

**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)	Case Nos. 12-1230-EL-SSO
Authority to Provide for a Standard Service)	
Offer Pursuant to R.C. § 4928.143 in the Form)	
of an Electric Security Plan.)	

**INITIAL BRIEF OF
THE RETAIL ENERGY SUPPLY ASSOCIATION,
DIRECT ENERGY SERVICES, LLC AND DIRECT ENERGY BUSINESS, LLC**

June 22, 2012

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I. INTRODUCTION

A. Procedural History

Section 4928.141, Revised Code requires every electric distribution utility to provide for a default electric service utilizing either a market rate option¹ or an electric security plan². The three Ohio Electric utilities owned by FirstEnergy Corp., Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company³ utilize an electric security plan (ESP), the terms and conditions of which were last authorized by the Commission in Case No. 10-388-EL-SSO. Though there are roughly two years left in the current approved ESP 2, on April 13, 2012 FirstEnergy filed to extend the ESP 2 by an additional two years under similar terms and conditions as the existing ESP, save for: the timing and manner of the procurement auctions in the additional two years, the addition of Rider AER to defer and blend the payment

¹ Section 4928.142, Revised Code.

² Section 4928.143, Revised Code.

³ For brevity, the Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company will be collectively referred to as "FirstEnergy".

for renewable energy credits, and authorization to enter into a new non bid bilateral agreement between FirstEnergy and its affiliated competitive retail electric service (“CRES”) provider to supply electric service to the Percentage of Income Payment Plan (PIPP) customers.

Accompanying the application for the two year extension (here after referred to as ESP 3), was a stipulation signed by 19 entities, and opposed by two major governmental aggregation organizations in the FirstEnergy service area, the Office of the Consumers’ Counsel, the Sierra Club and several CRES providers. The Attorney Examiners have accepted the Application as a stipulation pursuant to Rule 4901-1-30 of the Ohio Revised Code and conducted a hearing on the terms and conditions presented in Application as modified by the Stipulation.

B. Intervenor Retail Electric Supply Association, Direct Energy Services, LLC and Direct Energy Business, LLC

The Retail Energy Supply Association (“RESA”) is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than a regulated utility structure. Several RESA members are certificated as competitive retail electric service providers and are active in the Ohio retail market. This initial brief may represent the position of RESA as an organization, but may not represent the views of any particular RESA member. RESA members include:

Champion Energy Services, LLC; ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources N.A, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; Next Era Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Trans Canada Power Marketing Ltd.; and TriEagle Energy, L.P.

Direct Energy Services, LLC and Direct Energy Business, LLC are both certificated as CRES providers in Ohio. RESA, Direct Energy Services, LLC and Direct Energy Business, LLC jointly sponsored the testimony of Teresa L. Ringenbach and in addition RESA sponsored the testimony of Stephen E. Bennett. Neither RESA nor Direct Energy Services, LLC and Direct Energy Business, LLC signed the Stipulation.

C. Commission Standard of Review for a Stipulation

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., Ohio-American Water Co.*, Case No. 99-1038-WW-AIR (June 29, 2000); *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for the Commission's consideration is whether the agreement is just and reasonable and should be adopted. In considering the reasonableness of a Stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

In the matter at bar, Commission is confronted with a Stipulation which provides specific benefits to a number of individual parties as delineated in the Stipulation, but creates or

continues barriers to retail market development in violation of Section 4928.02 (B), Revised

Code which makes it State policy to :

Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

The barriers in the Stipulation to independent retail market development are: 1) the difficulty of collecting payment from customers who select utility consolidated billing; 2) the failure to provide for supplier consolidated billing; 3) the establishment of a two year exclusive bilateral contract between FirstEnergy and its affiliated CRES Provider for PIPP service without first making a public bid; and 4) the introduction of Rider AER which skews the cost responsibility and price signals for renewable energy credits in the near term at the eventual cost to rate payers of carrying costs in the long term.

Thus, pursuant to the Attorney Examiners' procedural schedule, RESA, Direct Energy Services, LLC and Direct Energy Business, LLC submit this initial brief on various issues in this proceeding and request the Commission modify the Stipulation as provided for below.

II. ARGUMENT

A. The Stipulation, as a package, does not benefit ratepayers in the public interest and violates important regulatory principles and practices; therefore, it must be modified.

RESA, Direct Energy Services, LLC and Direct Energy Business, LLC (jointly "Suppliers") maintain that the Stipulation does not meet the second and third prong of the Commission Standard of Review for Stipulations as filed for the reasons set forth below. The Suppliers position is that the Stipulation can be modified so as to bring it into compliance with the Commission's standards, the state policy of competitive retail electric service and the

statutory requirements for an ESP. The necessary modifications are detailed as part of this Initial Brief.

