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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 Edison Company for)
Authority to Provide for a Standard Service Offer)
Pursuant to R.C. § 4928.143 in the Form of an)
Electric Security Plan.)

Case No. 12-1230-EL-SSO

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REPLY BRIEF
OF
INTERSTATE GAS SUPPLY, INC.

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Filed: June 29, 2012

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REPLY BRIEF
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I. INTRODUCTION

Interstate Gas Supply, Inc. (“IGS”) has participated in this proceeding for the sole purpose of demonstrating that the Commission should modify the stipulated electric security plan (“ESP”) proposed in this proceeding to include a term requiring Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy” or the “Companies”) to offer a purchase of receivables (“POR”) program to CRES providers to which they provide consolidated billing service. Intervenor Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, “Direct”) and the Retail Energy Supply Association (“RESA”), which like IGS, were not signatories to the Stipulation, have also proposed that a POR program be made part of the ESP. IGS hereby submits its reply brief in response to the brief filed herein by FirstEnergy on June 22, 2012, and, more specifically, to the arguments advanced by FirstEnergy in opposing the IGS and RESA/Direct POR program proposal.¹

¹ See FE Brief, 59-65.

Based on the comments of FirstEnergy witness Ridmann and the cross-examination of IGS witness Parisi and RESA/Direct witness Ringenbach by FirstEnergy's counsel, IGS anticipated most of the arguments contained in First Energy's brief. However, conspicuous by its absence is any mention of the fact that the POR program proposed by IGS and RESA/Direct in this proceeding is identical to the POR programs approved by the Commission years ago for all the state's major gas distribution utilities with choice programs² and the electric POR program approved for Duke Energy Ohio, Inc. ("Duke") in its recent ESP case.³ Also missing from the FirstEnergy brief is any discussion of the Commission's order in Duke MRO case, wherein the Commission expressly endorsed the very POR proposal advanced by IGS and RESA/Direct in this case – the creation of a non-bypassable generation-related uncollectible to permit the purchase of CRES provider receivables at no discount – as "further[ing] the state policy of promoting competition."⁴

It is not surprising that FirstEnergy has studiously avoided any reference to this history because it pulls the rug from under FirstEnergy's arguments that POR programs are conceptually inappropriate and contrary to Ohio's stated energy policy as set forth in Section 4928.02, Revised Code. If the Commission strips out these arguments from FirstEnergy's brief and gives them the short shrift they deserve, basically all that remains is FirstEnergy's vain attempt to show that a POR program is not necessary in this instance because the FirstEnergy market is

² See IGS Ex. 1 (Parisi Direct), 9; RESA/Direct Ex. 3 (Ringenbach Direct), 6.

³ See *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 11-3589-EL-SSO (Opinion and Order dated November 22, 2011), 18, 32-33.

⁴ See *In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO (Opinion and Order dated February 23, 2011), at 60-61.

already a “highly-developed competitive market for retail competition.”⁵ However, this argument is belied by the evidence showing that the state of competition in the Companies’ service territories is not what FirstEnergy claims it to be.

Although IGS does not intend to belabor points that were fully developed in its initial brief, IGS will necessarily touch on some of these points again in walking through the portion of FirstEnergy’s initial brief devoted to the POR issue. Further, there are some nuances to certain of FirstEnergy arguments that IGS did not anticipate, and, thus, those arguments require a more thorough discussion. However, at the end of the day, the fact remains that the POR program proposed by IGS and RESA/Direct will promote competition, add a qualitative benefit to the ESP, and serve the public interest. Accordingly, the Commission should modify the proposed ESP to include a POR program as recommended by IGS witness Parisi and RESA/Direct witness Ringenbach.

II. ARGUMENT

A. CONTRARY TO FIRSTENERGY’S CLAIM, THE COMPANIES’ SWITCH RATES ARE NOT EVIDENCE THAT ROBUST RESIDENTIAL COMPETITION EXISTS IN THE COMPANIES’ SERVICE TERRITORIES.

FirstEnergy prefaces its discussion of the POR program proposed by IGS and RESA/Direct with a table comparing the switch rates of the various Ohio electric distribution utilities as of December 31, 2011.⁶ Citing the data presented in this table, FirstEnergy boasts that the Companies’ have “the highest level of shopping in the state,”⁷ which FirstEnergy later

⁵ See FE Brief, 65.

⁶ FE Brief, 61. The Commission Division of Marketing Monitoring and Assessment report from which this data was gleaned is appended to Mr. Parisi’s direct testimony. See IGS Ex. 1 (Parisi Direct), Ex. 3.

⁷ See FE Brief, 60.

translates to mean that “a POR program is not needed to ‘jump start’ competition as was needed in other states.”⁸ Several points bear mention.

First, lest there be any confusion in this regard, IGS would again emphasize that the POR program it advocates would apply only to residential and small commercial accounts receivable. Thus, to the extent the Commission deems switch rates to be a relevant measure of competition, the focus must be limited to residential and small commercial switching statistics.

