although the Commission neglects to mention the outcome of the *CEI* case in relying on the comment regarding the applicants' bond ratings, the fact is that, despite the BBB- bond ratings and negative cash flow, the Commission denied the request for temporary emergency rate relief in the *CEI Order*.[33] This pulls the rug from under the notion that the Companies would be granted emergency relief in a contemporaneous MRO proceeding based solely on their precarious bond ratings.

The Commission summarized the standards governing emergency rate relief set out in the *CEI Order* with the statement that the ultimate question "is whether, absent emergency relief, the utility will be financially imperiled or its ability to render service will be impaired," noting that, "if the applicant utility fails to sustain its burden of proof on this issue, the Commission's inquiry is at an end."[34] As previously discussed, a bond rating that hovers just above the lower bound of investment grade does not, of itself, mean the Companies are financially imperiled, and there is

---

[32] *Id.*

[33] *CEI Order,* 10. The Commission did address the coverage ratio issue by authorizing the applicants to book full carrying charges for the deferred rate base amounts for the plants in question. *Id.*

[34] *CEI Order,* 4.

certainly nothing in the record in this case that would support a finding in a contemporaneous MRO proceeding that the Companies' ability to provide service to its customers would be impaired if it were not granted revenues equivalent to the revenues that would be generated by Rider DMR. Thus, the Rider DMR costs can only be placed in the ESP column. Consequently, the inclusion of Rider DMR as an element of ESP IV will cause ESP IV to fail the ESP v. MRO test on a quantitative basis.

The second problem with the Commission's theory that it would have the authority to authorize revenues equivalent to those that would be generated by Rider DMR in a contemporaneous MRO proceeding under the emergency provision of R.C. 4928.142(D)(4) is that this provision applies solely to standard service offer ("SSO") service. As noted above, the Commission recognized that it could not interpret this provision of R.C. 4928.142(D)(4) "as simply replicating or being redundant to R.C. 4909.16."[35] CMSD agrees with this assessment and submits that there is no question these provisions are intended to address two entirely different circumstances. The fact that the mechanism the legislature provided in the MRO statue for addressing an emergency or a potential unconstitutional taking of property is limited to an adjustment to the SSO price clearly signals that the legislature's intent was that this mechanism would be used only to address financial emergencies or potential unconstitutional takings arising from unexpected, unavoidable costs flowing from the utility's obligation to provide for SSO service to non-shopping customers. Thus, even if, contrary to fact, a precarious bond rating, of itself, could be deemed to be an extraordinary circumstance that constitutes a genuine emergency situation, the Commission could not, under the emergency provision of R.C. 4928.142(D)(4), reasonably require only SSO customers to provide the funds necessary to address this emergency

[35] Fifth Entry on Rehearing, ¶ 355.

through an adjustment to the SSO price. Plainly, this would be an issue for an R.C. 4909.16 emergency rate proceeding, where all customers would be called upon to provide the interim revenues in the minimum amount necessary to avert the emergency. Because the Commission could not authorize an adjustment to the SSO price rate in a contemporaneous MRO proceeding to produce revenues equivalent to those that would be generated by Rider DMR, the Rider DMR costs can only be entered on the ESP side of the ledger. Thus, there is no "wash," which means that including Rider DMR as a provision of ESP IV will cause it to fail the ESP v. MRO test.

The final problem with the notion that the Commission could authorize equivalent revenues in an MRO proceeding is that R.C. 4928.142(D)(4) provides that the electric utility seeking to invoke its emergency provision "has the burden of demonstrating that any adjustment to its most recent standard service offer price is proper in accordance with this division." This language indicates that the legislature did not contemplate that anyone other than the applicant utility would initiate a request for an adjustment to the SSO price under this provision. Not only did FirstEnergy not present evidence in this proceeding demonstrating that the Companies faced a genuine emergency that threatened its financial integrity, but the evidence it did present via Ms. Mikkelsen's testimony purported to show that it had the financial wherewithal to support the projected $256 million in credits under the FE Proposal, which when, coupled with its agreement to an eight-year distribution rate freeze and its willingness to commit to $51.1 in shareholder-provided benefits for purposes of ESP IV, demonstrates that FirstEnergy does not believe that its financial integrity is threatened. As the Commission correctly framed it, the test here is whether the record in this proceeding will support authorizing revenues in a contemporaneous hypothetical MRO case equivalent to the revenues that would be generated by Rider DMR. There is simply no way that the Commission could reasonably find that the evidence presented

