

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric) Case No. 19-0361-EL-RDR
Illuminating Company and The Toledo)
Edison Company for an Extension of the)
Distribution Modernization Rider.)

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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FirstEnergy's ("Utility") customers have paid nearly a half-billion dollars (about \$100 by each residential consumer¹) for its so-called Distribution Modernization Rider ("Charge"). The Supreme Court of Ohio held that the Charge was unlawful.² In response to a motion filed by OCC and other customer parties in this case,³ the Public Utilities Commission of Ohio ("PUCO") protected consumers and issued an Entry denying FirstEnergy's attempt to extend the unlawful Charge.⁴ But unfortunately, the PUCO inexplicably in the same Entry also relieved FirstEnergy of a consumer protection obligation – filing a rate case at the end of its current electric security plan. That rate case would be the first such case filed by FirstEnergy since 2008. The rate case obligation was imposed on FirstEnergy by the PUCO.⁵ To protect consumers, the PUCO

¹ This amount is for a typical residential consumer using 1,000 kwh per month over the thirty-month period from January 2017 through June 2019.

² *In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73 (2019).

³ Ohio Manufacturers' Association Energy Group ("OMAEG"), Northeast Ohio Public Energy Council, and Northwest Ohio Aggregation Coalition.

⁴ *See* Entry (November 21, 2019).

⁵ *In re Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*. Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016), at ¶¶ 189, 249-251, 327, 343, 346, 358-59; Eighth Entry on Rehearing (Aug. 16, 2017), at ¶¶ 89, 91, 94.

should revisit on rehearing its decision to relieve FirstEnergy of the obligation to file a rate case. The PUCO should reimpose the obligation on FirstEnergy to file a rate case at the end of its current electric security plan because the Entry is unlawful and unreasonable in the following respects:

Assignment of Error 1: The PUCO's decision to relieve FirstEnergy of its obligation to file a distribution rate case, when its current electric security plan ends, harms consumers and is unreasonable and unlawful because it is not supported by the record, thus violating R.C. 4903.09. Consumers are harmed where, as here, a utility's distribution costs and revenues are not comprehensively reviewed for over a decade and a half while the utility's earned return exceeds its authorized return.

Assignment of Error 2: The PUCO's decision to relieve FirstEnergy of its obligation to file a distribution rate case was unreasonable and unlawful in violation of Supreme Court of Ohio precedent. The PUCO departed from its prior decision without substantive explanation. Consumers are harmed where, as here, a utility's distribution costs and revenues are not comprehensively reviewed for over a decade and a half while the utility's earned return exceeds its authorized return.

Assignment of Error 3: The PUCO's decision relieving FirstEnergy of an obligation to file a distribution rate case is unreasonable and unlawful under the electric security plan settlement process and harms customers because the PUCO approved a settlement agreement (which included the obligation to file a distribution rate case) in another case establishing FirstEnergy's current standard service offer. Consumers are harmed where, as here, a utility's distribution costs and revenues are not comprehensively reviewed for over a decade and a half while the utility's earned return exceeds its authorized return.

Assignment of Error 4:

The PUCO's decision to relieve FirstEnergy of its obligation to file a distribution rate case when its current electric security plan ends harms consumers and is unreasonable and unlawful because it violated OCC's due process rights by preventing OCC from having its day in court. Consumers are harmed where, as here, a utility's distribution costs and revenues are not comprehensively reviewed for over a decade and a half while the utility's earned return exceeds its authorized return.

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**MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

In *Ohio Edison*, the Supreme Court of Ohio (“Court”) held that FirstEnergy’s so-called Distribution Modernization Rider (“Charge”) was unlawful. In its Application filed in this case (which was made before the Court’s ruling), FirstEnergy asked the PUCO to authorize a two-year extension of the Charge. In light of the Court’s ruling in *Ohio Edison*, OCC, along with other customer parties, filed a Joint Motion requesting that the PUCO deny FirstEnergy’s Application to extend the unlawful charge.⁶

The PUCO issued an Entry in this case appropriately denying FirstEnergy’s Application to extend the Charge as moot.⁷ But the PUCO erred in determining that, due to the elimination of the Charge, it is no longer necessary or appropriate for FirstEnergy

⁶ *Joint Motion to Protect Consumers by Denying FirstEnergy’s Request to Continue its So-Called Distribution Modernization Rider by the Office of the Ohio Consumers’ Counsel, Ohio Manufacturers’ Association Energy Group, Northeast Ohio Public Energy Council, and the Northwest Ohio Aggregation Coalition* (Aug. 30th, 2019).