Second, as IGS demonstrated in its initial brief in response to Mr. Ridmann’s recitation of these same statistics, a high switching percentage, of itself, tells us little about the actual state of competition in a particular market.⁹ As NOPEC/NOAC witness Frye pointed out, ninety-six percent of the switching in FirstEnergy’s Ohio territory is attributable to opt-out governmental aggregation service and, with the exception of one community, all the governmental aggregations in the Companies’ service territories are supplied by FirstEnergy’s marketing affiliate, FirstEnergy Solutions.¹⁰ Although Mr. Ridmann opined that governmental aggregation service “is still shopping,”¹¹ under these circumstances – *i.e.*, where one provider serves almost the entire switched residential load – it cannot be seriously argued that the Companies’ switching statistics evidence a “highly-developed competitive market for retail generation” as FirstEnergy asserts.¹² Further, as Mr. Ridmann acknowledged, none of the “other states” to which FirstEnergy refers have opt-out governmental aggregation programs.¹³ If one eliminates

⁸ See FE Brief, 65.

⁹ See IGS Brief, 19-20.

¹⁰ See NOPEC/NOAC Ex. 1 (Frye Direct), 10-11.

¹¹ See Ridmann Recross, Tr. II, 33.

¹² See FE Brief, 65.

¹³ See Ridmann Recross, Tr. II, 33-34.

governmental aggregation from the Companies' switch rates so as to put these switch rates on the same footing as the switch rates of the FirstEnergy subsidiaries operating in the POR states of Pennsylvania, Maryland, and New Jersey,¹⁴ it becomes readily apparent that there is a definite a correlation between the availability of a POR program and the degree of residential competition.¹⁵ Although Mr. Ridmann denied that any such correlation existed,¹⁶ it appears from its argument that the "jump start" a POR program provides is not necessary here due to the high residential switch rate in the Companies' service territories that FirstEnergy now concedes that POR programs do, in fact, promote competition. As IGS noted in its initial brief, in view of the Commission's prior pronouncements on this subject, IGS did not believe that there was actually any issue as to whether POR programs enhance competition,¹⁷ and the fact that FirstEnergy has described POR programs as a means to "jump start" competition removes any question in this regard.

Third, as Mr. Parisi explained, the more relevant measure of the state of competition in a particular market is the number of CRES providers that are actively marketing customers.¹⁸ For

¹⁴ As of December 31, 2011, the residential switch rates for CEI, Ohio Edison, and Toledo Edison were 74.51 percent, 64.14 percent, and 62.89 percent, respectively. *See* IGS Ex. 1 (Parisi Direct), Ex. 3. According to Mr. Ridmann, the switch rates for FirstEnergy's Pennsylvania subsidiaries with POR programs are in the 50 percent to 58 percent range, while the switch rates for FirstEnergy's Maryland and New Jersey subsidiaries, both of which also have POR programs, were 38 percent each. *See* Ridmann Redirect, Tr. II, 18. If one reduces the CEI, Ohio Edison and Toledo Edison switch rates by 96 percent as a shorthand method of eliminating switching associated opt-out governmental aggregation, the resulting switch rates obviously pale in comparison to the switch rates of the Pennsylvania, Maryland, and New Jersey FirstEnergy subsidiaries.

¹⁵ In this connection, it is important that the Commission understand that IGS does not oppose governmental aggregation. Indeed, as Mr. Parisi testified, IGS has supplied governmental aggregations for many years. *See* IGS Ex. 1 (Parisi Direct), 16. However, the point here is that if one is going to rely on a comparison of switch rates to measure the relative state of competition in various markets, one must adjust the numbers so as to recognize the distinction between opt-out governmental aggregation service and the affirmative selection of a CRES provider as the supplier of generation service.

¹⁶ *See* Ridmann Redirect, Tr. II, 18-19.

¹⁷ *See* IGS Brief, 3.

¹⁸ *See* Parisi Cross, Tr. II, 184-186; Parisi Redirect, Tr. II, 201-202; *see also* Ringenbach Cross, Tr. III, 62-63.

obvious reasons, FirstEnergy gives this measure of competition only a passing mention in its brief, and what FirstEnergy does have to say about it is wrong.¹⁹

In suggesting that the number of suppliers available to serve customers in the Companies' service territories shows that a POR program is unnecessary, FirstEnergy cites Mr. Ridmann's testimony for the proposition that "there are 30 to 35 CRES providers currently registered to provide services in the Companies' territories."²⁰ However, on cross-examination, Mr. Ridmann acknowledged that his reference to 30 to 35 "registered" CRES providers was to the number of CRES providers that had authority to provide service within Companies' service territories, not to the number of CRES providers had actually entered into arrangements with FirstEnergy under its supplier tariff to provide service.²¹ In claiming that there is no need for a POR program in the Companies' service territories, FirstEnergy simply ignores Ms. Ringenbach's analysis showing there are only five CRES providers currently actively soliciting residential customers in the FirstEnergy market.²² Further, although this figure is in keeping with the number of CRES providers currently making offers in the service territories of the other non-POR Ohio electric distribution utilities – AEP-Ohio (five) and Dayton Power and Light Company (six) – there are eleven suppliers actively soliciting customers behind Duke, which has a POR program.²³

FirstEnergy also fails to mention the even more startling results of the comparison of the five competitive suppliers actively soliciting customers in the Companies' service territories to the numbers from other states reported by Ms. Ringenbach. In Illinois, ComEd, which recently

¹⁹ See FE Brief, 65.

