

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Commission's ) Review of its Rules for Competitive Retail ) Electric Service Contained in Chapters ) 4901:1-21 and 4901:1-24 of the Ohio ) Administrative Code. )</b>	<b>Case No. 12-1924-EL-ORD</b>
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**COMMENTS OF FIRSTENERGY SOLUTIONS CORP.**

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**I. INTRODUCTION**

On June 25, 2012, the above-referenced docket was initiated in order to allow the Public Utilities Commission of Ohio ("Commission") to conduct a review of the Competitive Retail Electric Service ("CRES") rules ("Rules") contained in Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code (OAC). FirstEnergy Solutions Corp. ("FES") was one of several parties participating in the August 6, 2012 workshop ("Workshop") to discuss appropriate revisions to the Rules. Commission Staff ("Staff") incorporated many suggestions offered at the Workshop into their proposal, and the November 17, 2012 Commission Entry established a schedule for filing comments and reply comments. FES respectfully files its comments and also proposes some additions to the aforementioned Rules. FES appreciates the opportunity to comment and requests the Commission consider its responses and comments and appropriately modify the proposed Rules.

**II. COMMENTS**

**1. General Comments**

In an effort to make the Rules consistent, each stakeholder supported a move from calendar day deadlines to business day deadlines throughout OAC 4901:1-21 and 4901:1-29. FES is supportive of these changes, with the exception of the instances noted below.

**2. 4901:1-21-03 General Provisions.**

**Section (D)(2):** "...percent of" appears to be a typographical error and should be replaced with "percent off" to remain consistent with section 1-21-12(B)(7)(b).

**Section (D)(6):** CRES providers present offers to potential, current and former customers. Certain sub-sets of proposed customers are not part of the general public. As written, this rule requires a CRES provider to submit the details of every offer within four business days of making such offer. Due to the fact that CRES providers may opt to provide offers to a specific set of customers only, or to offer price renewals that do not apply to the general public, FES proposes a new sub-section to avoid inevitable confusion. FES recommends the following addition:

This section does not apply to renewal offers or offers that are not open to the general public.

Absent this additional language, the rule could be interpreted to mean that CRES providers are obligated to submit every single offer to the PUCO for publication on the Apples to Apples chart, regardless of whether the offer is intended to be made available to every potential customer. This interpretation is clearly not the intent of the rule and would not be practical or lawful and would be extremely burdensome to both Commission Staff and to CRES providers, while providing no benefit to consumers.

FES also urges the Commission to implement an electronic functionality that allows CRES providers to post market offers on the Commission's web page. Currently, there is a deadline that offers not received by Thursday at noon will not be posted until

the following Monday. Illinois, Pennsylvania, and Maryland all allow suppliers to log in and post their own market offers to the Commission's web page to avoid a potential four day lag. FES urges the Commission to develop this capability as soon as possible. This functionality will allow for efficient market response to changes, and ensure that Ohio consumers have the most current information on their CRES options.

**3. 4901:1-21-04 Records and Record Retention.**

**Section (C):** The investigation of customer complaints includes locating all relevant records, including phone calls and documents, along with contacting the customer and eventually resolving the complaint. The current rule requires a CRES provider to submit all of this information to the Commission within five calendar days of the request. FES recommends that "calendar" be replaced with "business" to remain consistent with the other Staff changes and to recognize the challenge presented by weekends and holidays. It is more efficient and preferable to submit the records along with information about how the complaint was resolved to ease the administrative burden on the Commission, and additional time is often required to reach the customer to resolve the issue. When submitting customer complaint records, FES proposes modifying the rule to allow ten business days to comply. FES believes this will result in a much more efficient process for all involved including customers, and the Commission.

**4. 4901:1-21-06 Customer Enrollment.**

**Section (D)(1)(d):** The current rule requires CRES providers to provide a signed customer contract immediately after signature. As competition evolves and the amount of shopping customers increases, the ability to perform any task on an "immediate" basis

becomes progressively more difficult, if not impossible. With this reality in mind, FES recommends that this subsection be rewritten as follows:

~~Immediately upon~~ *Within two business days of obtaining the customer's signature, CRES providers shall provide the applicant a legible-copy of the signed contract unless the contract was provided with the enrollment materials.*

It is not practical, or possible, to treat mailings in the same way one would treat a door to door solicitation – CRES providers need additional time to mail the contract. FES agrees that each customer should have a copy of their full agreement with a CRES provider, but it simply does not make sense to photocopy a signed customer enrollment form as soon as it is received in order to send it right back to the customer. Such a process is costly and does not provide customers with any real benefits. In every state where it does business, including Ohio, FES is obligated to retain and provide proof of enrollment if a customer claims it was enrolled without permission. However, other states do not have similar requirements to provide customers with signed copies. The Commission should follow suit and eliminate this unnecessary practice.