⁷ Entry (Nov. 21, 2019), at ¶ 16.

to file a distribution rate case when its current electric security plan ends (as the PUCO had previously ordered⁸).

To protect consumers, the PUCO should on rehearing modify the Entry to again require FirstEnergy to file a distribution rate case at the end of its current electric security plan, as it had previously ordered because “it is sound regulatory practice to conduct regular distribution rate cases.”⁹ A rate case will facilitate a full, detailed, comprehensive consideration of FirstEnergy’s distribution costs and revenues – an important consumer protection that was required by the PUCO when it ruled on FirstEnergy’s electric security plan. But the PUCO’s recent Entry inexplicably and without record support relieves FirstEnergy of the obligation to file a rate case, contrary to its holding in FirstEnergy’s electric security plan case. The Entry is in stark departure from the PUCO’s recent pronouncement of its long-held policy that it “will respect our precedents in order to assure the predictability which is essential in administrative law.”¹⁰ There is no basis for the PUCO’s Entry and, to protect consumers, it should be modified on rehearing.

II. STANDARD OF REVIEW

After an order is entered, an intervenor in a PUCO proceeding has a statutory right to apply for rehearing “in respect to any matters determined in the proceeding.”¹¹

⁸ *In re Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*. Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016), at ¶¶ 189, 249-251, 327, 343, 346, 358-59; Eighth Entry on Rehearing (Aug. 16, 2017), at ¶¶ 89, 91, 94.

⁹ *See id.* at Eighth Entry on Rehearing at ¶ 91.

¹⁰ *In the Matter of the Application of the Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 08-1094-EL-SSO, Second Finding and Order (December 18, 2019) at ¶ 29.

¹¹ R.C. 4903.10.

An application for rehearing must be in writing and “set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.”¹²

In considering an application for rehearing, R.C. 4903.10 provides that the PUCO may grant and hold rehearing if there is “sufficient reason” to do so. After such rehearing, the PUCO may “abrogate or modify” the order in question if the PUCO “is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted.”¹³

As explained below, this standard has been met. The PUCO should abrogate or modify its Entry and reimpose the obligation on FirstEnergy to file a rate case at the end of its current electric security plan.

III. ASSIGNMENTS OF ERROR

Assignment of Error 1: The PUCO’s decision to relieve FirstEnergy of its obligation to file a distribution rate case, when its current electric security plan ends, harms consumers and is unreasonable and unlawful because it is not supported by the record, thus violating R.C. 4903.09. Consumers are harmed where, as here, a utility’s distribution costs and revenues are not comprehensively reviewed for over a decade and a half while the utility’s earned return exceeds its authorized return.

PUCO decisions must be supported by the record.¹⁴ R.C. 4903.09 provides that:

In all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.

¹² R.C. 4903.10(B). *See also* Ohio Admin. Code 4901-1-35(A).

¹³ R.C. 4903.10(B).

¹⁴ R.C. 4903.09; *Ohio Consumers’ Counsel v. PUC*, 111 Ohio St.3d 300 (2006).

To meet the requirements of this statute, the PUCO's Entry must show, in sufficient detail, the facts in the record on which the Entry is based and the reasoning followed in reaching the conclusion.¹⁵ As the Supreme Court of Ohio has explained:

The General Assembly never intended this court to perform the same functions and duties as the Public Utilities Commission but it did intend that this court should determine whether the facts found by the commission lawfully and reasonably justified the conclusions reached by the commission in its order and whether the evidence presented to the commission as found in the record supported the essential findings of fact so made by the commission.¹⁶

The PUCO's decision that relieves FirstEnergy of the obligation to file a rate case at the end of its current electric security plan does not meet this standard. The PUCO should abrogate or modify its Entry and reimpose the obligation on FirstEnergy to file a rate case at the end of its current electric security plan.