²⁰ *Id.*, n. 355.

²¹ See Ridmann Cross, Tr. I, 243-244.

²² See RESA/Direct Ex. 3 (Ringenbach Direct), 5; RESA/Direct Ex. 3 (Ringenbach Direct), Attachment A.

²³ *Id.*

implemented a POR program, now has eighteen marketers making offers in its service area and, in Pennsylvania, the two largest electric utilities with POR programs, PPL and PECO, have thirty-four and thirty-eight marketers making offers, respectively.²⁴

FirstEnergy also closes its eyes to the fact that the Commission's Apples-to-Apples chart shows that, on the gas side, Ohio's two largest gas distribution utilities, Columbia of Ohio and Dominion East Ohio, both of which have had POR programs in place for years, have, respectively, fifteen and sixteen competitive suppliers actively soliciting new customers. Plainly, it is not mere coincidence that there are far more competitive suppliers making offers in markets where POR programs are in place than there are in the FirstEnergy market.

In addition to the number of marketers actively soliciting customers, a related relevant measure of the state of competition in a particular market is the number of different products available. However, in claiming that there is a highly-developed competitive market in the Companies' service territories, FirstEnergy ignores the evidence showing that there are only seven total offers available from the five CRES providers actively marketing in FirstEnergy's Ohio territory, whereas, in Illinois, there are currently 65 products available from the 25 competitive suppliers authorized to provide service in the ComEd and Ameren service areas.²⁵

B. FIRSTENERGY'S "LEVEL PLAYING FIELD" ARGUMENT IS WIDE OF THE MARK.

FirstEnergy next observes that IGS witness Parisi and RESA/Direct witness Ringenbach agreed that CRES providers are not competitively disadvantaged by the absence of a POR

²⁴ See RESA/Direct Ex. 3 (Ringenbach Direct), 5-6; RESA/Direct Ex. 3 (Ringenbach Direct), Attachment A.

²⁵ See IGS Ex. 1 (Parisi Direct), 11.

program because all CRES providers are on the same footing in this regard.²⁶ As must surely be obvious, the fact that CRES providers are not disadvantaged vis-à-vis one another does not speak to the question of whether a POR program would enhance competition in the Companies' service territories. As Mr. Parisi explained²⁷ – and as the evidence clearly demonstrates²⁸ – competitive suppliers are much more likely to enter a residential market in which the host utility purchases the suppliers' receivables. Thus, the question is not whether the playing field is level for all CRES providers, but whether the absence of a POR program limits the number of CRES competing on the playing field. Moreover, in addition to competing against one another to attract customers, CRES providers must also compete against the utility's default SSO rate. There can be no question that, in the absence of a POR program, the utility has a distinct advantage in these match-ups.

In a non-POR market, the competitive supplier must price the risk of shopping customer default into its offers,²⁹ whereas FirstEnergy is insulated from the risk of non-shopper default by its generation-related uncollectible expense rider. Thus, the SSO rate contains no component for the risk of non-payment. Although non-shoppers compensate FirstEnergy for the risk of non-payment through the uncollectible expense rider, FirstEnergy has the ability to disconnect customers for non-payment of SSO charges, whereas the disconnection incentive for payment is not available to CRES providers. Under these circumstances, the playing field is not, in fact, level as between FirstEnergy and CRES providers. Indeed, in its order in the Duke MRO case, the Commission expressly recognized that a POR program that includes a non-by-passable

²⁶ See FE Br., 61 (citing Parisi Cross, Tr. II, 210 and Ringenbach Cross, Tr. III, 64).

²⁷ See IGS Ex. 1 (Parisi Direct), 10.

²⁸ See RESA/Direct Ex. 3 (Ringenbach Direct), 5-6; See RESA/Direct Ex. 3 (Ringenbach Direct), Attachment A.

²⁹ See IGS Ex. 1 (Parisi Direct), 5.

generation-related uncollectible expense rider that permits the utility to purchase supplier receivables at no discount “creates a level playing field.”³⁰

C. THE USE OF A NON-BYPASSABLE GENERATION-RELATED UNCOLLECTIBLE EXPENSE RIDER TO COMPENSATE THE UTILITY FOR ASSUMING THE RISK OF SHOPPING CUSTOMER DEFAULT UNDER A POR PROGRAM WILL NOT REQUIRE SSO CUSTOMERS TO SUBSIDIZE CRES PROVIDERS.

1. The purchase of receivables is a transaction between the utility and the competitive supplier, and, as such, does not, of itself, raise any subsidy issues.