1. The Stipulation, as a package, does not benefit ratepayers and is not in the public interest.

a. The MRO v. ESP Test

Section 4928.143(C)(1), Revised Code, requires that a proposed ESP, including its pricing, terms, and conditions, is more favorable in the aggregate than the expected results of a Section 4928.142, Revised Code, market-rate offer. FirstEnergy, in the supporting testimony of Mr. Ridmann,⁴ finds that the ESP 3 is more favorable quantitatively largely because of two types of savings attributed to the ESP. First, Mr. Ridmann takes the net present value of a stream of estimated future RTEP payments ranging from \$34 to \$39 million annually through May 2022⁵. Numerically, the RTEP payments constitute the largest part of the ESP 3 savings versus the MRO. The problem with this claim is that FirstEnergy has already promised to pay the RTEPs when it received authority from this Commission to leave the Midwest Independent System Operator (MISO) in favor of PJM Interconnection. Switching regional transmission organizations created both exit payments to MISO and transmission investment obligations -- RTEP payments -- to PJM. FirstEnergy had sound business reasons for changing regional transmission organizations, but the cost of the move in general and FirstEnergy's obligation to pay the RTEPs in particular are addressed in the Opinion and Order of the ESP 2 case⁶. Extending the ESP 2 for two more years does not alter the existing obligation of FirstEnergy to pay the RTEPs. Thus, as Staff witness Fortney testified⁷:

⁴ FirstEnergy Ex. 3.

⁵ FirstEnergy Ex. 3, WRR Attachment 1.

⁶ See In Re Ohio Edison Company, et al., Case No. 10-388-EL-SSO, Opinion and Order, August 25, 2010 at 26 and 32.

⁷ See the testimony of Staff Witness Fortney, Staff Ex. 3 at 2.

Simply put, Staff believes that the benefit of this credit [\$360 million dollar RTEP payment] was a result of the Commission's decisions in Case No. 10-388-EL-SSO (ESP 2) and is not a direct benefit of ESP 3, thus should not be reflected in the ESP 3 vs. MRO analysis.

Staff witness Fortney then goes on to remove the RTEPs from the MRO vs. ESP test and finds that Mr. Ridmann's testimony adjusted for the RTEPs goes from a \$200 million dollar advantage to the ESP to a \$7 million dollar advantage to the MRO⁸. The same \$7 million advantage to the MRO over the ESP is confirmed by the Northeast Ohio Public Energy Council (NOPEC) and the Northwest Ohio Aggregation Coalition (NOAC) expert witness Mr. Frye, who also backs up the finding based upon discovery responses from FirstEnergy⁹. In addition, Mr. Frye questions the assumption in the MRO test prepared by Mr. Ridmann that without the ESP 3 FirstEnergy would receive a distribution rate case Opinion and Order with a net present value increase of \$339 million dollars collected over the two years of the ESP 3 extension. The amount of a future rate increase -- when such increases would be effective and the long term impact of such distribution rates -- especially when compared with the distribution improvement rider which is part of the Stipulation -- is very speculative and as such should be afforded little to no evidentiary weight.

Equally speculative is the assumption of Mr. Ridmann that the PIPP bilateral, no bid contract saves the rate payer some \$5.2 million dollars per year for a total of \$10.4 million dollars for the two extended years of the ESP3. Mr. Ridmann assumed that since the non-bid bilateral contract for PIPP service would be set at a rate 6% below the auction price, that the ESP savings is the estimated cost of supplying the PIPP customers' times 6%¹⁰. In other words Mr. Ridmann has assumed that the market value of supplying PIPP customers is the same cost as the

⁸ Id. at 3.

⁹ NOPEC/NOAC Ex. 1 at 6.

¹⁰ FirstEnergy Ex. 3 at 4 and 17-18.

weighted average cost of serving all standard service customers. There is no factual basis for this assumption. We know that the migration risks for PIPP customers differs from regular customers because PIPP customers cannot shop¹¹. So the migration of risk of supplying PIPP is less than what suppliers in the auction for the general load will face. It could be that suppliers would be willing to discount the auction bid by more than 6% to serve PIPP customers, knowing that unlike the standard service customers, PIPP customers cannot leave for a CRES supplier if the market rate for power decreases. Even if suppliers were not willing to offer a greater discount than 6%, there is no evidentiary support for Mr. Ridmann's implied assumption that suppliers would offer no discount for PIPP load over the standard service offer bid. If for example an RFP for the PIPP load produced only a 3% discount, the ESP savings for purposes of the MRO v. ESP test would only be \$5.2 million, not \$10.4 million for the two year extension.

FirstEnergy may claim that the Commission approved the non-bid affiliated bilateral agreement in ESP 2 and thus it should accept the same in ESP 3. There is one important difference though between ESP 2 and ESP 3. In ESP 3 there is clearly time to bid the PIPP service. The PIPP service which is the subject of the proposed non-bid contract commences service on June 2014. Thus, FirstEnergy, following a Commission decision in this case, has plenty of time to conduct a simple RFP¹² asking if any supplier was willing to contract for more than a 6% discount. An RFP would establish a true, proven worth of the exclusive contract for the PIPP load. The proposed contract between FirstEnergy and its affiliate cannot be considered an arms-length negotiation.

¹¹ Rule 122:5-3-02 and 03 of the OAC.

¹² Request for Proposal.

In sum, the Suppliers believe that once the speculative savings from the theoretical distribution rate case and the unbid PIPP contract are removed and the RTEP payments are excluded it appears that quantitatively the MRO is superior to the ESP by at least \$7 million.