In its Fifth Entry on Rehearing, approving the various provisions in FirstEnergy's electric security plan, the PUCO stated: "We do note, however, that, by the end of ESP IV, it will have been 17 years since the Companies' last distribution rate case, and we direct the Companies to file a distribution rate case at that time."¹⁷ This holding by the PUCO was apparently made in recognition of the testimony of Staff Witness McCarter, who testified:

a holistic, periodic review of each company's finances is necessary to ensure that all costs are appropriately incurred and recovered. A rate case permits the overall earnings of the Companies to be reviewed along with all of its revenues and expenses. As such, Staff believes it is a prudent regulatory practice to gain holistic understanding of the regulated distribution company on a regular basis. In an

¹⁵ See, e.g., *MCI Telecommunications Corp. v. PUCO*, 32 Ohio St.3d 306 (1987).

¹⁶ *Commercial Motor Freight, Inc. v. PUCO*, 156 Ohio St. 360, 364 (1951); see also *Motor Service Co. v. PUCO*, 39 Ohio St.2d 5 (1974).

¹⁷ Fifth Entry on Rehearing, ¶251.

industry as dynamic as the electric utility industry, a number of significant changes can occur within 10 years.¹⁸

Nothing has changed that justifies relieving the Companies of the requirement to file a rate case following the eight-year electric security plan. Regarding its decision to the contrary, the PUCO merely notes that the Rider DMR was part of a package of provisions related to FirstEnergy's distribution service, including extension of FirstEnergy's delivery capital recovery rider and a directive to file a distribution case at the end of the electric security plan. The PUCO then adds that:

In light of the changed circumstances, with termination of revenues recovered through [the Charge], as well as the elimination of any possibility for an extension of [the Charge], we find that it is no longer necessary or appropriate for [FirstEnergy] to be required to file a new distribution rate case at the conclusion of [FirstEnergy's] current [electric security plan].¹⁹

The PUCO cites no authority for its decision. It does not explain why it is purportedly “no longer necessary or appropriate” for FirstEnergy to file a rate case. Nor does it explain how the “changed circumstances” have anything to do with its new decision relieving FirstEnergy from filing a rate case. No change made to the Charge justifies reneging on the filing of a rate case. The fact still remains that, at the end of the electric security plan, it will have been seventeen years since FirstEnergy's last rate case. And as a matter of good public policy, FirstEnergy's distribution rates should be reviewed. There has been no evidence submitted in this round of the case that FirstEnergy should be relieved of its rate case obligation. Without evidence to support its new conclusion, the PUCO has violated R.C. 4903.09

¹⁸ Testimony of Doris McCarter at 13 (Sept. 18, 2015).

¹⁹ Entry at ¶ 17.

Consumers are clearly prejudiced by the PUCO's decision made without record support. As OCC explained in the electric security plan proceeding, freezing of the distribution rates (until the next rate case) harms, not helps customers. FirstEnergy's distribution rates set in 2008 will be in effect until at least 2024, and now with the PUCO ruling, even beyond that time. Customers will be paying rates to FirstEnergy that guarantee FirstEnergy will be overearning excess profits at consumer expense. As OCC witness Effron testified, FirstEnergy is already earning a return in excess of its authorized cost of capital through its 2008 distribution rates. In fact, these are calculated in the table below:

Utility	Earned Return on Rate Base	Authorized Return on Rate Base	Earned Return on Equity	Authorized Return on Equity
Ohio Edison	11.2%	8.48%	16.0%	10.5%
Cleveland Electric Illuminating	11.7%	8.48%	17.1%	10.5%
Toledo Edison	10.7%	8.48%	15.1%	10.5%

Allowing FirstEnergy's base distribution rates to go unchecked when the utility is earning in excess of its earned return on equity only ensures that FirstEnergy will keep reaping profits on the backs of its customers. OCC Witness Kahal testified that the rate freeze means that the PUCO cannot examine (and adjust) distribution rates that customers will pay for sixteen years: A base rate case investigation is long overdue for the FE Utilities. There will be no detailed rate case-type review of cost of service and rate of return for more than 16 years (i.e., 2008 to beyond 2024). Such a delay in examining the reasonableness of distribution rates and rate of return is an improper departure from cost-

based ratemaking and is unfair to customers. Further, FirstEnergy filing a rate case at the end of its current electric security plan is closely related to the implementation of FirstEnergy's grid modernization case.²⁰ Grid modernization may result in operation and maintenance savings. Such savings will be fully passed along to customers only in a rate case.²¹