As IGS anticipated from questions posed to Mr. Parisi and Ms. Ringenbach on cross-examination, FirstEnergy argues on brief that the POR program as proposed by IGS and RESA/Direct will require SSO customers to subsidize CRES providers. However, in stating that “a POR program essentially provides a subsidy to CRES providers that undermines the market and sends the wrong price signals to customers,”³¹ FirstEnergy has muddled the distinction between the purchase of the receivables and the mechanism for compensating the utility for assuming the risk of shopping customer default under the POR program. As IGS understands the argument, FirstEnergy’s quarrel is actually with the risk compensation mechanism, not with the purchase of receivables.³² Be that as it may, there is no merit to the argument that expanding the

³⁰ See *In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO (Opinion and Order dated February 23, 2011), at 60-61.

³¹ See FE Brief, 61. Although FirstEnergy footnotes Volume I, Page 267 of the transcript as the source for this proposition, there is nothing on this page that relates to the POR issue. In fact, there is nothing anywhere in the record that remotely supports the proposition that POR programs undermine the market or produce inaccurate price signals.

³² As Mr. Parisi explained, an alternative method for making the utility whole for assuming this risk is to discount the price paid for the receivables. See IGS Ex. 1 (Parisi Direct) 5. Although this method would eliminate FirstEnergy’s “subsidy” objection, as discussed in IGS’s initial brief, this approach has not worked in practice due to the failure of the parties to come to terms with respect to a mutually acceptable POR discount rate. See IGS Brief, 5-6.

generation-related expense rider to cover shopping customer uncollectible expense will undermine the market and create an inaccurate price signal. Indeed, although FirstEnergy fails to mention the point, this is precisely the risk compensation mechanism utilized, with Commission approval, in connection with the POR programs offered by every major gas distribution utility in the state as well as by Duke on the electric side.

2. The evidence contradicts FirstEnergy's claim that expanding Rider NDU to cover bad debt associated with shopping customer default will result in SSO customers subsidizing CRES providers.

IGS certainly does not dispute FirstEnergy's claim that one of Ohio's stated energy policy objectives is to:

Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa . . .³³

However, as explained in detail in IGS's initial brief, there is no evidence to support FirstEnergy's claim that making its generation-related uncollectible expense rider, Rider NDU, non-bypassable will cause SSO customers to subsidize competitive retail electric service.³⁴ Indeed, the likelihood is that SSO customers would actually benefit if Rider NDU is expanded in this fashion.

First, making Rider NDU non-bypassable will enlarge the pool of customers responsible for paying the rider rate. In the absence of a POR program, CRES providers must employ stricter creditworthiness standards than the host utility to manage their bad debt risk.³⁵ This

³³ Section 4928.02(H), Revised Code.

³⁴ See IGS Brief, 22-25.

³⁵ See IGS Ex. 1 (Parisi Direct), 23.

means that, over time, shopping customers are likely to be better payers than SSO customers in general, and that, over time, poor paying shopping customers will tend to be returned to SSO service, thereby adding to the risk of default that the bypassable generation-related bad debt tracker must cover. Making Rider NDU non-bypassable will bring the “good” paying shopping customers into the pool of customers over which uncollectible expense will be spread, which should reduce the Rider NDU rate from what it otherwise would have been.³⁶

Second, although it is possible that, in the case of fixed-price contracts, the SSO price may, from time to time, be more favorable than the supplier contract price, it is not unreasonable to assume that, on balance, CRES provider offer prices will tend to be lower than the SSO price. Indeed, this would always be the case where the contract price is based on a discount off the SSO price. Thus, as Mr. Parisi suggested, the uncollectible amount associated with a shopping customer default will, in all likelihood, tend to be lower than if the same defaulting customer had been served under the SSO rate.³⁷ Moreover, under a POR program that includes a non-bypassable uncollectible expense rider, the difference would be even greater because the CRES provider would not have been forced to price the risk of non-payment into its offer.

Third, although FirstEnergy asserts that “CRES providers currently have higher uncollectible expenses compared to utilities,”³⁸ it is not clear precisely what FirstEnergy is purporting to compare. The citation FirstEnergy provides to support this assertion merely refers to Mr. Parisi’s estimate that shopping customer defaults are typically in the three-to-five percent

³⁶ See RESA/Direct Ex. 3 (Ringebach Direct), 12-13.

³⁷ See IGS Ex. 1 (Parisi Direct), 23.

³⁸ FE Brief, 62.

range.³⁹ Ms. Ringenbach offered a similar estimate, and both witnesses agreed that that, in some instances, the default rate could be higher.⁴⁰ However, as IGS pointed out in its initial brief, there is no data in the record that would permit a mathematical comparison of utility uncollectible expense to CRES provider uncollectible expense. To perform the calculation necessary to make such a comparison, one would need to know, among other things, the average balance of all defaulting shopping customers, the average balance of all defaulting SSO customers, and the actual default rates of both sets of customers. Moreover, these inputs would change over time, so the comparison would only be a snapshot and, more importantly, would not take into account the impact a POR program might have on the shopping customer default rate. The real question here is whether making Rider NDU by-passable would require SSO customers to subsidize competitive retail electric service. For those reasons previously discussed, IGS believes that the answer to this question is no and that, if there is a subsidy, it would flow in the opposite direction.