On page 15 of his direct testimony, FirstEnergy witness Ridmann claims there are several qualitative benefits of the ESP over an MRO. These consist of extending the two upcoming auctions to cover three years instead of one year in order take advantage of today's "historically" low prices. As noted by NOPEC \ NOAC expert witness Mr. Frye, there is no way of knowing whether in fact we are at historically low prices now¹³. Mr. Ridmann also claims that by extending the current program another two years the Stipulation "...continue(s) to support competitive electric generation markets, governmental aggregation, and shopping, all of which have led to savings for customers under the current ESP".

The Suppliers take no position as to whether extending the bid term for the next auction from one year to three years is beneficial or harmful. The Suppliers do take issue though with the claim that the current program supports shopping. The current options customers have for retail shopping in FirstEnergy service territory today, especially for residential customers, is very limited. There are virtually no residential customers who are contracting with CRES for service. The Commission's 2011 statistics for governmental aggregation show that 96% of all residential customers who are shopping do so through government aggregation¹⁴. Further, with the exception of the Village of Swanton all residential customers in aggregation are simply getting the standard offer product with a small discount supplied by the FirstEnergy affiliated CRES¹⁵. This is far from the statutory requirement of Section 4928.02(B), Revised Code which calls for a

¹³ NOPEC\NOAC Ex. 1 at 8.

¹⁴ Id. at 10.

¹⁵ Id. at 11.

variety of supplies and suppliers and many different types of products for retail customers to choose from. Similarly, as demonstrated by Witness Ringenbach's testimony which includes the Ohio Commission's own Apples to Apples chart and similar websites in other competitive states there are only a fraction of CRES actively making residential offers in the FirstEnergy service territory when compared to other competitive utility service territories.

FirstEnergy has the burden of demonstrating that the ESP 3 is better in the aggregate than an MRO. At this point they have failed to demonstrate any quantitative benefit, and two years of continuing the current program is qualitatively not a benefit to the development of the retail market, especially for residential customers. The Commission can cure this deficiency and ensure the approved ESP is more favorable in the aggregate by adopting the qualitative benefits advocated by RESA and Direct Energy.

2. The FirstEnergy proposal to extend the recovery period for renewable energy credits over the life of the proposed ESP is not in the Rate Payers best interest.

FirstEnergy proposes to extend the recovery period for renewable energy credits over the life of the proposed ESP 3 in order to lower the short term renewable energy charge that otherwise would be in place for customers related to compliance with Ohio's alternative energy mandates. In ESP 2, FirstEnergy procured renewable energy credits in the market by auction, bilateral agreement, or by RFPs. The only deferral or delay in charging standard service customers for the required renewable energy credits was for the timing differences between when the costs are expensed and when the revenue was collected¹⁶. However, in the Stipulation

¹⁶ Tr. I, 251-252.

Rider AER is proposed for the expressed purpose of deferring the cost of the renewable energy credits to “smooth out” the cost of the renewable energy credits over a broader period of time.¹⁷

As shown in RESA Exhibit 1 and described by the Direct Testimony of Teresa Ringenbach, the ESP proposal would more than smooth out the cost, it would artificially depress the price in the near term by between 56 percent and 65 percent¹⁸ of what it otherwise would be without this special treatment in the near term. If the Commission does not modify the stipulation, it would make FirstEnergy’s price to compare artificially low when comparing it to CRES offers and therefore would artificially dampen shopping. Mr. Ridmann conceded that the monthly Rider AER charge for 1,000 kWh per month residential customer from Ohio Edison customer would be reduced from the present charge of \$3.36 for renewable energy credits to \$1.18 under the proposed ESP.¹⁹ Needless to say, this present discount will be reversed in the future, when there may be fewer residential customers to pick up the deferred amount plus interest.

From the customers’ perspective, the proposed Rider AER is a double loss, for not only will it skew the price signals for potential shoppers, the customer will be billed for the deferral and its carrying costs. The \$2.18 amount per month deferred in the case of Ohio Edison residential customer would be subject to a seven percent per month carrying charge.²⁰ FirstEnergy hopes and intends to recover these deferred costs, including carrying charges, from subsequent customers via the rider.²¹

¹⁷ Tr. I, 253.

¹⁸ The artificial decrease differs between the three FirstEnergy operating companies with Ohio Edison having the largest decrease at 65% and Toledo Edison the smallest at 56%.

¹⁹ RESA Ex. 1; Tr. I, 255.

²⁰ Tr. I, 255.

²¹ Tr. I, 257.

FirstEnergy has failed to articulate a benefit that flows in the long term for customers. It appears that tomorrow's standard service customers will simply be charged for today's standard service customers cost for renewable energy credits plus 7% carrying charges.

3. The Stipulation package violates important regulatory principles and practices.

Not only does the Stipulation proposal to extend the recovery period for renewable energy credits over the life of the proposed ESP in order to lower the rider charge in the near term not benefit ratepayers in the long run, it also violates an important regulatory practice or policy. It violates the regulatory principle of treating both shopping and non-shopping customers on a non-discriminatory basis. Because the extension of the recovery of the renewable energy costs are going to be extended out, this extension will in affect skew the price and provide a disincentive for shopping to occur in the near term. Under the cost recovery deferral contemplated by the Proposed Rider AER, customers will receive the incorrect price signal that electric is lower priced than it actually is and would therefore see greater benefit in the price to compare over that provided by a CRES provider. Similarly, such an artificially low price would cause customers in the near term to undervalue demand side management and efficiency measures, which run counter to sound public policy. The Commission should promote equal treatment among shopping and non-shopping customers and reject the deferral portion of Rider AER.