Third, FirstEnergy's current base distribution rates were set in 2008. There should be a comprehensive review of all of the costs and revenue involved in serving FirstEnergy's distribution customers given the significant changes in the cost of capital, operation and maintenance costs, and rate base since then. Relieving FirstEnergy of the obligation to file a rate case at the end of its current electric security plan makes this necessary comprehensive review that much more elusive. And given the lack of "teeth" (with an unreasonably high earnings threshold in the range of 16% to 19% return on equity and the exclusion of Charge profits) in the significantly excessive earnings test, a rate case is likely the only way to re-set the authorized return on equity based on updated financial market conditions.

Additionally, under H.B. 6 (now R.C. 4928.148 *et al.*), FirstEnergy filed for a decoupling mechanism that will stay in effect until its next rate case.²² Based on FirstEnergy's filing in that case, the decoupling mechanism will cost consumers approximately \$17 million in its first year and untold amounts every year thereafter.²³ Now that the PUCO has relieved FirstEnergy of the obligation to file a rate case at the

²⁰ See Case Nos. 16-481-EL-UNC; 17-2436-EL-UNC.

²¹ See, e.g., Case No. 16-481-EL-UNC, FirstEnergy Grid Modernization Business Plan (Feb. 29, 2016).

²² See Case No. 19-2080-EL-ATA.

²³ See *id.* at Application (November 21, 2019), Schedule A, pages 1-3.

end of its current electric security plan, consumers will be paying even more costs associated with the decoupling mechanism for an indefinite, unknowable duration.

There is no record support in this case for the PUCO's Entry relieving FirstEnergy of its obligation to file a rate case at the end of its current electric security plan. The PUCO should abrogate or modify its Entry and reimpose the obligation on FirstEnergy to file a rate case at the end of its current electric security plan.

Assignment of Error 2: The PUCO's decision to relieve FirstEnergy of its obligation to file a distribution rate case was unreasonable and unlawful in violation of Supreme Court of Ohio precedent. The PUCO departed from its prior decision without substantive explanation. Consumers are harmed where, as here, a utility's distribution costs and revenues are not comprehensively reviewed for over a decade and a half while the utility's earned return exceeds its authorized return.

Just recently, the PUCO affirmed its long-held policy that it "will respect our precedents in order to assure the predictability which is essential in administrative law."²⁴ This policy is necessary under Supreme Court of Ohio precedent. The Court has "instructed the [PUCO] to respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law."²⁵ Where the PUCO departs from a previous decision, it must explain why.²⁶ "When the [PUCO] has made a lawful order, it is bound by certain institutional constraints to justify that change before such order may be changed or modified."²⁷ The change or modification must be substantively reasonable and lawful.²⁸ The PUCO's Entry relieving

²⁴ *In the Matter of the Application of the Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 08-1094-EL-SSO, Second Finding and Order (December 18, 2019) at ¶ 29.

²⁵ See, e.g., *In re Ohio Power Co.*, 144 Ohio St.3d 1, 5 (2015).

²⁶ See *id.*

²⁷ See *id.*

²⁸ See *id.*

FirstEnergy of the obligation to file a rate case at the end of its current electric security plan does not meet this standard.

The PUCO in its Entry relieved FirstEnergy of a consumer protection obligation – filing a rate case at the end of its current electric security plan – that the PUCO had previously required of FirstEnergy.²⁹ It did so on the thinnest of grounds, saying only:

In light of the changed circumstances, with termination of revenues recovered through [the Charge], as well as the elimination of any possibility for an extension of [the Charge], we find that it is no longer necessary or appropriate for [FirstEnergy] to be required to file a new distribution rate case at the conclusion of [FirstEnergy’s] current [electric security plan].³⁰

The PUCO cites no authority for its decision. It does not explain why it is purportedly “no longer necessary or appropriate” for FirstEnergy to file a rate case. Neither FirstEnergy nor any other party asked in this case to be relieved of the rate case obligation. There was no evidence submitted in this case that FirstEnergy should be relieved of its rate case obligation. Without any supporting authority, explanation, or evidence, and as explained herein throughout, the PUCO’s Entry changing course by relieving FirstEnergy of its rate case obligation is not substantively reasonable and lawful.