by FirstEnergy in this case would be sufficient to satisfy its burden of proof under R.C. 4928.142(D)(4) in a contemporaneous MRO proceeding, and, thus, the Commission could not, in fact, authorize equivalent revenues in such a proceeding. The Commission should grant rehearing on this ground.

SECOND GROUND FOR REHEARING

The Commission's finding that ESP IV is more favorable than a contemporaneous MRO by $51.1 million on a quantitative basis is based on the improper exclusion of the $397.5 million in costs associated with Rider DMR from the comparison.

As demonstrated by the foregoing discussion, the Commission erred in concluding that, because "it is likely that the Commission would grant relief in response to a hypothetical application under R.C. 4928.142(D)," the costs associated with Rider DMR should be excluded from the quantitative ESP v. MRO test.[36] Thus, the Commission's determination that ESP IV is more favorable than a contemporaneous MRO by $51.1 million is also incorrect. As modified by the Commission, Rider DMR will add $397.5 million – and potentially as much as $662.5 million – to the ESP cost column, thereby causing ESP IV to fail the R.C. 4928.143(C)(1) more-favorable-than-an-MRO test by at least $346.4 million on a quantitative basis. CMSD is gratified that the Commission did not ascribe a quantitative value to conditioning its approval of Rider DMR on FirstEnergy maintaining its headquarters and nexus of operations in Akron, which, for those reasons set forth in detail in CMSD's rehearing reply brief, would have been unreasonable and improper in any event.[37] However, with no measurable quantitative benefits to

[36] Fifth Entry on Rehearing, ¶ 357.

[37] *See* CMSD Rehearing Reply Brief, 19-23.

replace the $256 million net benefit the Commission ascribed to Rider RRS, approval of Rider DMR causes ESP IV to fail the quantitative ESP v. MRO test by a substantial margin.

THIRD GROUND FOR REHEARING

> **The Commission's determination that ESP IV, as modified on rehearing, passes the ESP v. MRO test on a qualitative basis is based on an incorrect interpretation of the applicable judicial precedent, ignores the actual objective of Rider DMR and the extremely tenuous connection between Rider DMR and the qualitative benefits the Commission ascribes to grid modernization, and fails to consider that the costs of Rider DMR are disproportionate to any conceivable financial benefit to customers.**

The Commission prefaced its application of the ESP v. MRO test by noting that the Ohio Supreme Court has held that R.C. 4928.143(C)(1) "does not bind the commission to a strict price comparison" and that "in evaluating the favorability of a plan, the statute instructs the commission to consider 'pricing *and all other terms and conditions*.'"[38] (Emphasis sic). However, this does not mean, as the Commission appears to suggest, that the Commission can simply tick off the qualitative benefits provided by certain terms of an ESP that would not be achievable in an MRO proceeding and declare that the ESP is more favorable than an MRO based on those benefits regardless of the outcome of the quantitative test. As the court stated, both pricing – *i.e.*, the relative quantifiable cost to customers under the ESP and a hypothetical MRO – and the qualitative benefits associated with other terms and conditions of the ESP must be considered. Moreover, CMSD submits that the court's reference to a "*strict* price comparison" (emphasis added) is not accidental and is further evidence of the court's expectation that the Commission will balance the cost to customers with the qualitative factors where, as here, the ESP would fail the ESP v. MRO test based on a strict quantitative analysis.

---

[38] Fifth Entry on Rehearing, ¶ 351, citing *In re Application of Ohio Edison Co.*, 146 Ohio St.3d. 222, at 226, 2016-Ohio-3021 and *In re the Application of Columbus S. Power Co.*, 128 Ohio St.3d. 402, 2011-Ohio-958.

