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PUCO
April 30, 2010

Public Utilities Commission of Ohio
Docketing Division
180 East Broad Street
Columbus, OH 43215-3793

RE: In the Matter of the Application of Ohio Edison Company, The
Cleveland Electric Illuminating Company, and The Toledo Edison
Company for Authority to Establish A Standard Service Offer Pursuant
to Section 4928.143, Revised Code, in the Form of an Electric Security
Plan
Case No. 10-388-EL-SSO

Dear Clerk:

Please find enclosed the original and twenty (20) copies of the Post-Hearing Brief of Direct Energy Services, LLC in the above-referenced case, which is being served on all parties by electronic mail today. Please do not hesitate to contact me should you have any questions.

Thank you for your attention to this matter.

Sincerely,



Matthew D. Austin

Enclosures

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**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)	Case No. 10-388-EL-SSO
Edison Company For Authority to Establish)	
A Standard Service Offer Pursuant to)	
Section 4928.143, Revised Code, in the)	
Form of an Electric Security Plan)	
)	

**POST-HEARING BRIEF OF
DIRECT ENERGY SERVICES, LLC**

Now comes Intervenor, Direct Energy Services, LLC ("Direct Energy"), by and through counsel of record, and respectfully requests the Public Utilities Commission of Ohio ("PUCO" or the "Commission") to reject the application for an Electric Security Plan ("ESP") submitted jointly by Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company (collectively referred to as "FirstEnergy").

Direct Energy is a certified competitive retail electric service provider ("CRES") that has actively sold retail electricity in Ohio for almost ten years. Direct Energy was a party to the proposed Market Rate Option ("MRO") application submitted to the PUCO on October 20, 2009. FirstEnergy submitted an application for an ESP and Stipulation and Recommendation to the PUCO on March 23, 2010. Direct Energy was not a signatory to the instant ESP filed by FirstEnergy and intervened in the pending matter in opposition to the terms of the ESP.

Direct Energy opposes FirstEnergy's application for an ESP because the terms of the ESP violate the Ohio Revised Code and Ohio's public policy. Direct Energy respectfully requests the Commission to reject in its entirety, or in the alternative, to modify the terms of the ESP and

require fair, open bidding for all load requirements, including for PIPP customers, instead of granting a monopoly to FirstEnergy Corp. and its various subsidiaries and affiliates.

I. Introduction

Over the past decade, Direct Energy has been very active in the Ohio market, including the FirstEnergy service areas. Direct Energy supports the concept of an MRO, as well as the specific MRO application submitted by FirstEnergy in matter 09-906-EL-SSO to a large degree and encourages the Commission to modify the ESP to be consistent with the MRO in that case. Unlike the proposed ESP at issue here, the MRO promises on-going, straightforward auctions of all load behind the FirstEnergy utilities and provides the utility customers, citizens, and businesses of Ohio with the most cost-effective means of obtaining electric energy. It also provides any supplier including certified retail electric suppliers, like Direct Energy, with the needed certainty around the standard service structure upon which to base their investment in Ohio.

The proposed ESP however, provides a guaranteed share of the market to a single CRES provider, FirstEnergy Solutions, while also ensuring that unlike an MRO, the underlying market structure in Ohio may change every three years. It is highly unlikely the PUCO would approve a settlement which hands a portion of the market over to Direct Energy or any other CRES provider who was a party to this case without a bid. However that is exactly what this ESP is seeking to obtain for FirstEnergy Solutions.

The energy policy of the State of Ohio requires the Commission, in fulfilling its duties under Chapter 4928 of the Ohio Revised Code, to ensure diversity of electricity supplies and suppliers. Ohio Revised Code ("O.R.C.") § 4928.142(C) states that the Commission and not the utility "**shall select the least-cost bid winner or winners.**" (emphasis added) Clearly, the General Assembly mandated that the Commission act in a direct supervisory role in the auction process of

an MRO and thus preclude companies like FirstEnergy Corp. from obtaining a monopoly on a market share of energy generation for the next several years.

Additionally, approval of an MRO, as contemplated under Section 4928.142 of the Ohio Revised Code, will encourage the continued growth of a competitive market in Ohio by providing regulatory certainty which will encourage large investment in the state by ensuring the rules of the road will not significantly change and in return will produce generation prices reflecting the market cost of generation without additional risk premiums. This is necessary for any supplier interested in making a long term investment in Ohio and providing customers the best value. FirstEnergy's proposed ESP fails at achieving these goals.