The PUCO’s decision was unreasonable and unlawful, and in order to protect consumers, the PUCO should reimpose the obligation on FirstEnergy to file a rate case at the end of its current electric security plan.

²⁹ *In re Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*. Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016), at ¶¶ 189, 249-251, 327, 343, 346, 358-59; Eighth Entry on Rehearing (Aug. 16, 2017), at ¶¶ 89, 91, 94.

³⁰ Entry at ¶ 17.

Assignment of Error 3: The PUCO's decision relieving FirstEnergy of an obligation to file a distribution rate case is unreasonable and unlawful under the electric security plan settlement process and harms customers because the PUCO approved a settlement agreement (which included the obligation to file a distribution rate case) in another case establishing FirstEnergy's current standard service offer. Consumers are harmed where, as here, a utility's distribution costs and revenues are not comprehensively reviewed for over a decade and a half while the utility's earned return exceeds its authorized return.

The PUCO established the consumer protection obligation to file a rate case at the end of its current electric security plan on FirstEnergy in the Utility's last (and current) electric security plan case.³¹ But this case involves FirstEnergy's efforts to extend its unlawful Charge.³² Nowhere in this case did FirstEnergy (or any other party) ask to be relieved of the rate case obligation. There was never any evidence submitted in this case that FirstEnergy should be relieved of its rate case obligation. Second, FirstEnergy's rate case obligation was not part of this DMR extension case, no party had the opportunity to (for example) put on evidence or cross-examine witnesses on the issue.

Yet notwithstanding that the rate case obligation was established in FirstEnergy's electric security plan case, the PUCO is modifying its decision in the electric security plan case regarding the rate case obligation in this rider extension case where the issue *was not even put before the PUCO*. That is unlawful and unreasonable under the process governing settlements before the PUCO and Supreme Court of Ohio precedent.³³

³¹ *In re Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*. Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016), at ¶¶ 189, 249-251, 327, 343, 346, 358-59; Eighth Entry on Rehearing (Aug. 16, 2017), at ¶¶ 89, 91, 94.

³² *See, e.g.*, Application; Entry.

³³ *See Ohio Consumers' Counsel v. PUC*, 114 Ohio St.3d 340, 343 (2007) (the PUCO can only change or modify earlier orders if it justifies the changes); *Disc. Cellular, Inc. v. PUC*, 112 Ohio St.3d 360, 375 (2007) ("R.C. 4903.10 appears to permit the PUCO to modify an order only after granting an application for rehearing. Here, the PUCO denied Discount Cellular's application for rehearing. As a result, the PUCO acted beyond its statutor authority when it cited in its rehearing order an additional reason for dismissing Discount's complaint.").

The Ohio Administrative Code allows parties to enter into settlements and submit them to the PUCO for consideration.³⁴ Though not binding on the PUCO, settlements are evaluated as a package³⁵ and accorded substantial weight.³⁶ The ultimate issue for the PUCO's consideration when evaluating a settlement, which embodies considerable time and effort by the signatory parties, is whether the settlement is reasonable and should be adopted.³⁷ Obviously, parties decide whether to sign a settlement based on what it says as a package; whether to apply for rehearing of a PUCO decision on a settlement based on what the PUCO says; and appeal a PUCO decision to the Supreme Court of Ohio based on what the PUCO says.

In FirstEnergy's ESP IV case, parties made decisions about signing the settlement, applying for rehearing, and appealing to the Supreme Court of Ohio based on the settlement's terms as a package and the PUCO's decisions on the settlement. That includes what the PUCO said in its Fifth and Eighth Entries on Rehearing, requiring FirstEnergy to file a rate case at the end of its current electric security plan.³⁸ It is wholly unreasonable and contrary to the settlement process for the PUCO to now change what it said in its ESP IV decisions (requiring FirstEnergy to file a rate case at the end of its current electric security plan) in this, a completely unrelated case where the issue of

³⁴ O.A.C. 4901-1-30.