In no event can the Commission simply toss out the results of the quantitative comparison and rely solely on the results of an analysis of the qualitative benefits in determining whether an ESP is more favorable than an MRO. At minimum, there must be some proportionality between the additional costs customers would incur under an element of an ESP (as opposed to under an MRO) and the qualitative benefits attributed to that element. In this instance, not only will be customers be up to $662.5 million worse off under a version of ESP IV that includes Rider DMR than they would under an MRO, but there is no assurance that Rider DMR will achieve its objective of preserving credit rating of FirstEnergy Corp. Moreover, the inclusion of Rider DMR will actually negate another qualitative benefit of ESP IV.

No one would dispute the Commission's assertion 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.[39] However, the fundamental problem here is that Rider DMR is not designed to pay for grid modernization.[40] Rather, Rider DMR is specifically designed to provide a cash infusion to the Companies in the hope that the additional revenues will stave off a downgrade of FirstEnergy Corp.'s credit rating, thereby allowing the Companies access to the capital markets on more favorable terms than would be accorded an enterprise with a below-investment grade rating.[41]

Although the Commission's hope is that providing a cash infusion for the purpose of maintaining an investment-grade credit rating will provide the Companies with an incentive to embark on a grid modernization program, there is no direct link between Rider DMR and any

[39] *See* Fifth Entry on Rehearing, ¶ 358.

[40] *See* Fifth Entry on Rehearing, ¶ 184.

[41] *See* Fifth Entry on Rehearing, ¶ 358.

specific elements of a grid modernization program. Indeed, at this juncture, the Commission has no idea what the approved grid modernization program will entail, what it will cost, or when actual investments in the program will be made. Presumably, the specifics of the grid modernization program will be addressed in the grid modernization case FirstEnergy has filed pursuant to an earlier stipulation. However, approving Rider DMR before these matters are resolved puts the cart way before the horse. In so stating, CMSD understands that Chairman Haque's concern that grid modernization efforts could be thwarted if the Companies cannot come up with the necessary funds when the time comes to implement the program,[42] but this actually makes CMSD's point. The cash infusion that would result from Rider DMR is intended to address the Companies' credit rating and will not be used to pay for grid modernization. If the real concern is the Companies' financial health, that is a matter for a R.C. 4909.18 permanent rate case or, if circumstances are so dire that the Companies are financially imperiled, an R.C. 4909.16 emergency rate case. There is no direct nexus between the costs of Rider DMR and the qualitative benefit that the Commission ascribes to grid modernization for purposes of the ESP v. MRO test.

The second problem is that there is no assurance that approval of Rider DMR will prevent a downgrade of FirstEnergy Corp.'s credit rating. Although the Commission takes the position that the Rider DMR revenues represent the Companies fair-share contribution toward satisfying Moody's CFO-to-debt metric for an investment grade rating,[43] FirstEnergy Corp.'s credit rating is dependent on a number of factors over which the Commission has no control. As

---

[42] *See* Concurring Opinion of Chairman Asim Z. Haque, ¶ 5.

[43] The Commission accepted Staff witness Buckley analysis purporting to show that the Companies should be responsible for 22% of the corporate-wide operating revenue, and that the revenue increase required from the Companies to satisfy Moody's CFO pre-working capital to debt benchmark should be based on this percentage and collected through Rider DMR. *See* Fifth Entry on Rehearing, ¶ 200.

noted above, the excerpt from the April 28, 2016 research update issued by S&P makes it 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.[44] 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,"[45] *i.e.*, FirstEnergy Corp.'s unregulated generation subsidiaries. Thus, providing a cash infusion to the Companies via Rider DMR will do nothing to address this S&P concern. In addition, although a cash infusion by the Companies' distribution customers via Rider DMR would contribute toward satisfying Moody's CFO-to-debt metric for an investment grade rating for FirstEnergy Corp., this result cannot be achieved unless other FirstEnergy Corp. entities also pay their fair share. This makes any connection between Rider DMR and the qualitative benefits the Commission attributes to grid modernization even more tenuous.