Finally, FES requests clarification that there is no need to send an additional contract if the customer already received one with the enrollment materials. Scanning the signed enrollment form and sending additional copies of the contract are both extremely burdensome from an administrative standpoint and cause unnecessary delays in the enrollment process. It would save CRES providers (and therefore customers) significant time and money if these unnecessary requirements are eliminated.

**Section (D)(1)(e):** Staff's suggestion that the customer *must* contact the utility to rescind should be rejected or be replaced with "may" because it eliminates opportunities for customer education. Many customers who call to rescind are simply confused or have

questions about the contract. Customers should have the ability to discuss these concerns with a supplier representative who is informed and has been appropriately trained on the marketing offer or CRES provider contract, rather than with the utility. Sending the customer directly to the utility essentially guarantees that the customer will rescind, when the customer may only be confused about its terms. This practice will lead to many customers unnecessarily missing out on potential savings or other benefits. This comment applies equally to sections 1-21-06(D)(2)(a)(ix)(c) and 1-21-06(G)(3).

**Section (D)(1)(g):** FES recommends that “three calendar days” be changed to “five business days” for enrolling customers acquired through direct mail. While suppliers have the obvious incentive to enroll customers as quickly as possible, three calendar days is often not enough time for a CRES provider to process enrollments for a large direct mail campaign. This difficulty is especially true to the extent the Commission does not modify the rule requiring CRES providers to photocopy the enrollment form and send additional copies of the contract to customers, as described above. The recommendation to replace “three calendar days” with “five business days” is consistent with the recommendations FES makes regarding sections (D)(2)(c) and (D)(3)(d).

**Section (D)(2)(b)(i):** FES suggests that “one business day” be changed to “two business days.” If there is a high volume of sales on any given day, it becomes difficult, if not impossible, to comply with the quick turnaround that mailing a contract in one business day to a telephonically enrolled customer requires. In order to properly process enrollments, CRES providers need more time for administration and processing.

Additionally, CRES providers should be permitted to provide an electronic link to the generation resource mix online rather than using paper to mail a copy to customers.

Not only is using paper to send this information inefficient and duplicative, the requirement is ironically, environmentally unfriendly. Customers without web access could be directed to contact the CRES provider for a copy to ensure complete and timely access.

**Section (D)(2)(b)(iii):** FES recommends that for Commission or Staff requests for audio recordings of telephone enrollments “calendar days” be changed to “business days” for the reasons listed above.

**Section (D)(2)(c):** Currently, the different types of enrollment processes require varying procedures for completion. It would be logical and much more efficient for CRES providers to treat all enrollments the same. FES recommends the following language:

The CRES provider shall send an electronic enrollment request to the electric utility ~~no sooner than three calendar~~ business days and ~~no later than five calendar~~ business days after sending the customer the written contract, within five business days following the completion of the enrollment transaction with the customer, unless a later start date is agreed to in the contract

No other state has a similar “staging” requirement in which the CRES provider must withhold telephonic enrollments while sending along direct and internet enrollments. There is no good reason to treat these enrollments any differently than other forms of enrollment, since the customer has the same amount of time to rescind. However, unchanged, this rule requires CRES providers to develop complicated systems to calculate the appropriate date to trigger files being sent to the utility. Not only is this unnecessary and costly, but it is a process likely to result in many more errors. This proposed change is consistent with the recommendations FES makes regarding sections (D)(1)(g) and (D)(3)(d).

**Section (D)(3)(d):** For the reasons listed in sections (D)(1)(g) and (D)(2)(c) above, FES recommends changing the time to send electronic enrollment requests to utilities for customers signing up for CRES service over the internet from “three calendar days” to “five business days”.

**Section (E):** This new rule requires a CRES provider to obtain proof of consent along with revised contract terms in the event that a customer and CRES provider agree to material changes to an existing contract. FES requests clarification that this section is not intended to apply to the contract *renewal* offers that contain a change in terms. Under the contract renewal process described in section 4901:1-21-11, customers with a contract that will renew have the opportunity to cancel if the customer does not agree to the new terms of the contract renewal. Confirmation that the intent here was not to modify that process will help avoid any later confusion and also resolve any conflict between 4901:1-21-06(E) and 4901:1-21-11.