B. By directing the FirstEnergy Companies to implement a purchase of receivables ("POR") program, the Commission would be removing the largest barrier to competition.

Since the Stipulation fails the statutory test under Section 4928.143 (C) (1), Revised Code and violates important regulatory principles, the Commission must focus on how the Stipulation \ Application must be modified. Section 4928.143, Revised Code specifically

empowers the Commission to modify ESP applications which are not in compliance.²² Under a POR, the CRES is put on par with the utility for amounts that must be paid for a customer to avoid disconnection unlike today where a customer need only pay their utility charges to avoid disconnection.²³ In addition, POR removes a blind spot that CRES have today regarding how much a customer actually paid on their bill and how it was applied. Under POR the CRES provider has the ability to accurately check and verify the amount being paid by the Electric Distribution Utility (“EDU”) is correct. In addition, the CRES provider no longer has a concern regarding the amount of the deferred payment plan because the account receivable is now an EDU debt and the EDU will have an incentive to collect the full bill amount, not merely the EDU charges.²⁴

The implementation of a POR program would provide additional benefits. For example, a utility with an uncollectible rider but not POR program must currently split the rider into distribution and generation components. Customers who switch to a CRES provider no longer pay the generation related uncollectible rider. Over time, as the scenarios continue, the CRES provider will return slow paying or poor paying customers to the utility leaving the “good” payers with the CRES provider. The result is a smaller pool of customers to cover the utility uncollectible expenses related to generation. This would have the effect of potentially increasing that pool of bad debt as those who remain to pay the bad debt are also those who are creating the bad debt. Under a POR program, the Commission could choose to follow the Ohio gas utility and Duke Electric utility approach to POR programs which require any customer under a POR

²² Section 4928.143(C)(1) provides in pertinent part: “subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code.” (emphasis added)

²³ RESA Ex. 3 at 10.

²⁴ RESA Ex. 3 at 12.

program to pay both the generation and distribution uncollectible rider. CRES providers would no longer keep only the good paying customers and the utility/social balance for bad debt for generation would remain balanced.²⁵

A brief history and background on the issue of a purchase of receivables program is warranted. On July 30, 2002, WPS Energy Services, Inc. and Green Mountain Energy Company filed a complaint with the Commission against FirstEnergy Corp., CEI, Toledo Edison and Ohio Edison in Case No. 02-1944-EL-CSS. The complaint alleged, among other items, that FirstEnergy had violated the Commission's September 13, 2001 Opinion and Order in In the Matter of the Establishment of Electronic Data Exchange Standards and Uniform Business Practices for the Electric Utility Industry, Case No. 00-813-EL-EDI, by failing to negotiate and implement a receivables purchase agreement. On December 12, 2002, the Commission issued an Entry scheduling this matter for hearing and directing FirstEnergy to proceed with implementation of an accounts receivable agreement providing for an interim purchase rate of 96 percent for service rendered after the customer's first scheduled meter read in 2003. The Commission stated its intention that the accounts receivable purchased at this rate would be subject to a later reconciliation based on its ultimate findings on the issues in that proceeding. Case No. 02-1944-EL-CSS proceeded to hearing but after negotiations the complainants, respondents and Staff entered into a Stipulation regarding the issues presented.²⁶

The Stipulation in Case No. 02-1944-EL-CSS, which was signed by FirstEnergy, et al, WPS Energy Services, Inc., Green Mountain Energy Company and the Staff, changed the partial payment posting priority for the respondent operating companies and all CRES providers

²⁵ RESA Ex. 3 at 12-13.

²⁶ See In re WPS Energy Services, Inc. and Green Mountain Energy Company v. FirstEnergy Corp., et al., Case No. 02-1944-EL-CSS, Opinion and Order, August 6, 2003, at 2.

utilizing consolidated billing in the three affected service territories. In 2003, the Commission rules provided for the following posting priority: electric distribution utility (EDU) past due, EDU current, CRES past due, and CRES current. The Stipulation in Case No. 92-1944-EL-CSS changed the order to: CRES past due, EDU past due, EDU current, CRES current. When a customer paid the full bill under this Stipulation, both the EDU and the CRES provider would receive the entire amount due them. If only a partial payment was made, the CRES past due amounts would be satisfied first with any excess amounts flowing through the priority protocol. Excess amounts paid by the customer were to be held by the EDU and applied to the next month's bill in accordance with the proposed modified priority posting. Customers on a deferred payment plan would be deemed to have paid in full if they met the monthly plan obligation, which was defined as the monthly payment plus current charges. Budget customers were deemed to have paid the full amount if they paid the monthly budgeted amount and current CRES charges, if not included in the budgeted amount. In situations where customers were dropped by the CRES provider or the customer dropped the CRES provider, the CRES provider's past due amounts would remain on the bill for at least nine billing cycles or until the customer was disconnected or terminated by FirstEnergy, whichever occurred first. Payments made during that period were subject to the modified payment priority.²⁷

The Commission adopted the Stipulation and the modified partial payment posting priority in its August 6, 2003 Opinion and Order in Case No. 02-1944-EL-CSS.

