

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of Ohio )  
Edison Company, The Cleveland Electric )  
Illuminating Company, and The Toledo )  
Edison Company for Authority to Provide ) Case No. 14-1297-EL-SSO  
for a Standard Service Offer Pursuant to )  
R.C. 4928.143 in the Form of an Electric )  
Security Plan. )**

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**REPLY REHEARING BRIEF OF  
THE RETAIL ENERGY SUPPLY ASSOCIATION**

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August 29, 2016

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**I. INTRODUCTION**

The Cleveland Electric Illuminating Company, The Toledo Edison Company and the Ohio Edison Company (the “Companies”) have failed to present credible evidence or legal reasoning in their initial rehearing brief to support Modified Rider RRS. Indeed, that rider should be dead on arrival given that ratepayers will pay over \$1 billion to the Companies, money that can be used to subsidize the competitive operations of FirstEnergy Solutions Corp. (“FES”). Rider DMR is no better and should be rejected as it still creates the potential for subsidization of FES’ competitive operations and will result in millions if not billions in charges over the term of ESP IV with no guarantee of grid modernization.

Importantly, neither Staff nor the Companies advocated for specific guarantees for grid modernization as a condition of Rider DMR in their initial rehearing briefs. With Staff continuing to “hope” for grid modernization and the Companies more interested in receiving cash to bolster FirstEnergy Corp. and its competitive businesses, the Retail Energy Supply

Association (“RESA”)<sup>1</sup> writes on reply to reinforce the need for conditions, if there is any approval of Rider DMR, and the need for specific directives to the Companies. Those directives should ensure that grid modernization will actually be implemented and include conditions (i.e., ring fencing) to prevent harm to the competitive retail marketplace through unlawful subsidies to FES. Without parameters, Rider DMR (as proposed) will allow the monies collected to flow freely within the FirstEnergy family, including to FES which competes in both the SSO auctions and CRES marketplace.

## **II. BOTH STAFF AND THE COMPANIES CONTINUE TO AVOID SPECIFIC CONDITIONS ON GRID MODERNIZATION**

RESA, in its initial rehearing brief, pointed out that neither the Staff’s nor the Companies’ DMR proposals guarantee that grid modernization projects will take place. The lack of any guarantee or assurance is clear from the record:

- Staff witness Turkenton testified that there is no requirement under the Staff’s DMR proposal to modernize the grid if the credit support is provided under Rider DMR.<sup>2</sup>
- Staff witness Choueiki testified that, if the Staff’s DMR proposal is approved, the Companies would not be required to spend any of the money collected through Rider DMR on grid modernization.<sup>3</sup>
- FirstEnergy witness Mikkelsen testified that, if the DMR proposal is approved, the Companies are not committing to move ahead with grid modernization.<sup>4</sup>

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<sup>1</sup> The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

<sup>2</sup> Rehearing Tr. Vol. 2 at 433.

<sup>3</sup> Rehearing Tr. Vol. 4 at 956-957.

<sup>4</sup> Rehearing Tr. Vol. 10 at 1609.

The initial rehearing briefs filed by the Companies and Staff likewise contain no commitment to implement grid modernization. For example:

- At page 43 of their initial rehearing brief, the Companies say that Rider DMR would advance Ohio policy by “**encouraging** smart grid programs and advanced metering infrastructure[.]” (Emphasis added.)
- At pages 24 of their initial rehearing brief, the Companies say accessing capital markets will “**enable** the Companies to procure funds to jumpstart their distribution grid modernization initiatives[.]” (Emphasis added.)
- At pages 5 and 7 of Staff’s initial rehearing brief, Staff indicates that Rider DMR is expected to “assure continued access to credit on reasonable terms so as to allow the borrowing of sufficient money,” to **support** grid modernization.

The continued lack of any assurance or commitment by the Companies (and Staff) to implement grid modernization programs supports RESA’s argument in its initial rehearing brief that the Commission should mandate investments in smart grid, as well as basic parameters to ensure deployment of smart grid is timely and successful. Those parameters were described at pages 7 to 11 in RESA’s initial rehearing brief and address key aspects such as timing, system indicators, availability of usage data, use of usage data, workshops, reporting and a customer education campaign.

### **III. IF THE COMMISSION APPROVES SOME FORM OF RIDER DMR, THE COMMISSION SHOULD ALSO PROTECT THE COMPETITIVE MARKET**

Staff’s and the Companies’ initial rehearing briefs, as well as the Companies’ witness Mikkelsen’s testimony at rehearing, expose another problem with Rider DMR. That is the ability of the Companies to spend Rider DMR money as they see fit. For example, Staff’s Rider DMR proposal would give the Companies \$131 million a year to be used at the discretion of the Companies, including funding pensions, paying dividends to FirstEnergy Corp. shareholders or

moving the money to other affiliates including FES.<sup>5</sup> Regardless of Staff’s intentions or hopes, Rider DMR has the same potential to subsidize FES competitive operations as do Modified Rider RRS and the original Rider RRS.

Notably, at page 28 of their initial rehearing brief, the Companies state that they are “committing that they **intend** to use Rider DMR funds for purposes within the Companies’ operations, such as jumpstarting grid modernization.” (Emphasis added.) Committing to intend to do something is not a guarantee that something will actually be done. Simply put, there is no guarantee that Rider DMR money will not be used by the Companies and FirstEnergy Corp. to subsidize FES.

RESA, therefore, agrees with the Sierra Club’s recommendation at page 80 of its initial rehearing brief that the Commission should impose appropriate ring-fencing requirements and prohibitions on the Companies to prevent the movement of Rider DMR money outside of the Companies. Doing so will prevent the Companies from transferring Rider DMR monies to FirstEnergy Corp. and then to FES. Additionally, the Commission should require the Companies to publicly file quarterly reports and provide details on how Rider DMR money is being used and the actual amounts collected.

The Commission has approved of or imposed similar protections in other proceedings, and should do so in this case if it approves any form of Rider DMR. *See, In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO et al., Opinion and Order at 45-46 (November 22, 2011); *In the Matter of the Application of Ohio Power Company for Approval of an Amendment to its Corporate Separation Plan*, Case No. 11-

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<sup>5</sup> Staff Ex. 13 at 4; Rehearing Tr. Vol. 3 at 584; Vol. 10 at 1607-1608.

5333-EL-UNC, Finding and Order at 18-20 (January 23, 2012); and *In the Matter of the Application of Ohio Power Company for Approval of an Amendment to its Corporate Separation Plan*, Case No. 12-1126-EL-UNC, Finding and Order at 15-18 (October 17, 2012).

#### **IV. CONCLUSION**

RESA opposes Modified Rider RRS and Rider DMR because both riders will be unlawful, harmful and contrary to good public policy. If the Commission disagrees, it should at a minimum provide clear mandates with parameters to the Companies to ensure ratepayers receive some grid benefit from Rider DMR and that the Companies cannot unlawfully subsidize FirstEnergy Corp.'s competitive affiliates. Without such important directives, the goal of grid modernization will not be achieved and the competitive market will be harmed.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 29th day of August, 2016 upon all persons/entities listed below:

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