II. Material Defects with the Terms of the ESP.

Instead of having a competitive bid process under an MRO for PIPP load and usage, the ESP unilaterally grants FirstEnergy Corp.'s affiliate, FirstEnergy Solutions, the exclusive opportunity to provide load for the PIPP customers without any bid or RFP. Some parties may favor the proposed ESP over the MRO because they prefer a set of specialized programs that are more easily achieved and negotiated through an ESP. However, under the ESP, FirstEnergy Solutions has already won the load without ever making a competitive bid and at the exclusion of other companies having the ability to proffer a bid. The Ohio statute provides the Ohio Department of Development ("ODOD") the ability to conduct an auction or RFP in order to find the best prices for PIPP load, not to provide FirstEnergy Solutions with a guaranteed source of revenue. See, O.R.C. § 4928.54

FirstEnergy's ESP specifically incorporates this monopolistic provision on pages 7 and 8 of the proposed ESP stipulation when it articulates that there will be an auction with bidders for all load requirements except loads associated with customers enrolled in PIPP:

The winning bidder(s) will execute the SSO Supply Agreement. Upon conclusion of an

auction as set forth in Attachment A, the auction manager, CRA International, and the Commission's consultant may review the auction process and make recommendations to the Commission and the Companies as to process improvements for future auctions for delivery during the term of this ESP. Based on the recommendations of the auction manager and the Commission's consultant, the Commission may modify certain aspects of the auction process for future auctions contemplated by this ESP. However, such modifications may not alter the following: . . . (4) **the auction process shall be conducted to procure the entire SSO load requirements of the Companies excluding the load associated with customers enrolled in PIPP as set forth below in A.1. . . .** While PIPP customers will remain retail generation customers of the Companies, their retail load and usage will be excluded from the bid product and will instead be supplied by the Companies at a six percent (6%) discount off the PIPP customers price to compare.

(emphasis added)

Not only are PIPP customers' loads surgically carved out of the auction process, but the authority to provide the wholesale generation is unilaterally granted to FirstEnergy Solutions. The details of how companies signatory to the Stipulation will enter into contracts with FirstEnergy Solutions is reflected on page 8 of the ESP Stipulation and Recommendation:

To accomplish this pricing, the Companies will enter into a wholesale bilateral contract with FirstEnergy Solutions for this power supply for a three year period, with power flow under such wholesale contract commencing June 1, 2011. Under the bilateral contract, FirstEnergy Solutions will supply power to the Companies at wholesale in an amount sufficient to meet the requirements of all PIPP customers taking service under the Companies' tariffs and riders for generation services. As contemplated under Commission rule, PIPP customer load and usage is non-shoppable except as provided for in R.C. § 4928.54 if a better price is obtained. Under the wholesale contract, FirstEnergy Solutions would supply the same energy and capacity, resource adequacy requirements, market-based transmission service and market-based transmission ancillaries as winning bidders in the competitive bidding process. For purposes of this section, a PIPP customer shall be defined as any customer who is a PIPP customer as of June 1, 2011 and any customer who thereafter is enrolled in the PIPP program during the period of the ESP.

(emphasis added)

These contract parameters provide FirstEnergy Solutions with a guaranteed three-year contract for what otherwise would be awarded to the lowest bidder through a competitively bid auction with impartial supervision. But, in this case there is no auction. The lowest bidder is not awarded the contract. And there is no impartial supervision. Instead, an affiliate of FirstEnergy is handed the contract for 100% of the PIPP load for three years.

This sweetheart deal, reminiscent of ones cut in the back room of a bar, essentially cuts out the myriad of FirstEnergy Solutions' competitors from the opportunity to offer services to the PIPP load customer at a rate better than the 6% discount rate. Given that PIPP load is excluded from CRES service, the only opportunity a PIPP customer has to receive potentially higher savings from a supplier other than FirstEnergy Solutions would be through a competitive bid. While Direct Energy agrees that a discount for PIPP customers is admirable because PIPP customers typically need a discount, to remove the discount from being competitively bid on the open market creates an arbitrary floor that inhibits deeper discounts from competitors for the customers who need it the most.