In this same vein, FirstEnergy has claimed that the Rider DMR, as formulated by the Staff, will not produce adequate revenues to stave off a rating downgrade and that Rider DMR needs to generate $558 million per year for the next eight years to solidify FirstEnergy Corp.'s credit rating.[46] Although the Commission rejected this claim, there is obviously no guarantee that approval Rider DMR will prevent a downgrade, which is further evidence of the disconnect between Rider DMR and grid modernization. In view of these circumstances, the Commission cannot reasonably find that benefits of grid modernization outweigh the costs of Rider DMR for purposes of the ESP v. MRO test.

---

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

[45] *Id.*

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

The costs or Rider DMR are also disproportionate to any financial benefit to customers. CMSD would again point out that Staff made no attempt to quantify savings in interest costs FirstEnergy would experience as a result of maintaining an investment-grade rating versus being downgraded, let alone present an estimate of the actual ultimate dollar impact on customers associated with a downgrade. Although this would require a sophisticated analysis, one would think that the Commission would need this information to determine if the costs of Rider DMR outweigh the benefits. As CMSD suggested in its rehearing brief, simply eyeballing the numbers from the Companies' last distribution rate case should tell the Commission that any savings resulting from incorporating the lower cost of debt of newly-issued debt in the embedded cost of debt used in the cost of capital analysis in the next FirstEnergy rate case would be minimal in view of the magnitude of the Companies' outstanding debt, and would certainly not come close to offsetting the additional $397.5 to $662.5 million customers would pay over the term of Rider DMR.[47] In balancing the costs of Rider DMR with its objective of preserving the FirstEnergy Corp. credit rating, the Commission should have examined the financial impact on customers to determine if the financial benefits outweighed the financial costs. Further, the financial benefit, if any, from preserving FirstEnergy Corp.'s credit rating would not be realized by customers until after the Companies' next distribution rate case is decided, which, with the stipulated distribution rate freeze, cannot take place until after the eight-year term of ESP IV expires. Moreover, not only are the costs of Rider DMR disproportionate to any direct benefits that

[47] *See* CMSD Rehearing Brief, 23, citing *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).

customers might realize, but approval of Rider DMR also negates an unrelated qualitative benefit cited by the Commission in approving is ESP IV.

Although the Commission found that the eight-year distribution rate freeze represents a qualitative benefit of ESP IV in that it provides rate stability,[48] there can be no question that approval of Rider DMR totally negates this benefit. Rider DMR is a distribution rate that would result in customers paying an additional $132.5 million annually for distribution service over the next three years, and, potentially, for the next five years, an annual increase that nearly equals the total $132.6 million revenue increase granted to the three Companies in their last distribution rate case.[49] So much for rate stability. CMSD acknowledges that, as the Commission pointed out, a rate case would expose customers to the risk that the resulting base distribution rates could be higher than the current rates.[50] However, there is no way to know if this will occur, and other intervenors have argued that distribution rates might well go down as the result of a distribution rate case.[51] Be that as it may, the one thing that can be said with certainty is that the revenue requirement in an R.C. 4909.18 rate case would not include an increment designed to satisfy rating agency metrics, which is the objective of Rider DMR.[52]

Although the Commission is not bound to a strict price comparison and can consider qualitative benefits of other terms and conditions of an ESP in applying the ESP v. MRO test,

---

[48] *See* Fifth Entry on Rehearing, ¶ 359.

[49] *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.

[50] *See* Fifth Entry on Rehearing, ¶ 249.

[51] *See* OCC-NOAC Application for Rehearing dated May 2, 2016, at 20-22.

[52] *See* CMSD Rehearing Brief, 20-21.

where an element of an ESP causes it to fail the test on a quantitative basis, there must at least be some proportionality between the financial costs and the associated qualitative benefits. In this instance, the Rider DMR costs will provide no measurable quantitative benefit during the term of ESP IV and are totally disproportionate to the qualitative benefits, especially when one considers that there is no direct link between Rider DMR and grid modernization. In fact, because Rider DMR is not intended to fund grid modernization, there is no basis for the Commission to determine that Rider DMR will provide any qualitative benefits to customers at all. Rehearing should be granted on this ground.