However since that time, few suppliers have actively made offers in the FirstEnergy service territory compared to utility service territories with POR.²⁸ In addition, since the complaint in 2002, the FirstEnergy Companies have obtained approval from the Commission for

²⁷ Ibid. at 3.

²⁸ RESA Ex. 3 at 5-7.

a generation-related uncollectible expense rider²⁹. Rider NDU could now expanded to cover shopping customers uncollectible expenses. This is an important measure that will fully protect FirstEnergy Companies from the risk of non-collection. Also, it must be recognized that in the Commission's February 23, 2011 Opinion and Order in Case No. 10-2586-EL-SSO, the Commission endorsed purchase of receivables programs because they promote competition and create a level playing field for CRES Providers. Duke has been authorized by the Commission to purchase the account receivables of CRES Providers participating in a purchase of receivables program at no discount and today has eleven suppliers making residential offers versus only five in the FirstEnergy Ohio service territory.³⁰ Finally, FirstEnergy operating companies offer purchase of receivables programs in other states. All of these factors lead to the conclusion that the Commission must modify the Stipulation and require the implementation of a purchase of receivables program.

1. Implementing a POR program would be one of the most significant steps that the Commission could take to encourage more CRES providers to make offers in the FirstEnergy Market.

Implementing a POR program is critical to enhancing the competitive marketplace in FirstEnergy's service territory. Currently, when a FirstEnergy Customer under contract with a CRES provider consumes power, an account receivable is created that is associated with that customer in an amount equal to the amount the customer owes the CRES provider for the power consumed. The CRES provider has the collection risk associated with whether the customer will pay the amount owed to the CRES provider. Consideration for the risk that the customer may not pay their bill is a factor that goes into the price offered by the CRES provider and accepted by the customer. While the CRES provider charges may appear on a single consolidated utility

²⁹ Rider NDU (Non-Distribution Uncollectible Rider).

³⁰ RESA Ex. 1.

bill, ultimately, the customer must deal separately with the utility and the CRES provider for collection of unpaid amounts.³¹

Under a POR program, the electric utility would enter into an agreement to purchase a CRES provider's customer accounts receivable. The POR program could include a discount rate at which the electric utility pays less than the full amount owed to the CRES provider to accommodate the risk that not all shopping customers will pay for their CRES provider charges. Under a POR program, the utility would then pay the CRES provider a total discounted amount regardless of what the customer pays. This removes the need to provide data to the CRES provider on the total amount paid by the customer and how it was applied to the bill.³² Ms. Ringenbach preferred the approach where the EDU would purchase the CRES provider's receivables at a zero discount so that the CRES provider would get 100 percent of the billings for its charges.³³ She also recommended that for simplicity if consolidated billing were to be used, all CRES providers who chose to use utility consolidated billing must also participate in a purchase of receivables program or offer dual bills.³⁴

A POR program would allow for a single bill for customers with a single collection entity. It would make it easier for the CRES provider to verify that payments are accurate and would be simply easier on the customer when it comes to avoiding collection and remaining current on their electric distribution utility bill.³⁵

Nearly ten years ago, a settlement was entered into between certain CRES suppliers and FirstEnergy to create a four point payment priority plan. Under this plan, the CRES provider

³¹ RESA Ex. 3 at 7.

³² RESA Ex. 3 at 7.

³³ Tr. III, 66-67.

³⁴ Tr. III, 73.

³⁵ RESA Ex. 3 at 8.

past due amounts were paid first, followed by the utility's past due amounts, and then the utility's present charges followed by the CRES providers present charges. The Commission later incorporated this four point payment priority into its rules which applied to all utilities. Unfortunately, this four point system does not comport with the reality of how past due collections interface with the electric distribution utility's ability to shut off for nonpayment. Unless the CRES power charges are purchased by the utility, the money owed for the CRES power is not allowed to be counted for purposes of justifying a shutoff. To avoid a shutoff, FirstEnergy customers who enter into a payment plan or face disconnection can have the payment priority shifted whereby FirstEnergy charges are paid first so that the customer will not be shut off.³⁶

Under the current Commission rules, a customer cannot be disconnected for failure to pay CRES provider charges. In order to avoid disconnection, any payment by a customer in arrears would need to first satisfy utility past due amounts before being applied to CRES provider arrearages. Therefore, customers would pay the utility, not the supplier, for past due amounts first. If a customer enters into a pattern of paying only the minimum required to avoid disconnection a CRES provider would receive zero payment for their services and instead would result in an ever increasing CRES arrearage.³⁷ This pattern of customers paying the utility first will continue until the CRES provider returns the customer to EDU service for non-payment in order to avoid an ever increasing CRES past due arrearage.³⁸

In the FirstEnergy service territories, the amount past due remains on the customer's bill until the earlier of the date the customer is disconnected or the date the arrearages are paid in

³⁶ RESA Ex. 3 at 9.

³⁷ RESA Ex. 1.