With no competitive procurement for this load, a true test of whether or not the arbitrarily chosen discount¹ is truly a benefit and not a profit center for FirstEnergy's affiliate has not been undertaken. ESPs are required to provide a greater benefit to the public than their corresponding MROs; this ESP does not meet that requirement and violates Ohio's public policy.

According to the terms of the ESP, FirstEnergy Solutions is the sole source wholesale provider of electricity at a 6% discount to PIPP customers. The PIPP 6% discount rate is an arbitrary number that was determined speculatively and without any basis. In fact, William Ridmann, the Vice President of Rates and Regulatory Affairs for FirstEnergy Services Corp., and a witness for FirstEnergy, agreed that the PIPP discount could have been set higher or lower than the arbitrarily chosen 6% that found its way into the ESP. See, Trial Transcript p. 74 ("And so it could be higher or could be lower.") The only purpose it serves is to offer a slightly reduced cost of electric utilities to certain impoverished residential customers without regard to finding the lowest cost for those customers. Allowing the PIPP discount rate to be competitively bid on by a

¹ See, Trial Transcript p. 74

multitude of suppliers would likely result in an even greater percent discount², which conforms to the goals of Senate Bill 221 and O.R.C. § 4928.142(A)(1)(a) through (d).³

Further, denying a PIPP discount from being competitively bid on the open market with reasonable calculation that the bid will result in a greater than 6% discount likely impedes the PIPP customers' expectations of an open, fair, and transparent method of obtaining the greatest discount the market allows. This is a similar discount rate to other FirstEnergy Solutions retail offers, but because it is a wholesale load, it does not require any of the costs associated with a retail load such as customer acquisition costs, collection risks, or reporting requirements. Therefore, it should result in larger discounts to PIPP customers, not similar discounts.

Arbitrarily authorizing PIPP services to be provided only by FirstEnergy Solutions without first seeking out the lowest offers will easily result in distorted prices that prohibit a true "apples to apples" comparison and inhibit innovative resolutions aimed at reducing the cost of generating and supplying electricity. This arbitrarily chosen discount could become an artificial benchmark based solely on a side deal between FirstEnergy and First Energy Solutions and not a market driven energy price. Conversely, the proposed MRO parallels the products offered in the open market and creates an "apples to apples" comparison when comparing competitive offers that also reflect current market pricing while still retaining the ability of the ODOD to conduct a separate procurement to obtain lower prices for PIPP customers.

Beyond a carve out for its unregulated profit driven affiliate, FirstEnergy's proposed ESP

² See, Trial Transcript p. 791.

³ Ohio Revised Code Section (A)(a)(a) through (d) states: for the purpose of complying with section 4928.141 of the Revised Code and subject to division (D) of this section and, as applicable, subject to the rate plan requirements of division (A) of section 4928.141 of the Revised Code, an electric distribution utility may establish a standard service offer price for retail electric generation service that is delivered to the utility under a market-rate offer. The market-rate offer shall be determined through a competitive bidding process that provides for all the following: (a) open, fair, and transparent competitive solicitation; (b) clear product definition; (c) standardized bid evaluation criteria; and (d) oversight by an independent third party that shall design the solicitation, administer the bidding, and ensure that the criteria specified in division (A)(1)(a) to (c) of this section are met.

contains no improvements for a retail electric market including the need for regulatory certainty going forward. While an MRO creates certainty of generation procurement, it does not eliminate PUCO's ability to approve programs such as those included in the ESP. In fact many of these programs only benefit a small number of customers including members of specific groups. So while an MRO would eliminate the incentive to treat an ESP as a gold rush for tacked on costs and programs associated with ESPs that create a Christmas tree of non-generation costs for customers, the PUCO still maintains the ability to approve these programs through other filings such as a rate case or energy efficiency plans where they are more appropriately vetted for the greater good. In fact, most of the signatories agreed to the Stipulation in return for non-generation related items. Several other retail providers of generation including NOPEC, NOAC, Direct Energy, Gexa Energy, and Duke Energy Retail did not sign the settlement. There is nothing in this settlement which moves forward the retail electric market in Ohio, items brought up in the MRO case including the need for certainty and a purchase of receivables program are not addressed and were completely ignored in the ESP settlement. The MRO case highlight the need for retail improvements that exist in gas but not electric such as purchase of receivables none of these exist in this settlement. There is nothing in this settlement that moves the retail electric market in Ohio forward. In fact the ESP as a whole continues to discourage long term investment and large scale sales in the FirstEnergy service territory by ensuring a revision of the standard service offer structure every three years continuing retail market barriers to entry such as lack of purchase of receivables and setting a precedent to guarantee a share of the market to a competitor with no recourse.