Fourth, even if, contrary to IGS's expectation, the Rider NDU rate would go up as a result of making the rider non-bypassable, that would not necessarily mean that the additional increment SSO customers would pay would constitute an anticompetitive subsidy. Although CRES providers must compete against the SSO rate, that does not make the SSO rate a competitive offering. The SSO rate is merely the default option, and, from day one of deregulation, the idea was to structure the regime so that the utility would be indifferent to whether a customer chose a CRES provider or remained a generation customer of the utility. All customers, including current SSO customers, benefit from measures that promote competition

³⁹ *Id.*, n. 335 (citing Tr. II, 189).

⁴⁰ *See Ringenbach Cross*, Tr. III, 70; *Parisi Cross*, Tr. II, 189-190.

because, as Mr. Parisi testified, increased competition leads to lower prices and the introduction of new and innovative products.⁴¹ Thus, not only would making Rider NDU non-bypassable so as to permit FirstEnergy to purchase the receivables of CRES providers at no discount not “undermine the market” as FirstEnergy claims, this measure would actually enhance the market, which is why the Commission had no concern regarding anticompetitive subsidies when it approved this mechanism in connection with the POR programs offered by the state’s gas utilities and the electric POR program offered by Duke.

3. FirstEnergy’s claim that making its generation-related uncollectible expense rider non-bypassable will send wrong price signals to customers has no merit.

FirstEnergy’s proposition that making Rider NDU non-bypassable will send “wrong price signals” to customers is mystifying, to say the least. As things now stand, shopping customers pay for the risk of customer default through the rates charged by CRES providers. If Rider NDU is made non-bypassable to permit FirstEnergy to purchase CRES provider receivables at no discount, shopping customers will continue to pay for this risk. The only thing that will change will be that FirstEnergy will receive the compensation rather than the CRES provider. In fact, taking this risk component out of the CRES provider rates will result in more transparent pricing and will send a more accurate price signal to customers.

IGS also finds FirstEnergy’s professed concern over price signals to be more than a little ironic. As discussed in IGS’s initial brief, the resources FirstEnergy has in place to manage its collection efforts are paid for the distribution rates paid by both SSO customers and shopping customers, notwithstanding that shopping customers do not receive the full benefit of these

⁴¹ See IGS Ex. 1 (Parisi Direct), 10.

resources.⁴² Thus, there is no question that, with no POR program, shopping customers are subsidizing SSO customers in this regard and that shopping customers have to pay CRES providers a second time for maintaining this same functionality. Indeed, it is hard to imagine a more vivid example of a “wrong price signal.” However, FirstEnergy has not suggested that its distribution rates should be further unbundled to eliminate this subsidy. The good news is that a POR program automatically eliminates this subsidy by aligning the cost of these resources with the beneficiaries in accordance with cost-causation and cost-benefit principles.

D. NO STUDIES ARE REQUIRED TO SUPPORT COMMISSION APPROVAL OF THE POR PROGRAM ADVOCATED BY IGS AND RESA/DIRECT.

1. The Commission has already determined that POR programs benefit low-income customers.

Undeterred by the fact that the all the state’s gas utilities with choice programs have had successful Commission-approved POR programs in place for years, FirstEnergy next contends that certain studies should be conducted before the Commission considers implementing the POR program proposed by IGS and RESA/Direct in this case.⁴³ However, the first question FirstEnergy claims should be examined through a study – the impact of the proposed POR program on low-income customers – has already been answered by the Commission in its order in the Duke MRO case. As the Commission found, POR programs in which the utility purchases the receivables of competitive suppliers at no discount “allows greater freedom for customer shopping without undergoing a second credit evaluation by a CRES provider, thus promoting

⁴² See IGS Brief, 24.

⁴³ See FE Brief, 63.

shopping among low-income consumers.”⁴⁴ Moreover, as IGS noted in its initial brief, it is far from clear that the low-income customer interests that FirstEnergy purports to champion are actually legitimate interests.⁴⁵ If the notion is that the status quo should be preserved so that low-income shopping customers can retain supply service by gaming the system, nothing more need be said. On the other hand, if the notion is that a POR program may increase the amount a shopping customer must pay to avoid disconnection,⁴⁶ that is a concern that the distribution utility, as the billing entity, is far better placed to address than the CRES provider. Indeed, as Mr. Parisi explained, POR programs facilitate the offering and management of payment plans.⁴⁷

2. The Companies will be made whole under the POR program proposed by IGS and RESA/Direct.

FirstEnergy also criticizes IGS and RESA/Direct for failing to conduct a study of the impact the proposed POR program would have on the Companies.⁴⁸ This is another FirstEnergy red herring. No such study is necessary because the cornerstone of the POR program recommended by Mr. Parisi and Ms. Ringenbach is that the Companies will be fully compensated for the assuming the risk of shopping customer default by making Rider NDU non-

⁴⁴ See *In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO (Opinion and Order dated February 23, 2011), at 60-61.