³⁸ RESA Ex. 3 at 9.

full. In other words, if the customer continues to go through a cycle where it only pays the utility to avoid disconnection, the CRES provider would be forced to write off unpaid account receivables each year even though the customer was making payment on its bill. FirstEnergy's tariff is based on the settlement in Case No. 02-1944-EL-CSS which does not allow a CRES provider to collect for itself past due amounts from a customer and requires the past due amounts to remain on the utility bill until utility disconnection, the end of at least nine billing cycles, or when payment is made in full.³⁹

The operation of the Commission's payment priority or the entrance by the customer into a payment plan does not necessarily mean that CRES provider charges will eventually be paid. Because a customer can avoid shutoff by paying just the utility portion of the bill, it is the CRES provider who ultimately is at risk if the customer does not meet the payment plan. If there is a disconnection, the CRES provider is at a great disadvantage. The CRES provider does not do the billing. Even if it did, it would be difficult to try to collect the remaining CRES provider past due amounts because the customer only has to pay the utility arrearages to remain connected.⁴⁰

There are other problems with the existing payment priority. When customers begin to make partial payments, the CRES provider is not made aware of such payments. A CRES provider only receives information on the payment amount applied to the CRES portion of the bill and the Electric Data Interchange ("EDI") transaction with the utility only shows the amount paid by the customer attributable to CRES provider charges. In addition, there is no EDI transaction which shows the total amount paid on the bill and the amount of the payment applied to the CRES charges. These facts create several problems. Without being able to see how much the customer actually paid each month, a CRES provider has no ability to verify if the

³⁹ RESA Ex. 3 at 9-10.

⁴⁰ RESA Ex. 3 at 10.

customer's payment was properly applied. Unless a CRES provider is willing to go one by one each month contacting individual customers, the CRES providers are at the mercy of the information provided by the EDU. While a CRES provider is made aware of which customers are placed on a deferred payment plan, the CRES provider has no input into the payment amount which could result in little or no funds being paid to the CRES provider.⁴¹

2. Implementing a purchase of receivables program would resolve many issues and increase the number of suppliers actively making offers to residential and small commercial customers in the FirstEnergy service territory.

A POR program would convert the CRES providers past due amounts into a utility owned receivable. Unlike a CRES provider, the electric distribution utility has the ability to disconnect for nonpayment of the entire bill and could require a total arrearage payment for reconnection. The amount of CRES provider past due amounts would be limited because the customer would be required to pay the entire bill to avoid disconnection. Under a POR program, if a customer were to switch between CRES providers the customer will not need to pay off a past due CRES provider amount before the new CRES provider would be paid. Customer would have more flexibility in choosing the best plan for them without being returned to the EDU for nonpayment despite the fact that the customer is fulfilling payment plans.⁴²

Merely removing the nine billing cycle hold on collections and allowing a CRES to collect from customers who go past due under the current payment priority system would not remedy the situation. In fact, for a CRES provider, this would only increase cost for collection because CRES providers have no ability to disconnect the customer in addition according to the stipulation any payment made by a customer must be sent to the utility. The only effect of

⁴¹ RESA Ex. 3 at 11-12.

⁴² RESA Ex. 3 at 10-11.

removing the hold on collections and allowing the CRES provider to collect from customers who go past due under the current payment priority system would be the customer would no longer receive the CRES provider price and could be confused on where the money they paid a CRES actually went in the case of disconnection and that would make the situation even worse for the customer. Currently, customers deal with two entities for collection even though the customer is only paying a single bill. When the CRES provider comes to collect, the customer would be confused on how the customer can still be receiving power, be up to date on their utility payments, but yet still owe the CRES provider money and be receiving collection notices.⁴³

The implementation of a POR program would maintain a single collection point and would remove this confusing scenario. It would also remove the problems with the ever increasing customer debt associated with the current payment priority process.⁴⁴

In Ohio, the major beneficiary of the purchase of receivable programs on the gas side has been the retail customers. Dominion East Ohio, Columbia Gas of Ohio, Vectren Energy Delivery of Ohio and Duke Energy Ohio are all utilities offering consolidated billing with an offer to buy the receivable. (Ringebach Testimony, p. 6.) Duke also does this for its electric customers. Natural gas in Ohio has had more than two decades of robust retail marketing. Gas customers with payment problems have only a single creditor seeking collection and the creditor has the complete payment records creating less confusion from the customer perspective on how payments made were applied. Customers without payment problems also benefit from increased competition for gas supply which is robust in Ohio with many suppliers each offering plans and programs.⁴⁵

⁴³ RESA Ex. 3 at 11.

⁴⁴ RESA Ex. 3 at 11.

⁴⁵ RESA Ex. 3 at 6.

A review of Duke's purchase of receivables program for electricity and other states reveals that the implementation of a POR program will increase the number of suppliers. For example, Duke has a purchase of receivables program in place and it has 11 suppliers in its service territory. In Illinois, in the commonwealth Edison service territory which has a POR program, there are 18 CRES providers making residential offers. In Pennsylvania, Pennsylvania Power and Light has a POR program and has 34 suppliers making residential offers. PECO also has a POR program and it has 38 suppliers making offers.⁴⁶ By comparison FirstEnergy Ohio has five suppliers making offers in their service territories.

In summary, the implementation of a purchase of receivables program in the FirstEnergy service territory will solve a great number of problems and will remove a significant barrier to competition.

C. The Commission should order FirstEnergy to take the initial steps necessary to implement a supplier consolidated billing system with utility shutoff capability.