Additionally, there has been no evidence presented to the Commission demonstrating that the ESP complies with O.R.C. § 4928.143(B)(2)(h). That statute states in relevant part:

As part of its determination as to whether to allow in an electric distribution utility's

electric security plan . . . the commission shall examine the reliability of the electric distribution utility's distribution system and ensure that customers' and the electric distribution utility's expectations are aligned and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.

Upon belief, the Commission has not examined the reliability of the electric distribution utility's distribution system for this specific ESP. Nor is there any testimony or evidence indicating that the Commission has taken sufficient affirmative steps to "ensure that customers' and the electric distribution utility's expectations are aligned." Creating a monopolistic enterprise for FirstEnergy and its affiliates, and allowing riders that only benefit a limited number of customers, precludes alignment of expectations between FirstEnergy and its customers regardless of whether those customers are regular customers, PIPP customers, or business or industrial customers. The settlement contains a continuation of barriers to retail entry by maintaining the risk of regulatory uncertainty beyond a three year investment. It also adds additional risk that future ESPs will expand this precedent of a guaranteed market for the utility affiliate beyond PIPP load.

There are obvious material defects with the terms of the ESP. These defects force the ESP outside the bounds of the Ohio Revised Code, the Ohio Administrative Code, and Ohio's public policy laws. Direct Energy requests that the Commission reject the ESP and approve the MRO to ensure regulatory certainty and a thriving retail electric market absent of these harmful, rushed deals, or at a minimum, modify the ESP to comply with the law regarding the PIPP requirements.

III. Corporate Separation Plan

There are many direct and detailed requirements pertaining to corporate separation plans that must be included when utilities file an ESP. FirstEnergy's ESP does not comply with those mandates. For whatever reason, perhaps due to the haste in which FirstEnergy tried to steamroll the ESP through the Commission, the ESP miserably fails at establishing a separation of corporations between FirstEnergy and FirstEnergy Solutions. Not surprising, FirstEnergy

Solutions, a direct affiliate of FirstEnergy, stands to gain a monopolistic windfall of work through FirstEnergy's ESP.

An SSO application that contains a proposal for an ESP shall provide a description of its corporate separation plan. This plan shall include but not be limited to the current status of the corporate separation plan, a detailed list of all waivers previously issued by the commission to the electric utility regarding its corporate separation plan, and a timeline of any anticipated revisions or amendments to its current corporate separation plan on file with the Commission pursuant to Chapter 4901:1-37 of the Ohio Administrative Code. See, O.A.C. § 4901:1-35-03(C)(4).

Additionally, an SSO application that contains a proposal for an ESP shall contain a description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of R.C. § 4928.20. See, O.A.C. § 4901:1-35-03(C)(6).

Further, the initial filing for an ESP shall include a detailed account of how the ESP is consistent with and advances the policy of the State of Ohio as delineated in divisions (A) to (N) of R.C. § 4928.02. Following the initial filing, subsequent filings shall include how the state's policy is advanced by the ESP. See, O.A.C. 4901:1-35-03(C)(8).

Lastly, an SSO application shall include a narrative describing how the plan ensures competitive equality, prevents unfair competitive advantages, prohibits the abuse of market power, and effectuates the policy of the State of Ohio embodied in R.C. § 4928.02. See, O.A.C. 4901:1-37-05(A).

The totality of reference to the Companies' corporate separation plan in the current ESP application is limited to the following:

The Companies' corporate separation plan in Case No. 09-462-EL-UNC shall be approved as filed. However, within six months after the completion of the merger between FirstEnergy Corp. and Allegheny Energy, Inc., or within 18 months after this Stipulation is

approved, whichever comes first, if the Companies' corporate or operational structure has changed, then the Companies shall file an updated corporate separation plan. In either case, whether an updated corporate separation plan is filed or not, this plan may be audited by an independent auditor. The Commission shall select and solely direct the work of the auditor. The Companies shall directly contract for and bear the cost of the services of the auditor chosen by the Commission. Staff will review and approve payment invoices submitted by the consultant.