⁴⁵ See IGS Brief, 28.

⁴⁶ As discussed *infra*, FirstEnergy emphasizes that, under the Commission’s rules, the utility cannot disconnect a customer for the failure to pay CRES charges. Thus, it is not clear why FirstEnergy would believe that a POR program could impact the amount a shopping customer would have to pay to avoid disconnection. However, what is clear is that the utility has the ability to disconnect customers for nonpayment of its generation charges, whereas CRES providers do not.

⁴⁷ See IGS Ex. 1 (Parisi Direct), 7.

⁴⁸ See FE Brief, 63.

bypassable.⁴⁹ That said, IGS acknowledges that there may be some set-up costs associated with the implementation of a POR program. However, such costs should be relatively minor in view of the fact that FirstEnergy operating subsidiaries in four other states already have POR programs in place.⁵⁰ Thus, FirstEnergy has the institutional knowledge and the technical resources necessary to implement a POR program and will not be required to reinvent the wheel to offer a POR program in Ohio. Further, as discussed in IGS's initial brief, the Companies are required by Attachment D of the Stipulation to purchase the receivables of governmental aggregation suppliers ("GAGS") in certain limited circumstances.⁵¹ This was also a feature of the stipulation in FirstEnergy's last ESP case, Case No. 10-388-EL-SSO. FirstEnergy made no claim for costs in connection with this commitment and, presumably, either has the resources in place to satisfy the Attachment D requirement or is prepared to put such resources in play in short order if the need arises. Finally, IGS would submit that, in the context of an ESP, it is not inappropriate to ask the applicant utility to absorb the minor set-up costs associated with implementing a program that will add significant qualitative value to the ESP. Indeed, FirstEnergy has agreed to absorb far greater costs in connection with other terms of the ESP that it relies on to satisfy the Section 4928.143(C)(1), Revised Code, "more favorable" test.

- E. ATTACHMENT D TO THE STIPULATION REPRESENTS A FORM OF A POR PROGRAM AND REQUIRES ALL NON-AGGREGATION CUSTOMERS TO FINANCE ALL ASPECTS OF A PHASE-IN OF THE SSO AUCTION PRICE, INCLUDING GAGS' UNCOLLECTIBLES, WHILE GETTING NO BENEFIT IN RETURN.

⁴⁹ See IGS Ex. 1 (Parisi Direct), 18.

⁵⁰ See Ridmann Cross, Tr. I, 250; Ridmann Redirect, Tr. II, 18.

⁵¹ See IGS Brief, 30-31.

For reasons best known to itself, FirstEnergy devotes the largest chunk of its argument against the implementation of a POR program to an attempt to show that IGS witness Parisi did not fully understand the GAGS arrangement contemplated by Attachment D.⁵² This criticism mistakes the purpose of Mr. Parisi's testimony on this subject and is certainly not grounds for disregarding Mr. Parisi's testimony as FirstEnergy suggests.⁵³

FirstEnergy begins its effort to discredit Mr. Parisi's testimony on this issue with the charge that Mr. Parisi did not understand the scope and intent of Attachment D. However, as FirstEnergy subsequently acknowledges,⁵⁴ Mr. Parisi clearly understood that Attachment D purports to apply only in the scenario in which the Commission orders a phase-in of the generation price resulting from the auction that establishes the SSO rate pursuant to Section 4928.144, Revised Code.⁵⁵ Further, Mr. Parisi readily agreed that the Commission has not previously ordered such a phase-in for FirstEnergy and that there is no proposal that it do so in this case.⁵⁶ Thus, the only dispute here is over what is intended by the requirement of Section 6 of Attachment D that FirstEnergy enter into an agreement with the GAGS that assures recovery of all the costs associated with a phase-in, which, pursuant to Section 5, includes uncollectible GAGS Receivables.

⁵² See FE Brief, 63-64.

⁵³ *Id.*, 64.

⁵⁴ *Id.*

⁵⁵ See Parisi Cross, Tr. II, 198-199.

⁵⁶ *Id.*

Notwithstanding that “GAGS Receivables” is a defined term,⁵⁷ Mr. Parisi suggested that there is some ambiguity as to what is to be covered by the agreement required by Section 6 of Attachment D in terms of the uncollectible GAGS Receivables.⁵⁸ Indeed, as IGS pointed out in its initial brief, it does seem rather peculiar that the requirement that the Companies enter into receivables agreements with GAGS that includes uncollectible receivables would apply only to this tiny increment of their uncollectible receivables.⁵⁹ However, regardless of how this is supposed to work in practice, FirstEnergy’s criticism of Mr. Parisi’s interpretation of this feature of Attachment D is simply a straw-man argument and in no way calls into question the real point of Mr. Parisi’s testimony on this subject, which is to show that, despite its opposition to the POR program proposed by IGS and RESA/Direct, FirstEnergy has agreed to an arrangement that contains the very same features.