Currently, in the FirstEnergy service territory, the electric distribution utility undertakes to prepare and submit a single bill to retail customers with both the EDU and CRES provider charges on it.⁴⁷ This is called utility consolidated billing.

In a supplier consolidated billing scenario, the CRES supplier would take over the responsibility for billing both its own charges as well as the electric utility's charges on a single bill. The CRES provider would enter into an agreement to purchase the EDU's accounts receivable to keep the EDU whole. Under such a supplier consolidated billing scenario, the CRES provider (through the use of the utility process) would be granted authority to send the utility necessary information to implement the disconnection process for the CRES provided bill

⁴⁶ RESA Ex. 3 at 6 and Attachment A.

⁴⁷ RESA Ex. 3 at 13.

when a customer does not pay its bill. Customer protections related to shutoff would be maintained because the EDU would still keep the function of actually going to the home to disconnect for failure to pay but would do so at the direction of the CRES provider. Because the shutoff covers the entire bill similar to the POR situation, the account receivable of the CRES provider would not be superseded by the EDU. This would eliminate the increasing arrearage scenario for the customer. In addition, under supplier consolidated billing, utility payment plans and consumer protections for disconnection and shutoff would still apply and the utility could still put CRES charges into payments plans that are billed by the CRES provider. Supplier consolidated billing would also retain the ability as it exists today to flow through PIPP dollars to the EDU and the supplier for any interim period where a CRES provider serves the Choice ineligible customer and the customer has not yet been returned to SSO service.⁴⁸

Another benefit that would flow from supplier consolidated billing would be to bring more innovative products and services to customers at a quicker pace. EDU billing systems were not designed to provide the flexibility necessary for a CRES provider to quickly place competitive solutions in the marketplace. This is not the fault of the EDUs because they built their billing system to handle charges under a regulated monopoly system for generation service which tends not to move and change as quickly as competitive markets in terms of products. However, in a dynamic and ever changing marketplace, it is necessary to provide flexibility and a quick turnaround within a reasonable cost in order to offer innovative products and services. Allowing supplier consolidated billing would permit the offering of more innovative options to customers on a quicker basis.⁴⁹

⁴⁸ RESA Ex. 3 at 13; Tr. III, 78 and 90-91.

⁴⁹ RESA Ex. 3 at 14.

Of course, it will be necessary to work with FirstEnergy on a coordinated basis in order to implement supplier consolidated billing with shutoff capability. Ms. Ringenbach recommended a workshop process in order to develop rules. The Commission should order FirstEnergy, within six months of the stipulation being modified and approved, to file a report in a new docket regarding the steps necessary to implement such supplier consolidated billing with shutoff capability. Once FirstEnergy has submitted the required report, the Commission should then open a comment period on the report as well as hold a technical conference on matters raised by FirstEnergy and other commenters. After the comment period and the technical conference, the Commission should issue an order deciding whether or not to allow for supplier consolidated billing with shutoff in the FirstEnergy service territory.⁵⁰

D. The Commission should modify the Stipulation to reject any provision that allows FirstEnergy to award a wholesale bilateral contract to provide power for the PIPP customer load outside of the public auction.

The Stipulation currently contains a provision awarding a wholesale bilateral contract to provide power for the PIPP customer load outside of the public auction. Awarding a non-bid wholesale contract for the PIPP customer's load is at odds with a competitive marketplace and runs contrary to the important policies and principles in Ohio's Energy Policy. The Commission should reject that portion of the Stipulation which allows FirstEnergy to automatically assign the wholesale PIPP load to an affiliate, even if it is pegged to a price below the auction price. Instead, the PIPP load should be auctioned separately with six percent as the floor discount to allow for the largest possible benefit from the market for PIPP customers. Because the proposed new PIPP assignment covered in the stipulation does not begin until June 2014 for the period

⁵⁰ RESA Ex. 3 at 14-15; Tr. III, 75 and 80.

through May 2016, there is plenty of time to organize an auction for this load and test whether a six percent discount is the lowest offer available.

E. The Commission should adopt the RESA recommendations as to modifying Attachment C to the Stipulation and adopting additional EDI standards which will lead to increased market efficiencies and more CRES provider market entry in Ohio.

In order to support a robust retail market in which a variety of suppliers offer different sources of supply and innovative products, there must be electronic systems established by FirstEnergy which allow for a rapid, accurate flow of information between the EDU and the CRES. In today's electric market for open access states like Ohio, both Web and EDI data provision are the norm. Standardization by Ohio's EDUs with the progressive systems in other states makes it easier for more CRES suppliers to enter the Ohio market and for both domestic and new entrants to offer value products and services to retail customers. CRES providers who have developed systems that interface with the web, EDI, or both to manage customer data in other jurisdictions will find it easier to expand into the FirstEnergy EDU service territories. If the data provided is complete and uses industry standard data formats, CRES providers will have to make fewer modifications to their existing systems and can build new systems that are also usable in many competitive states. This will reduce costs. With more CRES providers entering and investing in Ohio markets in the FirstEnergy service area, the market will become more competitive. A more competitive market with more CRES providers will almost certainly lead to more product innovation and downward pressures on customers prices for competitive electricity.⁵¹