This sole paragraph on page 30, of a 186 page filing, is the entire reference to FirstEnergy's corporate separation plan. Certainly, more information is required under the Ohio Revised Code and the Ohio Administrative Code than a single sentence referencing a separate PUCO case from a previous year – especially when the current ESP application seeks to circumvent an open and fair auction for PIPP load.

Nonetheless, Case No. 09-462-EL-UNC, referenced in that lone paragraph above, involved FirstEnergy's application for approval of its corporate separation plan pursuant to R.C. § 4928.17 and O.A.C. 4901:1-37-05. But, according to PUCO's docket, this application was not approved. That application, although 40 pages in length, scantily refers to FirstEnergy Solutions, the affiliate that stands to gain all PIPP load work under the Stipulation without winning an open and fair competitive bidding process. The following are bullet points that depict the total references to FirstEnergy Solutions in FirstEnergy's corporate separation plan submitted for approval in Case No. 09-462-EL-UNC.

- The Companies (referring to Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company) effectuated the aforementioned structural separation by selling their generation assets and assigning their purchased power agreements to FirstEnergy Generation Corp. and FirstEnergy Nuclear Generation Corp. (each wholly owned subsidiaries of **FirstEnergy Solutions Corp.**, a competitive, wholly owned subsidiary of FirstEnergy Corp.) (page 3)
- **FirstEnergy Solutions Corp.**, an unregulated retail energy business subsidiary of FirstEnergy Corp., remains a separate affiliate and is marketed as such. The subsidiary has a separate cost center dedicated to advertising and other promotion. (page 6)
- B. NON-UTILITY SUBSIDIARIES AND AFFILIATES
FirstEnergy Solutions Corp. (FES)

FES provides energy-related products and services primarily in Ohio, Pennsylvania, Michigan, and Maryland, and through its subsidiaries, FGCO and NGC, owns or leases and operates FirstEnergy's fossil and hydroelectric generation facilities and owns FirstEnergy's nuclear generation facilities, respectfully, FENOC, a wholly owned subsidiary of FirstEnergy, operates and maintains the nuclear generating facilities. FES's subsidiaries are:

➤ **FE Aircraft Leasing Corp.**

FE Aircraft Leasing owns aircraft which is operated under lease by FirstEnergy Service Company.

➤ **FirstEnergy Engineering, Incorporated**

Provides engineering services to parties as a subcontractor on construction projects undertaken by FirstEnergy and its subsidiaries for third parties.

➤ **FirstEnergy Generation Corp.**

An exempt wholesale generator which owns or operates fossil plants and the Seneca pumped storage plant and sells all output at wholesale rates/prices to FirstEnergy Solutions. FirstEnergy Generation Corp. owns FirstEnergy Generation Mansfield unit 1 Corp. which holds various leasehold interests in Mansfield Unit 1.

➤ **FirstEnergy Nuclear Generation Corp.**

Operates and maintains the nuclear generating facilities (page 28)

- **\$2,750,000,000 Credit Agreement**
Administrative Agent: Citibank, N.A.

Parties: FirstEnergy Corp., **FirstEnergy Solutions Corp.**, American Transmission Systems, Inc., Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company. (page 33)

- **Sale of Transmission Assets to ATSI**

Various Agreements: Promissory Notes, Bills of Sale, Ground Leases, Operating Agreement.

Parties: American Transmission Systems, Incorporated, Ohio Edison Company, The Toledo Edison Company, The Cleveland Electric Illuminating Company, Pennsylvania Power Company, **FirstEnergy Solutions Corp.**

(emphasis added)

There is an obvious direct and irrefutably close relationship between FirstEnergy and FirstEnergy Solutions, for they even share the same \$2.75 Billion line of credit. The provisions contained in FirstEnergy's application for approval of its corporate separation plan do not fully comply with the strictures of the Ohio Revised Code or the Ohio Administrative Code. For example, the Stipulation does not include the following:

- Reference the current status of the corporate separation plan as required by O.A.C. § 4901:1-35-03(C)(4).
- A detailed list of all waivers previously issued by the commission to the electric utility regarding its corporate separation plan as required by O.A.C. § 4901:1-35-03(C)(4).
- A description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of R.C. § 4928.20 as required by O.A.C. § 4901:1-35-03(C)(6).
- A narrative describing how the ESP ensures competitive equality, prevents unfair competitive advantages, prohibits the abuse of market power, and effectuates the policy of the State of Ohio embodied in R.C. § 4928.02 as required by O.A.C. § 4901:1-37-05(A) – especially since the ESP attempts to create a monopoly of work for FirstEnergy Solutions regarding PIPP residents.