Despite its limited applicability, Attachment D is, in fact, a form of a POR program, the cost of which, including the related uncollectible expense, would be recovered from all customers through a non-bypassable rider.⁶⁰ On its face, this arrangement is discriminatory and anticompetitive because it confers an advantage on GAGS that is not available to non-aggregation CRES providers.⁶¹ More importantly, if Attachment D were to be invoked, all customers would be asked to pay for the recovery of the associated costs, including the related uncollectible expense, even though SSO customers and non-aggregation shopping customers

⁵⁷ Under Section 2 of Attachment D, the term “GAGS Receivables” appears to relate only to the difference between the reduced amount aggregation customers pay for generation as a result of the credit used to effectuate the phase-in and the actual price, plus carrying charges, of the energy supplied by the GAGS.

⁵⁸ See Parisi Cross, Tr. II, 199-200.

⁵⁹ *Id.*

⁶⁰ See IGS Ex. 1 (Parisi Direct), 16-17.

⁶¹ In so stating, IGS does not intend to suggest that it opposes Attachment D. Rather, as Mr. Parisi explained, IGS is simply looking for parity in the treatment of GAGS and non-aggregation CRES providers. See Parisi Recross, Tr. II, 207-209.

would receive no conceivable benefit from this arrangement. Thus, although FirstEnergy rails about the possibility that SSO customers might subsidize CRES providers if Rider NDU were made non-bypassable as a part of the POR program proposed by IGS and RESA/Direct, FirstEnergy is apparently fine with requiring SSO customers and non-aggregation shopping customers to pay for the costs of the Appendix D receivables program, including the increment covering uncollectible GAGS receivables. IGS trusts that the irony of this is not lost upon the Commission.

In this connection, it bears repeating that in Case No. 08-935-EL-SSO, FirstEnergy's initial ESP proceeding, the Commission determined that all the costs associated with a phase-in, including "any uncollectible GAGS receivables" (emphasis added), were to be recovered through the generation-related uncollectible expense rider approved in that case, which would become non-bypassable in the event of a phase-in.⁶² Although Section 4 of Attachment D now provides that all costs associated with a phase-in, including the increment of uncollectible GAGS receivables, will be recovered through a separate rider, the point is that, in Case No. 08-935-EL-SSO, Commission, without a peep from FirstEnergy, signed off on the concept of utilizing a non-bypassable bad-debt tracker as a means to recover uncollectible receivables. Moreover, the case for making Rider NDU non-bypassable to permit FirstEnergy to purchase supplier receivables at no discount is much stronger, because, for those reasons previously discussed, SSO customers will benefit from the POR program proposed by IGS and RESA/Direct, whereas only governmental aggregation customers and governmental aggregation suppliers benefit from the Attachment D arrangement.

⁶² See *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. 08-935-EL-SSO (Second Opinion and Order dated March 25, 2009), at 11, 16.

F. NO CHANGE TO THE COMMISSION'S DISCONNECTION RULES IS REQUIRED TO IMPLEMENT THE POR PROGRAM PROPOSED BY IGS AND RESA/DIRECT.

FirstEnergy concludes its argument against the POR program proposed by IGS and RESA/Direct by emphasizing that the Commission's rules prohibit electric utilities from disconnecting customers for failure to pay CRES provider charges.⁶³ Thus, according to FirstEnergy, implementation of a POR program would necessitate a rule change.⁶⁴ This is simply not true. As FirstEnergy well knows, no rule change was required in connection with the modification of the Duke electric POR program endorsed by the Commission in the Duke MRO case and approved by the Commission in the recent Duke ESP case.⁶⁵ Because the POR program proposed by IGS and RESA/Direct in this proceeding is identical to the previously-approved Duke POR program, it necessarily follows that no changes to the Commission's electric disconnection rules are required to implement this program. However, FirstEnergy has created some confusion regarding this subject that must be laid to rest.

As Mr. Parisi pointed out, the fact that a competitive supplier does not have the ability to disconnect a customer for nonpayment of the charges for the generation service it provides increases the supplier's exposure to uncollectible expense.⁶⁶ Thus, to manage this risk, the competitive supplier must employ more stringent credit requirements than the host distribution

⁶³ See FE Brief, 64. Although not expressly identified by FirstEnergy, the rule in question is Rule 4901:1-09-10(A), Ohio Administrative Code ("OAC"), which provides that no electric utility may disconnect a residential customer for the customer's failure "to pay any charge for a nontariffed service, including competitive retail electric service (CRES)."

⁶⁴ See FE Brief, 65.

⁶⁵ See *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO (Opinion and Order dated November 22, 2011), at 32-33.

