

Background

The Supplier Tariff's Credit Requirements

3. At all times relevant to this Complaint, FES was certified as a CRES provider in the State of Ohio.

4. At all times relevant to this Complaint, FES was duly registered as a CRES provider with AEP Ohio.

5. The requirements for suppliers in AEP Ohio's service territory are set forth in AEP Ohio's "Terms and Conditions of Open Access Distribution Service," P.U.C.O. No. 20, effective Jan. 1, 2012, at ¶ 31 (the "Supplier Tariff").

6. Within the Supplier Tariff, Section 10 sets forth the credit requirements for CRES providers (the "Credit Requirements").

7. The Credit Requirements provide that AEP Ohio "will apply, on a non-discriminatory and consistent basis, reasonable financial standards to assess and examine a CRES Provider's creditworthiness. These standards will take into consideration the scope of operations of each CRES Provider and the level of risk to the Company."

8. The Credit Requirements anticipate that AEP Ohio will establish an allowed unsecured credit limit for a CRES provider. If a CRES provider exceeds its allowed unsecured credit limit, the Credit Requirements provide that AEP Ohio will "make reasonable alternative credit arrangements" with that CRES provider.

9. The Credit Requirements provide that AEP Ohio "will make available its credit requirements upon request."

10. The Credit Requirements further provide that a CRES provider “may appeal the Company’s determination of credit requirements to the Commission or seek Staff mediation as to any dispute.”

AEP Ohio’s Demand For Collateral

11. FES has provided retail electric generation service to customers in AEP Ohio’s service territory for several years.

12. Prior to April 12, 2013, FES was not required to provide any collateral or security to AEP Ohio in connection with FES’ provision of retail electric service to AEP Ohio customers.

13. On or around April 12, 2013, AEP Ohio informed FES that it had determined that FES had “exceeded our threshold for unsecured credit” and demanded that FES provide collateral of several million dollars within three business days.

14. AEP Ohio stated that it had calculated FES’ exposure by “multiplying the most recent two-month average of energy by the July forward price for the AEP Zone, then rounding up to the nearest thousand.”

15. AEP Ohio did not explain how it calculated FES’ unsecured credit limit.

16. FES responded to AEP Ohio’s demand the same day, explaining that it did not agree with AEP Ohio’s request to provide collateral because, even using the formula identified by AEP Ohio in its April 12, 2013 email to calculate FES’ exposure, FES would have been below the unsecured credit limit.

17. Representatives of FES and AEP Ohio continued to communicate about AEP Ohio’s demand via telephone and email, during which communications AEP Ohio was unable to explain how FES’ unsecured credit limit was calculated.

18. For example, on the phone, AEP Ohio stated that it calculated a CRES provider's unsecured credit limit by taking 2% of the providers Tangible Net Worth where the CRES provider has a BBB- credit rating.

19. Applying this formula, FES' unsecured credit limit would be more than double the limit identified by AEP Ohio.

20. On the phone, AEP Ohio also stated that it uses a one-month average load and multiplies that amount by the peak July Forward AD Hub market price, and later clarified that it was capping that 2% of Tangible Net Worth at \$40 million.

21. In response to AEP Ohio's differing explanations, FES requested a copy of AEP Ohio's CRES provider credit requirements on April 18, 2013, in accordance with Section 10 of the Supplier Tariff.

22. FES further requested that AEP Ohio use a calculation of FES' exposure that would reflect both on-peak and off-peak load, rather than simply tying FES' exposure to peak load across an entire month at peak price.

23. On April 19, 2013, AEP Ohio responded via email, but did not provide a copy of AEP Ohio's credit requirements.

24. AEP Ohio then stated that the credit limit for CRES providers that have a BBB- credit rating was calculated as the lesser of \$30,000,000 or 2% of a CRES provider's tangible net worth.

25. AEP Ohio stated that, when it earlier identified FES' (higher) unsecured credit limit, it had incorrectly applied its policy. Specifically, AEP Ohio stated that it had failed to make a collateral call when FES had first exceeded the \$30 million cap, and so the \$40 million

cap it had referenced earlier included \$10 million that AEP Ohio was willing to extend based on its failure to request additional collateral from FES when it would have first been due.

26. AEP Ohio further refused to discuss its calculation of a CRES provider's exposure.

27. Upon information and belief, AEP Ohio did not have any written document that outlined its credit requirements for CRES providers at the time AEP Ohio issued its demand to FES for additional collateral.

28. AEP Ohio's lack of transparency and inability to identify written credit requirements that would apply to all CRES providers equally raised concerns regarding AEP Ohio's creation and application of its "credit requirements," including whether AEP Ohio's application of the "credit requirements" was discriminatory.

29. On April 26, 2013, two weeks after AEP Ohio's initial demand for FES collateral, AEP Ohio produced a written credit policy and provided it to CRES providers.

