

FILE

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Staff Proposal for       )  
An Economic Development Tariff               ) Case No. 11-4304-EL-UNC  
Template.   )

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COMMENTS OF FIRSTENERGY SOLUTIONS CORP.

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FirstEnergy Solutions Corp. ("FES") respectfully submits the following comments as provided for in the Public Utilities Commission of Ohio ("Commission") Entry dated July 15, 2011.

**I. INTRODUCTION**

FES recognizes and shares the Commission's interest in encouraging and promoting economic growth and development in the State of Ohio. As the Commission clearly appreciates, promoting economic development within the State of Ohio will improve and secure Ohio's position in the global economy. See O.R.C. 4928.02(N). FES appreciates the Commission's initiative and leadership by proposing the Economic Development Tariff Template (the "EDT").

FES submits that, for the reasons explained below, the Commission's goal of encouraging economic development, job retention and procurement while mitigating transaction costs will best be realized through incorporating a competitive bidding process into the EDT. Indeed, the state's policy of facilitating the state's effectiveness in the global economy goes hand-in-hand with ensuring effective competition in the provision of Competitive Retail Electric Service ("CRES") and recognizing the continuing emergence of competitive energy markets. O.R.C. 4928.02(G), (H), (N). So as not to advance one state policy at the exclusion of others, and indeed to best leverage the implementation of one policy to accomplish another, eligible

mercantile customers should be served through competitive bidding or Requests for Proposal (“RFP”) among CRES providers rather than default to the applicable electric distribution utility’s (“EDU”) standard service offer (“SSO”). This competitive process could be accomplished while still allowing the qualifying customer to take advantage of the even lower rates as set forth in the EDT, providing qualifying customers with the known, low rates the Commission seeks to provide. Revising the EDT to include a competitive bidding process is consistent with state policy as expressly stated in O.R.C. section 4928.02 and is the most effective means to encourage the economic development intended by the EDT.

## **II. COMMENTS**

### **A. The State Policies of Developing Competitive Energy Markets and Encouraging Economic Growth May Both Be Served By The Proposed Economic Development Tariff.**

Through the enactment of Senate Bill 221 and Am. Sub. Senate Bill 3, the State of Ohio foresaw the need to promote and ensure a competitive environment in Ohio’s energy marketplace for future economic growth and development. *See* O.R.C. 4928.02. Ohio’s electric consumers have benefited from this legislation and the supplier shopping mechanisms that have resulted therefrom, including opportunities to solicit retail electric service through competitive bidding or an RFP among CRES providers.

Consumers in general, and industrial customers in particular, have undeniably benefited from the continuing development of competitive energy markets in Ohio. Examples of these numerous benefits include:

- Lower generation prices for customers;
- The ability of customers to avoid SSO service costs through competitive offers;

- The ability of customers, including industrials with large or anticipated large loads, to make informed decisions about and obtain flexibility in electricity procurement;
- Greater productivity and efficiency from existing generating plants that leads to improved operational performance;
- The risk of generation investment is no longer borne by the customer and, instead, is on the investors of competitive suppliers;
- CRES providers are incented to innovate in the provision of electric service;
- Advancements in the development of renewable and alternative energy products; and
- Continuously improving service at lower cost.

These and the other untold benefits of a competitive supplier framework will attract new businesses to, and encourage the further development of, existing industrial and commercial customers in Ohio as they will have a positive effect on the cost of doing business in Ohio and will evidence a marketplace premised on growth, not regulation.

**B. Inclusion Of A Competitive Bidding Process In The Proposed Economic Development Tariff Has A Positive Impact On Delta Revenue And Electric Consumers.**

FES and other CRES providers are positioned to provide the service and savings to industrial customers who meet the criteria specified by the EDT. This fact is evidenced by the Summaries of Switch Rates from Electric Distribution Utilities to CRES Providers in terms of both number of customers and as a percentage of sales as of March 31, 2011, compiled and published by the Commission. These summaries show an average percentage of switch rates in terms of customers of 33.67% and switch rates in terms of sales of 56.67%. As this demonstrates, the marketplace is well suited to afford industrial incumbents and/or prospects the benefits of the competitive electric marketplace.