NOPEC intervened in FirstEnergy's application for approval of its corporate separation plan in Case No. 09-462-EL-UNC because:

NOPEC has serious concerns about FES's marketing practices to solicit prospective NOPEC customers including FES's relationship with the Companies in violation of the Commission's rules. NOPEC is also concerned about other practices by the Companies and FES that should be addressed by the Commission in this corporate separation case, including, for example, the transfer of numerous employees of the Companies to FES in 2009, providing FES with competitive advantages that other CRES providers can not duplicate. Competition by FES directly impacts NOPEC. Unfair and legally problematic marketing solicitations to prospective NOPEC customers are not only injurious to NOPEC's interests but, importantly, are injurious to the prospect of a functioning retail competitive market in Ohio.

See, Northeast Ohio Public Energy Council's Motion to Intervene, p. 4-5. NOPEC continues, "FES has sought to serve the same individual customers in governmental aggregation communities served by NOPEC. NOPEC's interest will be injured if the Commission approves the Companies' application, as proposed, as it fails to provide for meaningful effective corporate separation between the Companies and FES, and fails to protect against undue preference or advantage currently flowing from the Companies to FES." *Id.*, p. 5.

NOPEC further argues that the required Code of Conduct filed by FirstEnergy also falls dreadfully short of full compliance with the Ohio Administrative Code. Specifically, NOPEC

identifies that the “code of conduct merely recites the PUCO rules virtually verbatim, without regard to the unique circumstances of the Companies, including the fact that its unregulated affiliate, FES, has a dominant competitive market position in its affiliated Companies’ service territories.” See, Sur-Reply of the Northeast Ohio Public Energy Council, p. 2.

NOPEC’s issue with the corporate separation plan, which closely parallels some of Direct Energy’s issues with the Stipulation, is best summarized as follows:

NOPEC’s specific concerns include ensuring the approved plan includes specific and measurable programs, processes, and controls to ensure that no undue preference or advantage is extended to the Companies’ unregulated affiliate, FirstEnergy Solutions (“FES”), *vis a vis* competitors of FES. FES is actively soliciting retail customers in its affiliated Companies’ service territories, and has a dominant generation market position in those service territories. Under the circumstances, NOPEC’s specific concerns relate to FES receiving undue preference or advantage through, among other means, the reassignment of employees from the regulated Companies to unregulated FES; the use and extent of the references to “First Energy” and/or the Companies’ attributes in FES’s retail advertising; and the implications of shared executive decision-making between the Companies and FES.

See, Sur-Reply of the Northeast Ohio Public Energy Council, p. 3.

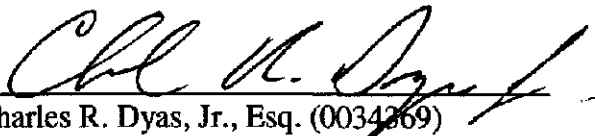
NOPEC was warning the Commission of the inter-relationship between FirstEnergy and FirstEnergy Solutions in 2009. The closeness of FirstEnergy and FirstEnergy Solutions is now again before the Commission in the pending ESP application as a result of FirstEnergy granting FirstEnergy Solutions a three-year contract that typically, and rightfully, should be bid on in the open market.

VI. Conclusion

As stated above, FirstEnergy’s filing of the pending ESP application before the Commission clearly violates the Ohio Revised Code, the Ohio Administrative Code, and Ohio’s public policy. For all the above reasons, Direct Energy respectfully requests the Commission to reject FirstEnergy’s ESP application in its entirety, or in the alternative, modify it to reflect the terms of the MRO, since the MRO complies with both the letter and spirit of the law.

Respectfully submitted,

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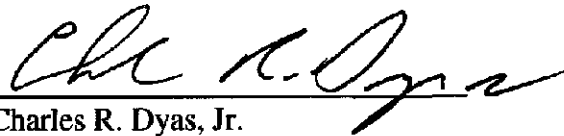
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Certificate of Service

30th I hereby certify that a copy of the foregoing document was served via electronic email this day of April, 2010 on the parties listed below.


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