⁶⁶ See IGS Ex. 1 (Parisi Direct), 5, 7.

utility, because the distribution utility has the ability to disconnect customers for the nonpayment of any tariffed charges, including SSO generation charges.⁶⁷ Asked on cross-examination if, under the IGS proposal, a shopping customer could be disconnected by the utility for failure to pay both utility charges and CRES charges, Mr. Parisi stated that, based on his experience with gas POR programs, it was his understanding that, once the host utility purchases the receivable, it becomes the utility's receivable so, technically, the utility would not be disconnecting the customer for failure to pay the CRES charge but, rather, for the failure to pay an amount owed the utility.⁶⁸ However, on brief, FirstEnergy ignores this qualification, and leaps to the conclusion that "a 'key component' of IGS's recommendation for a POR program is for the utility to have the ability to disconnect for CRES charges,"⁶⁹ when, in fact, how the utility ultimately deals with these receivables – whether they are construed to be CRES charges or customer indebtedness – has nothing whatever to do with the POR program itself.

Under IGS's proposal, FirstEnergy should be indifferent to whether it has the ability to disconnect a shopping customer for nonpayment of CRES charges because it will be fully compensated for any shopping customer uncollectible expense through the expansion of Rider NDU to cover shopping customer bad debt. If, at some point down the road, FirstEnergy sees a problem developing because a large number of shopping customers are savvy enough to game the system by paying only the distribution charges – a problem CRES providers now face – FirstEnergy has the ability to seek a waiver of Rule 4901:1-09-10(A), OAC, to address the problem. Thus, whether the Commission agrees with the distinction drawn by Mr. Parisi

⁶⁷ *Id.*

⁶⁸ See Parisi Recross, Tr. II, 211-212.

⁶⁹ FE Brief, 64.

between CRES charges and a receivables asset is irrelevant. As in Duke, no rule change is required to implement the POR program proposed by IGS.

III. CONCLUSION

As noted in its initial brief, IGS was quite curious to see what FirstEnergy would have to say with respect to the proposal to incorporate a POR program as a term of the ESP in view of the fact that POR the program proposed by IGS and RESA/Direct in this proceeding is identical to the POR programs approved years ago for all state's gas distribution utilities with choice programs and the electric POR program approved for Duke in its recent ESP case.⁷⁰ However, FirstEnergy does not even mention, let alone address, these existing POR programs in its brief. Instead, FirstEnergy attempts to persuade the Commission that POR programs are a bad idea, notwithstanding that the Commission went to great lengths in its order in the Duke MRO proceeding – which FirstEnergy also ignores – to explain the virtues of a POR program that includes a non-bypassable uncollectible expense rider that permits the utility to purchase CRES provider receivables at no discount.

Perhaps sensing that these arguments would have no traction, FirstEnergy ultimately concedes that POR programs do promote competition, but goes on to contend that the state of competition in the Companies' service territories is so highly developed that a POR program is unnecessary. However, the record shows that there are only five CRES providers actively soliciting customers in the Companies' service territories and that a single CRES provider, FirstEnergy's marketing affiliate FirstEnergy Solutions, serves almost the entire switched residential load as the supplier to opt-out governmental aggregations. Thus, the evidence belies the claim that the FirstEnergy residential market is robustly competitive.

⁷⁰ See IGS Brief, 34.

IGS expected FirstEnergy's brief to focus on the fact that it secured a waiver of the requirement that electric utilities offer POR programs imposed by the Commission in the 2000 EDI case⁷¹ as a result of the stipulation that resolved the WPS/Green Mountain complaint case.⁷² However, other than a single sentence reciting the partial payment posting priority that came about as a result of the stipulation in that case,⁷³ FirstEnergy's brief is silent on this subject as well.

As IGS explained in detail at the outset of its initial brief, much has changed since the WPS/Green Mountain complaint case was resolved.⁷⁴ Thus, the fundamental question before the Commission is why FirstEnergy should continue be relieved from offering a POR program in view of the Commission's subsequent pronouncements with respect to the virtues of POR programs, the obvious benefits of such programs, and the positive impact such programs have in terms of promoting competition. There is no question that the Commission has the authority to modify the stipulated ESP by including a term that requires FirstEnergy to purchase the receivables of CRES providers at no discount and by expanding Rider NDU to accomplish this result – and FirstEnergy does not claim otherwise. If the Commission allows this window to close without revisiting the waiver approved in the WPS/Green Mountain complaint case, the barrier to competition in the FirstEnergy residential and small commercial market posed by the lack of a POR program will remain in place, an outcome that is clearly inconsistent with the stated Ohio energy policy.

⁷¹ See *In the Matter of the Establishment of Electronic Data Exchange Standards and Uniform Business Practices of the Electric Utility Industry*, Case No. 00-813-EL-EDI (Finding and Order dated July 19, 2000), at 15.

⁷² See *WPS Energy Services, Inc. and Green Mountain Energy Co. v. FirstEnergy Corp., et al.*, Case No. 02-1944-EL-CSS (Opinion and Order dated August 6, 2003).

⁷³ See FE Brief, 60.

⁷⁴ See IGS Brief, 4-9.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Royer', is written over a horizontal line.

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