In contrast, the proposed EDT essentially removes portions of industrial load from the marketplace and obligates an EDU to serve and subsidize that load, with the EDU absorbing 20% of the subsidy and other customers in the EDU's service territory absorbing the remaining 80% of the subsidy. The proposed EDT is anti-competitive and anti-free market, as it is based on the erroneous assumption that the developing markets in Ohio are unable to offer the energy products needed by industrial customers to promote growth and economic development. The proposed EDT further assumes that EDU shareholders and customers should be compelled to subsidize industrial customers by paying an "energy tax" that is funneled directly to those customers.<sup>1</sup> FES suggests that there is a better, more efficient way to promote economic development without turning the state's back on competitive markets. If the state is to impose an additional regulatory burden on competitive markets with an EDT, it should do in a manner that is least disruptive of those markets.

Thus, FES believes that the supply for an EDT should be obtained using a competitive bid process or RFP and that delta revenue be recovered based only on the difference between the EDT price and the lower of the successful bid/proposal price or the existing industrial schedule price. The pricing, terms and conditions of the proposed EDT would remain as set forth in any EDT as ultimately adopted.<sup>2</sup> Importantly, the "energy tax" imposed on EDU shareholders and customers could be reduced or possibly eliminated. Under this alternative, the existing industrial tariff offer would serve as the price ceiling and the EDT offer would serve as the price floor for

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<sup>1</sup> Curiously, the EDT also works as a subsidy to EDUs that still own generation and have a high percentage of industrial customers taking service from CRES providers. Currently, these EDUs are not receiving revenues based on their industrial schedules. Once the EDT is offered, many of those shopping customers will switch to the EDT, and the EDUs will be compensated at the full industrial schedule price (i.e., above-market price), less 20% of the delta. In fact, as more customers take service under the EDT, EDUs will have a perverse incentive to increase their industrial schedule pricing as high as possible in order to increase their return from the energy tax.

<sup>2</sup> For example, qualifying energy-intensive high load factor customers would still receive the discounts for a five-year term, with one-year options to renew in years six through ten (unless otherwise suspended by the Commission) as provided in the EDT, which will provide the desired pricing stability to these customers.

purposes of determining the delta revenue amount to be collected. As proposed in the EDT, the entirety of the difference between these two offers is delta revenue. However, under this alternative, the EDT offer remains as the price floor (and is the amount the customer actually pays), but the price ceiling would be *the lower of* either the industrial tariff offer or the winning bids/proposals. To the extent winning bids/proposals are lower than the existing industrial schedule price, the delta revenue would be calculated only on this smaller delta. If the lowest price resulting from the competitive bid process is higher than the existing industrial schedule price, the EDT would function exactly as proposed with the utility serving the load and the delta revenue being calculated between the EDT price and the existing industrial schedule price. Thus, bidding out this load has no downside but could have substantial upside. In fact, if bidders are willing to match the price, terms and conditions proposed in the EDT, no delta revenue would be calculated and no “energy tax” would be imposed on Ohio customers.<sup>3</sup>

Under this proposal, if a supplier’s price is less than the current industrial schedule, an eligible mercantile customer would still pay the new lower EDT rate. However, the supplier would supply the load at its winning bid price and be made whole by receiving both the EDT rate that the customer pays and any amount between the EDT price and the winning bid price from delta revenue as collected by the utilities. Under this framework, all other customers would pay less in delta revenue than they would under the current proposal. Reducing the “energy tax” paid by Ohio consumers to support economic development while promoting competitive energy markets is consistent with state policy as set forth in O.R.C. section 4928.02. Thus, this proposed modification to the EDT advances state policies, protects customers’ pocketbooks, and should be adopted by the Commission.

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<sup>3</sup> The same beneficial result would occur if the winning bid were below the EDT price. In that event, the qualifying customer would pay the even lower winning bid price, and no delta revenue would be created to be absorbed by other customers.

FES recognizes that this high level overview of the alternative proposal would require additional specificity and detail prior to being implemented. FES looks forward to working with the Commission and other stakeholders to further develop those details so that this alternative framework can be implemented.

### III. CONCLUSION

The proposed EDT is another opportunity for the growth and advancement of competition in Ohio's electricity marketplace. FES submits that state policy and the intended benefits of the proposed EDT would best be realized through a competitive supply framework that would reduce the impact of delta revenue resulting from the proposed EDT. For these reasons, and those set forth above, FES submits that a competitive supply framework of competitive bidding and/or RFPs should be included within the EDT.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Comments of FirstEnergy Solutions Corp.* was served this 5<sup>th</sup> day of August, 2011, via e-mail and first-class U.S. mail, postage-prepaid, upon the parties below.

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