FOURTH GROUND FOR REHEARING

The Commission's approval of Rider DMR violates longstanding Commission precedent against determining the amount of a rate increase based upon the amount of revenue necessary to satisfy rating agency metrics.

In its rehearing brief, CMSD pointed out that the Commission addressed the very issue presented by Rider DMR decades ago in a Cleveland Electric Illuminating Company rate case in response to the applicant's claim that the authorized dollar return should be predicated upon satisfying rating agency metrics.[53] The Commission stated as follows:

> There is much more involved in solidifying or improving applicant's present ratings than merely handing out rate increases, as Company witness Maugans acknowledged (transcript citations omitted). Adequate rate relief is an important step, but utility management also has a definite role to play as it is the company's performance over time that influences the rating agencies. The Commission recognizes that improved ratings will lead to lower future financing costs, but the real question is what price we should ask customers to pay presently for this future benefit. This is the very heart of the rate of return inquiry, and a balance must be struck. Were it not for this consideration, we could simply send the rate of return witnesses home and decide the earnings requirement question solely through an analysis of coverage ratios.

[53] *See* CMSD Rehearing Brief, 20.

> There is quite clearly more to establishing a reasonable earnings opportunity than a mechanical calculation designed to satisfy the ratings agencies' coverage tests.[54]

Although the Commission summarized CMSD's argument that approval of Rider DMR would be inconsistent with this precedent in its Fifth Entry on Rehearing,[55] the Commission did not respond to CMSD's central point, which is that the Commission has squarely held that it would be improper to grant rate relief be based on the amount of cash earnings necessary to satisfy rating agency metrics, which is precisely what the Commission has done in approving Rider DMR. Indeed, by insulating the Rider DMR revenues from review in a subsequent SEET proceeding,[56] the Commission has demonstrated that it does not care one whit if Rider DMR forces customers to provide revenues that exceed the revenues that would produce a fair and reasonable rate of return on FirstEnergy shareholders' investment, thereby ignoring the need to strike the balance the Commission referred to in the excerpt from the order in Case No. 70-537-EL-AIR set out above. The Commission, by designing Rider DMR based on a mechanical calculation designed to satisfy Moody's CFO-to-debt ratio for an investment-grade rating, is, in effect, turning over its ratemaking responsibility to a rating agency, without any regard for the interests of the Companies' customers that the Commission is charged to protect. It is no secret that many FirstEnergy customers across all rate categories have their own creditworthiness issues, yet the Commission has chosen to focus on the credit rating of FirstEnergy Corp., an entity it does not even regulate.

---

[54] *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. 79-537-EL-AIR (Opinion and Order dated July 10, 1980), at 34.

[55] *See* Fifth Entry on Rehearing, 64.

[56] *See* Fifth Entry on Rehearing, ¶ 212.

CMSD understands that the Commission places a high value on grid modernization and also recognizes that R.C. 4928(B)(2)(h) permits single-issue ratemaking in the context of an ESP "notwithstanding any provision of Title XLIX to the contrary." However, it is important that the Commission bear in mind that the "single issue" that Rider DMR is designed to address is the FirstEnergy Corp.'s precarious credit rating, not grid modernization. As CMSD previously observed, 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.[57] Accordingly, in the context of single-issue ratemaking, the need for additional cash earnings would be subject to the same standards that apply to the rate of return determination in an R.C. 4909.18 rate case, and, thus, under the longstanding precedent discussed above, could not be based on the amount necessary to satisfy rating agency metrics.

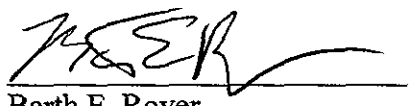
What makes all this even worse is that, as previously discussed, there is no assurance that Rider DMR will prevent a downgrade of FirstEnergy Corp. due to factors over which this Commission has no control. Conversely, it is possible that the recent announcements regarding closing certain units owned by FirstEnergy Corp.'s generation subsidiaries[58] will serve to solidify FirstEnergy Corp.'s current credit rating even without the additional revenues that will be generated by Rider DMR. Indeed, as noted above, S&P has, as a general matter, indicated that FirstEnergy Corp.'s credit outlook will improve "(i)f the company's business risk materially

[57] *See* CMSD Rehearing Reply Brief, 16-17.