**Section (F):** This new rule requires a CRES provider to notify a customer when an electric distribution company rejects the customer’s enrollment. FES seeks clarification as to which method(s) of notification of an enrollment rejection by a utility are acceptable.

**Sections (J)(4):** There is no definition for “regulated sales service rate” in (J)(4). For clarification, this subsection should be changed to read:

Any customer returned to electric distribution company’s standard service offer shall pay the applicable ~~regulated sales service~~ standard service offer rate ~~while taking such service~~ for their customer class.

**5. 4901:1-21-08 Customer access, slamming complaints, and complaint handling procedures.**

**Section (B)(1) and (B)(2):** Staff's recommendation to provide ongoing status reports on customer complaints at three business days, ten business days, and every three business days until complete is impractical, unnecessary and overly burdensome. FES recommends that the practice of providing an initial status report be dropped, and that CRES providers instead be allowed a full ten business days to compile records, contact the customer, discuss issues internally, and author a report. If an investigation can not be completed in ten business days, then a status report should be provided every five business days until the investigation is complete. This proposed process is much more efficient and a less costly process, and the additional time at the front end will allow CRES providers a better opportunity to resolve any issues for dissatisfied customers.

**6. 4901:1-21-09 Environmental disclosure.**

**Section (C)(1)(a):** This rule requires a CRES provider to identify generation resources when providing environmental disclosures to customers. Section (C)(1)(a) lists the specific generation sources a CRES provider must identify. The proposed change removed "unknown purchased resources" as a specific category. In reality, it is not always possible for a CRES provider to know the source of all purchased generation. For this reason, FES suggests restoring "unknown purchased resources" as a specific category.

**Section (D)(3)(a-b):** Consistent with the comments regarding Section 4901:1-21-06 (D)(2)(b)(i) above, CRES providers should be allowed to include a link to the environmental disclosure on the company website, rather than continuing the unnecessary, inefficient, costly, and environmentally unfriendly practice of mailing paper



copies of the environmental disclosures. Customers without web access could be directed to contact the CRES provider for a copy to ensure complete and timely access.

**7. 4901:1-21-11 Contract administration.**

**Section (E):** Staff's recommendation to change calendar days to business days was not incorporated into references to the rescission period in this section. Consistent with the recommendations made above, FES believes that the rescission period should be five business days.

**Section (F):** The current contract renewal practice by which customers with varying cancellation fees are treated differently and some customers receive multiple notices is unnecessarily confusing for the customer and costly for the CRES provider.

FES proposes the following solution to the convoluted renewal notice process: eliminate everything prior to "the CRES provider shall" in section (F)(2), and strike sections (F)(3) and (F)(4) entirely. Contracts with automatic renewal clauses allow the CRES provider to reduce marketing and supply costs and pass those savings on to customers. If these proposed modifications are made, CRES providers will be able to offer lower renewal prices and more diverse renewal products. Customers will benefit from these improvements through less confusion, and a more consistent contract renewal process. Should section (F)(3) remain, FES requests clarification that the intent was to change "electronic mail" to "e-mail", rather than to eliminate e-mail as an option. For many customers, e-mail is a much more effective way to communicate than traditional mail.

**8. 4901:1-21-12 Contract disclosure.**

**Section (A)(1):** FES recommends that this section start with the phrase “If applicable,” since currently only Dayton Power and Light and Ohio Power Company charge customers switching fees. All other Ohio utilities charge switching fees to the CRES provider rather than the customer so the requirement to include this in customer contracts in those territories results in confusion.

**9. 4901:1-21-17 Opt-out disclosure requirements.**

**Section (D)(2):** FES proposes that time for use of the list of eligible customers be changed from “calendar days” to “business days”, to remain consistent with similar changes recommended by FES throughout the Rules.

**10. 4901:1-21-18 Consolidated billing requirements.**

**Section (H):** Allowing the utility to remove CRES charges from the bill before the customer has paid them in full significantly complicates the collection process for CRES providers and unnecessarily jeopardizes recovery of payment owed to the CRES provider. To alleviate this problem, a third section (H)(3) should be added which reads “CRES charges shall remain on a customer bill until fully paid”. Once the past due CRES balance is removed from the bill, many customers forget about them, or assume they are no longer obligated to pay them. Ultimately, a large amount of past due balances requires CRES providers to charge other customers higher prices to make up for these losses. A utility should not be permitted to remove a CRES charge from a consolidated bill until it has been fully collected.

