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Summary of PUCO's Eighth Entry on Rehearing Regarding FirstEnergy's ESP IV

On August 16, 2017, the Public Utilities Commission of Ohio (PUCO) issued its Eighth Entry on Rehearing (Entry) in FirstEnergy's fourth electric security plan (ESP IV) case. The PUCO's Entry considered OMAEG, FirstEnergy, and others' applications for rehearing of the PUCO's Fifth Entry on Rehearing where, among other things, the PUCO adopted Staff's proposal to establish a distribution modernization rider (Rider DMR). In its Entry, the PUCO denied the applications for rehearing filed by OMAEG and several other intervening parties. The PUCO granted in part, and denied in part, FirstEnergy's application on rehearing.

Rider DMR

- **Affirmed decision to approve Rider DMR, authorizing FirstEnergy to collect up to $1billion from customers.**

The PUCO denied OMAEG and others' argument that the PUCO exceeded its authority to establish an entirely new rider proposal on rehearing that was not at issue in the PUCO's original Opinion and Order (Order). In rejecting the argument, the PUCO held that it had broad authority to modify its Order on rehearing to include alternatives to FirstEnergy's proposed ESP and that this authority is consistent with Supreme Court of Ohio precedent. At the current tax rate, FirstEnergy is estimated to collect approximately $204 million per year for three years with a possible extension of Rider DMR for two more years. If FirstEnergy is authorized to collect the PUCO's approved rider amount for five years, FirstEnergy could collect from customers over $1 billion.

The PUCO rejected arguments that Rider DMR is not grid modernization and is merely an above-market charge for credit support for its parent company and unregulated affiliates. The PUCO also disagreed that the rider is an unlawful subsidy to FirstEnergy. Further, the PUCO denied OMAEG and others' argument that there is no requirement for FirstEnergy to use Rider DMR revenues on distribution modernization. The PUCO clarified that it intends to review Rider DMR to ensure that its revenues are used to support grid modernization. Further, the PUCO directed Staff to prepare a request for proposal for a third party "monitor" to assist Staff to ensure Rider DMR funds are expended appropriately. Further, should FirstEnergy receive an extension of Rider DMR, additional reports will be filed and a final report will be filed after the termination of Rider DMR. However, the PUCO also clarified that Rider DMR revenues are not limited to the development of grid modernization programs.

The PUCO rejected arguments on rehearing that Rider DMR is an unlawful transition charge, rationalizing that because FirstEnergy has already transferred its generation assets to an affiliate and has utilized the competitive bidding process since its first ESP in 2009, Rider DMR is not a transition charge. Rather, the PUCO asserted that it is a distribution charge. The PUCO added that Rider DMR revenues will not be used to subsidize non-distribution functions of FirstEnergy Corp.

- **No modifications to Rider DMR.**

The PUCO rejected several of FirstEnergy's requests to modify the calculation of Rider DMR and to extend it through the eight year ESP term. The PUCO affirmed its decision to limit the term of Rider DMR to three years with possible extension up to five years. Second, the PUCO rejected FirstEnergy's assertion that it failed to add a value to Rider DMR to account for the economic development impact of maintaining the FirstEnergy Corp's headquarters in Akron, Ohio. Third, the PUCO rejected FirstEnergy's argument that a 15 percent CFO to debt ratio should be used instead of 14.5 percent and that a three-year average of CFO to debt ratio should be used instead of a four-year average. Fourth, the PUCO rejected FirstEnergy's argument that it should increase the allocation factor to 34 to 40 percent for Rider DMR instead of 22 percent.

The PUCO denied OMAEG and others' argument that revenues collected under Rider DMR should be included in the SEET calculation. The PUCO also denied FirstEnergy's request to exclude Rider DMR from the SEET calculation while it is in effect. In the Entry, the PUCO affirmed its decision that revenue collection under Rider DMR should be excluded from SEET for the initial three-year period. The PUCO explained that it will reconsider whether to continue excluding Rider DMR revenues from SEET when evaluating any possible extension of Rider DMR.

ESP IV Provisions

- **Rider NMB Opt-Out program.**

The PUCO rejected FirstEnergy's request to reduce the scope of the Non-Market Based Services Rider (Rider NMB) Opt-Out program to just the signatory parties to the stipulation. The PUCO agreed with OMAEG that the NMB Opt-Out program should be open to all parties.

- **FirstEnergy to file a distribution rate case upon conclusion of ESP IV.**

The PUCO rejected FirstEnergy's argument that it was premature for the PUCO to direct it to file a distribution rate case at the end of ESP IV and affirmed its decision to require FirstEnergy to file a new distribution rate case at the end of its ESP IV.

- **Revenue cap on shared savings.**

The PUCO rejected FirstEnergy's request to increase the shared savings cap. In holding, the PUCO found that authorizing an additional $15 million in annual shared savings revenue, in addition to other provisions of ESP IV, would be overly burdensome on ratepayers. The PUCO stated that the increase in shared savings cap will be stayed until FirstEnergy is no longer receiving Rider DMR revenue.

- **Revenue cap increases to continue until replacement ESP plan.**

The PUCO granted FirstEnergy's application for rehearing wherein FirstEnergy requested that the PUCO clarify that the Delivery Capital Recovery Rider (Rider DCR) and its revenue cap currently in place will continue until the PUCO establishes a new ESP.

- **PUCO disagrees that unlimited charges to customers does not violate Ohio law.**

It their applications for rehearing, OMAEG and other parties argued that the PUCO's ability to authorize provisions of any ESP that could result in virtually unlimited charges to customers violated Ohio law requiring all charges to be just and reasonable. The PUCO disagreed and held that it had great flexibility to approve ESP provisions relating to distribution service and that Ohio law requiring just and reasonable charges did not strictly apply.

- **ESP versus MRO test.**

The PUCO denied parties' applications for rehearing wherein the parties argued that FirstEnergy's ESP IV failed the MRO test. The PUCO found that the modified ESP IV would result in approximately $51.1 million in benefits that would not otherwise be available under an MRO. The PUCO also emphasized FirstEnergy's purported need for immediate financial assistance. Further, the PUCO found that Rider DMR revenue could not be recovered through base distribution rates. As such, the PUCO granted FirstEnergy's request to consider the annual economic benefit of retaining FirstEnergy Corp's headquarters in Akron, Ohio and agreed that it should be considered in the ESP versus MRO test.