[58] *See* Fifth Entry on Rehearing, ¶ 204.

improves by reducing the size of its higher risk competitive business."[59] Does the Commission really want to subject customers to the risk that they will have pay hundreds of millions of dollars via Rider DMR and, at the end of the day, will have absolutely nothing to show for it? The Commission should grant rehearing on this ground and should remove Rider DMR as an element of ESP IV.

Respectfully submitted,



Barth E. Royer
Barth E. Royer, LLC
2740 East Main Street
Bexley, Ohio 43209
(614) 385-1937 – Phone
(614) 360-3529 – Fax
BarthRoyer@aol.com – Email

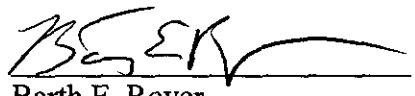
Adrian Thompson
Taft Stettinius & Hollister LLP
200 Public Square, Suite 3500
Cleveland, OH 44114-2302
(216) 241-3141 – Phone
(216) 241-3707 – Fax
athompson@taftlaw.com – Email

Attorneys for
The Cleveland Municipal School Distric

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

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 14th day of November 2016.



Barth E. Royer

cdunn@firstenergycorp.com
dakutik@jonesday.com
jlang@calfee.com
talexander@calfee.com
Thomas.mcnamee@puc.state.oh.us
Thomas.lindgren@puc.state.oh.us
Steven.beeler@puc.state.oh.us
mkurtz@BKLlawfirm.com
kboehm@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
stnourse@aep.com
mjsatterwhite@aep.com
yalami@aep.com
Jennifer.spinosi@directenergy.com
ghull@eckertseamans.com
myurick@taftlaw.com
dparram@taftlaw.com
Schmidt@sppgrp.com
ricks@ohanet.org
tobrien@bricker.com
mkl@bbrslaw.com
gas@smxblaw.com
wttpmlc@aol.com
lhawrot@spilmanlaw.com
dwilliamson@spilmanlaw.com
blanghenry@city.cleveland.oh.us
hmadorsky@city.cleveland.oh.us
kryan@city.cleveland.oh.us
mdortch@kravitzllc.com
rparsons@kravitzllc.com
gkrassen@bricker.com
dstinson@bricker.com
dborchers@bricker.com
mitch.dutton@fpl.com
DFolk@akronohio.gov
mkimbrough@keglerbrown.com
sechler@carpenterlipps.com
gpoulos@enernoc.com
twilliams@snhslaw.com
dwolff@crowell.com
rlehfeldt@crowell.com
larry.sauer@occ.ohio.gov
maureen.willis@occ.ohio.gov
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
cmooney@ohiopartners.org
callwein@keglerbrown.com
joliker@igsenergy.com
mswhite@igsenergy.com
Bojko@carpenterlipps.com
barthroyer@aol.com
athompson@taftlaw.com
Christopher.miller@icemiller.com
Gregory.dunn@icemiller.com
Jeremy.grayem@icemiller.com
blanghenry@city.cleveland.oh.us
hmadorsky@city.cleveland.oh.us
kryan@city.cleveland.oh.us
tdougherty@theOEC.org
jfinnigan@edf.org
Marilyn@wflawfirm.com
todonnell@dickinsonwright.com
matt@matthewcoxlaw.com
mfleisher@elpc.org
drinebolt@ohiopartners.org
meissnerjoseph@yahoo.com
LeslieKovacik@toledo.oh.gov
trhayslaw@gmail.com
Jeffrey.mayes@monitoringanalytics.com
mhpetricoff@vorys.com
mjsettineri@vorys.com
glpetrucci@vorys.com
msoules@earthjustice.org
sfisk@earthjustice.org