**11. 4901:1-24-09 Certification renewal.**

FES urges Staff to completely delete this section. States with a similar competitive landscape do not require this unnecessary renewal process. Many other safeguards are in

place to monitor the activity of a CRES provider and the burden of completing the tasks in this section on an annual basis unnecessarily increases administrative filings and expenses.

**12. 4901:1-24-10 Application approval or denial.**

**Section (C)(3):** The term “reasonable financial assurances” in this requirement for Commission acceptance of an application is too vague. FES requests clarification, and suggests that references to the financial information provided by an applicant would help to provide some of the additional clarity needed here.

**13. 4901:1-24-11 Material changes to business operations.**

**Section (A)(2):** The term “reasonable financial assurances” in this section, identical to the language in 1-24-10(C)(3), is similarly vague and FES requests further clarification.

**Section (B)(6):** FES recommends that “BBB-“ be changed to “BB+” and “Baa3” be changed to “Ba1”. The difference between these ratings is minimal and the effect of adopting these proposed ratings do not materially alter the risk of a CRES provider default.

**14. 4901:1-24-14 Financial security.**

FES strongly objects to this newly proposed section and proposes that it be deleted in its entirety. This rule serves no legitimate purpose and only provides a means for some utilities to inappropriately increase costs for CRES providers in an attempt to stifle competition. This new rule should be eliminated for several reasons:

- The Commission’s licensing requirements and material change requirements in OAC 1-24-09 to 1-24-11 provide it the ability to ensure

that licensed suppliers are sufficiently unlikely to default on their obligations;

- This rule will impose new and unnecessary costs and risks on CRES providers that will lead to higher prices for customers because CRES providers will have to build the cost of the “financial instrument” into their prices;
- One benefit of serving retail customers is that CRES providers are not subject to collateral requirements or other financial instruments – which ultimately leads to more competition amongst CRES providers and lower prices for customers. This proposed rule will result in less CRES providers being willing and/or able to make retail offers in the state – thus negatively impacting competition and prices;
- The proposed rule is extremely vague and gives an EDU broad discretion to impose new and unnecessary financial requirements on CRES providers. As a result, the rule could be applied inconsistently throughout the state as each EDU implements its own tariff –thus causing confusion and uncertainty amongst CRES providers and customers;
- The rule lacks the necessary detail and parameters to effectively implement;
- This rule could be used in an inappropriate manner by an EDU that does not want shopping in its service territory. For example, an EDU could unilaterally impose severely burdensome financial requirements on CRES

providers in order to prevent CRES providers from making offers to customers in its service territory;

- Ohio law provides for a standard service offer for customers who do not shop. This service would be available if a CRES provider defaults and is not able to deliver retail service to a customer;
- Standard Service Offer generation rates are established pursuant to a competitive bidding process in FirstEnergy and Duke's EDU service territories. AEP and DPL have proposed similar auctions in their most recent SSO applications. Winning bidders in these auctions are obligated to serve the standard service offer load, whatever amount it may be, for the applicable delivery period. Bidders in these auctions factor "shopping risk" into their bid prices to account for load that leaves the standard service offer and returns to the standard service offer. In addition, bidders are subject to rigorous collateral requirements. In essence, migration and default risk have already been addressed in the wholesale bidding process and customers are already paying for that as bidders have incorporated it into their winning bids. If customers pay for the same risk on the retail side, they would be paying twice for the same costs/risks;
- The proposed rule completely fails to provide for proper protection of highly confidential CRES provider information. Section (B) would allow a utility to not only to require suppliers to furnish financial information, but also "other information" to determine the "type and/or amount of the financial instrument required." While a utility would presumably have to

file tariff changes describing what “other information” required from suppliers would be, the term is unbounded. As written, the rule provides an avenue for intrusive requests for information from CRES providers, without any limitations on how that information may be shared, protected or used. Given that some Ohio utilities still view themselves as “competing” with CRES providers for customers, this section risks disclosure of CRES providers’ competitively sensitive information and would allow utilities to impose potentially burdensome information requirements on CRES providers further discouraging them from entering a given utility territory.

Given the many layers of protection against the risk of a CRES provider default that already exists, it is entirely unnecessary to add these new provisions. The risk of anti-competitive behavior that the new rule introduces would harm Ohio’s competitive retail electric markets, especially in territories where the utility views itself to be in direct competition with CRES providers.

### **III. CONCLUSION**

FES encourages the Commission to consider FES’s suggested changes appropriately modify the Rules.

Respectfully Submitted,

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Summary: Comments electronically filed by Mr. Scott J Casto on behalf of FirstEnergy Solutions Corp.