



## Ohio Supreme Court decides: FirstEnergy grid modernization rider unlawful

June 19, 2019

On June 19, 2019, in a 4-3 [decision](#) favorable to Ohio consumer interests, the Ohio Supreme Court reversed the Public Utilities Commission of Ohio's (PUCO) order that allowed FirstEnergy to collect between \$168 million and \$204 million per year through the controversial Distribution Modernization Rider (Rider DMR). Rider DMR became effective January 2017. The PUCO approved the rider under the grid modernization incentive provisions of R.C. 4928.143(B)(2)(h), reasoning that the revenue it collected would improve FirstEnergy's deteriorating credit standing and, thus, provide FirstEnergy's Ohio utilities with an "incentive" to "jump-start" their grid modernization initiatives. Writing for the majority, Justice Donnelly reasoned that the PUCO's order was unlawful because FirstEnergy was not "required" to make any investments to modernize the utilities' distribution grid. The Court remanded the case to the PUCO with instructions to immediately remove the DMR from FirstEnergy's electric security plan. Justices Kennedy and Fischer wrote dissenting opinions.

Significantly, the Court's opinion reversed the PUCO for failing to provide protections for consumers, including not making the DMR subject to refund and not providing consumers the timely ability to learn how the DMR revenues were being spent or to challenge their use. The Court took issue with the process by which an auditor was to make quarterly reviews of the utilities' DMR expenditures but was not to make those reports available to consumers until after the utilities filed an application to extend the DMR for another two years (2020–2021).

FirstEnergy filed an application with the PUCO earlier this year (PUCO Case No. 17-2474-EL-RDR) to extend Rider DMR for an additional two years. In view of the Court's ruling, this application is now subject to dismissal. Due to Ohio law, FirstEnergy will

not be required to refund amounts it already has collected from the rider, even though the rider has been ruled unlawful.

Note: Bricker & Eckler represented the Northeast Ohio Public Energy Council, the largest public retail energy aggregation in Ohio, in successfully prosecuting this appeal.

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