To its credit, FirstEnergy has recognized the importance of the electronic information systems and in the letter to Exelon Generation LLC which was admitted into evidence as part of

⁵¹ RESA Ex. 2 at 5.

the revised testimony of David Fein⁵². As part of the letter agreement, FirstEnergy has agreed to adopt EDI 867HU standards which include data segments for loss factor (“REFLF”); service voltage (“REFSV”); and special meter configuration (“REFKY”). These EDI 867 standards are important because they provide customer data that CRES providers require for verification of the customer type and characteristics for product structure and pricing. The more comprehensive the data set presented in the EDI 867, the more likely it is that the CRES provider can structure and price a product that best addresses the customer’s needs and meets the customer’s value proposition. This data also helps the CRES provider to properly enter the customer in the billing system so that enrollment and invoicing can be done separately and on a more timely basis. Further, the REFKY data segment indicates that a customer has a special meter configuration or attribute -- like net metering, combined heat and power, or distributed generation. REFKY helps CRES providers more easily serve customers who are investing in the innovative energy solutions like Advanced Metering Infrastructure. As such, including REFKY in the EDI 867HU standard allows CRES providers to continue to partner with Ohio customers who are investing in their home and in-state businesses. Standardization of data practices at FirstEnergy and throughout the state to match the best practices used in surrounding markets can only lead to increased market efficiencies and more CRES provider market entry in Ohio.⁵³

FirstEnergy has also agreed to support supplier messaging for consolidated billing via the bill-ready EDI 810 transaction which all other electric distribution utilities in Ohio, Pennsylvania and Maryland support as well as EDI 814 Reinstatement which all other Ohio electric distribution utilities support.

⁵² Exelon Ex. 101.

⁵³ RESA Ex. 2 at 6-7.

There remain a few differences between RESA witness Stephen Bennett's testimony and FirstEnergy's agreement with Exelon Generation on the subject of electronic information exchange. FirstEnergy's agreement with Exelon Generation only affected one option a supplier can choose to employ when attempting to acquire customer information, that being the EDI option. In addition to the EDI changes, Mr. Bennett recommends that the supplier web site be upgraded to allow data to be automatically downloaded or "scraped." Allowing suppliers to access customer information through a secure web portal will allow for even faster delivery of the data needed in order for suppliers to generate an offer, as there is at least a 24 hour lag when utilizing the EDI option. What FirstEnergy provides today is simply a secure web page in which suppliers login to retrieve or download either the Eligibility Lists or interval data files. While this seems like a reasonable effort to produce customer information for suppliers, it is lacking as far as the original concept intended for a "web-based system". The original intent was for FirstEnergy to create a secure web-based system in which suppliers could access customer information one customer at a time using the same customer number a supplier would utilize for enrollment purposes (the 20 digit customer number). The data provided through this system should display all relevant customer information a supplier would need to generate an offer. This information should mimic what FirstEnergy provides via the Eligibility Lists (with slight modifications) which is updated as much as FirstEnergy updates the internal customer record in the database, in a format that remains static. In addition to the various types of information that are already identified in Attachment C to this Stipulation, RESA witness Bennett recommended that the system provide access to network system peak load contribution ("NSPLC") values, PLC/NSPL effective dates, and the addition of a PIPP indicator.⁵⁴

⁵⁴ RESA Ex. 2 at 5. Note the PLC and NSPL information is available to CRES, but not in the web based format.

In Illinois, the Commonwealth Edison Utility provides a web-based system to enter a customer number and have the CRES receive a screen output of all of the customer information that can then be scraped into the CRES provider system.⁵⁵ This allows for faster pricing of customers and takes the utility employees out of the mix by keeping the sales negotiation confidential between the customer and supplier. At the very least, Mr. Bennett recommended that the eligibility list currently available in the FirstEnergy Ohio website would need to have that customer number which would be similar to how FirstEnergy provides that customer number in the eligible list in their Pennsylvania Electric Distribution Utilities⁵⁶. The second recommendation of Mr. Bennett, not included in FirstEnergy agreement with Exelon, was the recommendation to convene a stakeholder process to discuss supplier consolidated billing.

In sum, the Commission should adopt the provisions of FirstEnergy Exhibit 7 and the revised language contained in Attachment C and Mr. Bennett's recommended additions, modifications, standards, requirements and commitments which will make the EDI and web system more workable and bring benefits to fruition sooner.

III. CONCLUSION

The Commission should direct the FirstEnergy Companies to implement a purchase of receivables program. It should order FirstEnergy to take the steps necessary to implement a supplier consolidated billing system with shutoff capability. The Commission should reject FirstEnergy's proposal to extend the recovery period for renewable energy credits over the life of the proposed ESP. The Commission should modify the Stipulation to reject any provision that would allow FirstEnergy to award a wholesale bilateral contract to provide power for PIPP customer load unless it is first publically offered. Finally, the Commission should adopt the

⁵⁵ Tr. II, 82-83.

⁵⁶ Tr. II, 82.

provisions of FirstEnergy / Exelon letter agreement and the revised language contained in Attachment C as well as Mr. Bennett's recommended additions, modifications, standards, requirements and commitments which would make the EDI and web system more workable.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 22nd day of June, 2012 by electronic mail upon the persons listed below.



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