³⁵ See, e.g., *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case No. 18-218-GA-GCR, Opinion and Order (December 18, 2019) at ¶ 45.

³⁶ See, e.g., *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123 (1992).

³⁷ See, e.g., *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case No. 18-218-GA-GCR, Opinion and Order (December 18, 2019) at ¶ 45.

³⁸ *In re Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*. Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016), at ¶¶ 189, 249-251, 327, 343, 346, 358-59; Eighth Entry on Rehearing (Aug. 16, 2017), at ¶¶ 89, 91, 94.

FirstEnergy meeting its PUCO-imposed rate case obligation was never before the parties or the PUCO.

The PUCO cannot modify its electric security plan decision in this unrelated case to consider a two-year extension of the distribution modernization charge. But, that is exactly what the Entry does. The PUCO should abrogate or modify its Entry and reimpose the obligation on FirstEnergy to file a rate case at the end of its current electric security plan.

Assignment of Error 4: The PUCO’s decision to relieve FirstEnergy of its obligation to file a distribution rate case when its current electric security plan ends harms consumers and is unreasonable and unlawful because it violated OCC’s due process rights by preventing OCC from having its day in court. Consumers are harmed where, as here, a utility’s distribution costs and revenues are not comprehensively reviewed for over a decade and a half while the utility’s earned return exceeds its authorized return.

The PUCO’s Entry violates OCC’s due process rights under the Ohio and federal constitutions³⁹ in this proceeding where it relieved FirstEnergy of the obligation to file a rate case at the end of its current electric security plan, without notice of that being an issue in this case, without record evidence, without allowing OCC to put on evidence, and without allowing OCC to refute and cross-examine other parties’ evidence. That is “not the fair hearing essential to due process. It is condemnation without trial.”⁴⁰ The PUCO meets due process requirements only when it’s authority “is not arbitrarily and capriciously exercised.”⁴¹ Due process requires ample notice, an opportunity to present evidence, cross-examine witnesses, introduce exhibits, post-hearing briefs, and

³⁹ See Ohio Const., Art. I, sec. 16; U.S. Const., Amend. XIV.

⁴⁰ See *Ohio Bell Tel. Co. v. Pub. Util. Comm.*, 301 U.S. 292, 300 (1937).

⁴¹ See *Pub. Util. Comm. v. Pollak*, 343 U.S. 451, 465 (1952).

challenges through applications for rehearing.⁴² To comply with the law, the PUCO must provide “in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion.”⁴³ The PUCO’s conduct in relieving FirstEnergy of the obligation to file a rate case at the end of its current electric security plan is unlawful and unreasonable because it has not met the standard that due process requires.

The PUCO’s conduct is arbitrary and capricious, an abuse of discretion, otherwise outside the law and “at variance with the rudiments of fair play long known to our law. The Fourteenth Amendment condemns such methods and defeats them.”⁴⁴ As a result, the PUCO should abrogate and modify the Entry. To protect consumers, it should reimpose the obligation on FirstEnergy to file a rate case at the end of its current electric security plan.⁴⁵

IV. CONCLUSION

To protect consumers, the PUCO should grant rehearing and modify its Entry by reinstating the obligation on FirstEnergy to file a rate case at the end of its current electric security plan. A rate case would provide a comprehensive review of FirstEnergy’s distribution revenues and expenses so that the Utility’s charges to its consumers for electric distribution service are lawful, fair, just, and reasonable.

⁴² See *Vectren Energy Delivery of Ohio, Inc. v. Pub. Util. Comm.*, 113 Ohio St.3d 180, 2006-Ohio-1386 at ¶53.

⁴³ See *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 89 (1999).

⁴⁴ See *West Ohio Gas Co. v. Pub. Util. Comm.*, 294 U.S. 63, 71 (1935) (internal quotations and citations omitted).

⁴⁵ Clearly, consumers are prejudiced by the PUCO’s denial of OCC’s due process rights. As the PUCO has explained, “it is sound regulatory practice to conduct regular distribution rate cases.” See *id.* at Eighth Entry on Rehearing at ¶ 91.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission this 23rd day of December 2019.

/s/ William J. Michael
William J. Michael
Assistant Consumers' Counsel

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Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.