30. The April 26, 2013 credit policy provided that CRES providers would be provided with unsecured credit at the lesser of a specified percentage of "Tangible Net Worth" or a "Maximum Unsecured Monetary Limit." The specified percentages and the unsecured monetary limits vary based on the CRES provider's (or its guarantor's) credit rating.

31. Specifically, AEP Ohio's credit policy establishes the following measures for CRES providers' unsecured credit limits, the lesser value of which is applied:

<u>Column A</u> Credit Rating of the CRES or its Guarantor S&P/Moody's/Fitch	<u>Column B:</u> Percentage of Tangible Net Worth	<u>Column C</u> Maximum Unsecured Monetary Limit
A-/A3/A- and above	4%	\$75,000,000
BBB+/Baa1/BBB+	3%	\$50,000,000
BBB/Baa2/BBB	3%	\$40,000,000
BBB-/Baa3/BBB-	2%	\$30,000,000

32. AEP Ohio's credit policy also provided that a CRES provider's exposure would be calculated on an ongoing basis by multiplying the provider's actual highest monthly energy usage over a rolling 12-month period times the next July forward price at AEP Ohio's load zone.

33. AEP Ohio would then deduct the unsecured credit limit from the CRES provider's overall "exposure" to identify the amount of security or collateral the CRES provider must provide AEP Ohio.

34. AEP Ohio has since amended the credit policy to apply a mixture of on- and off-peak July forward prices to calculate the "exposure" caused by a CRES provider.

35. A CRES provider can be found to be in "default" with AEP Ohio if it fails to provide the security or collateral required by AEP Ohio.

36. If a CRES provider is in "default," AEP Ohio could petition the Commission to seek authority to return the CRES provider's customers to standard service offer ("SSO") service, at which point these customers would become customers of AEP Ohio and billed at AEP Ohio's generation rate.

37. Other Ohio EDUs impose a variety of different requirements.

38. For example, the FirstEnergy Ohio utilities require initial security in the amount of \$250,000 and then establish a threshold of unsecured credit at 5% of tangible net worth for investment-grade CRES providers.

39. FES is not aware of any other Ohio utilities that establish a maximum dollar value to set a cap on an unsecured credit limit associated with retail electric service.

40. FES has not received any demands for collateral based on its provision of CRES service in any other Ohio EDU's territory.

41. Indeed, in all of the states in which FES operates and in all of the utility territories in which FES provides retail service, FES has never received a request for additional collateral in connection with retail service.

42. AEP Ohio informed FES that its initial April 12, 2013 demand for collateral had incorporated the incorrect Maximum Unsecured Monetary Limit and that, instead, FES' unsecured credit limit was \$30 million, rather than \$40 million.

43. After AEP Ohio amended its new written credit policy, AEP Ohio recalculated FES' exposure and applied the lower Maximum Unsecured Monetary Limit.

44. As a result of this calculation, AEP Ohio informed FES that it now demands 150% the amount of collateral that it had previously demanded.

45. AEP Ohio's unreasonable credit requirements impose immediate and irreparable harm to FES.

46. AEP Ohio has used its unreasonable credit requirements as the basis for issuing a Notice of Default to FES.

47. Subsequently, AEP Ohio filed a request to suspend FES' EDU/CRES Agreement with AEP Ohio, which would have the effect of blocking FES from enrolling further customers in AEP Ohio's service territory.

48. Such a disruption in FES' business and marketing operations would cause confusion to its existing and potential customers, and would irreparably damage FES' investments in customer satisfaction and FES' good will.

COUNT ONE
Unjust and Unreasonable Practices

49. FES incorporates the allegations set forth in the preceding paragraphs as if fully set forth herein.

50. AEP Ohio's practices with regard to CRES provider credit requirements are unjust and unreasonable.

51. AEP Ohio's credit requirements for CRES providers are arbitrary and unnecessarily onerous.

52. AEP Ohio's credit requirements do not properly reflect the actual financial risk posed by CRES providers to AEP Ohio.

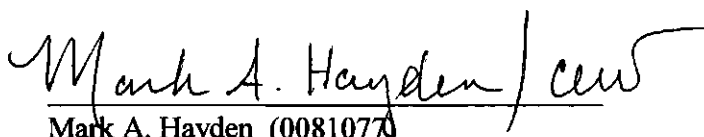
53. AEP Ohio's formula through which it calculates a CRES provider's unsecured credit limit is unjust and unreasonable.

54. AEP Ohio's formula through which it calculates a CRES provider's exposure is unjust and unreasonable.

RELIEF

WHEREFORE, FirstEnergy Solutions Corp., requests that the Commission:

- a. Issue an Order declaring AEP Ohio's practices relating to CRES provider credit requirements to be unjust and unreasonable;
- b. Institute a proceeding to establish just and reasonable credit requirements for CRES providers in AEP Ohio's service territory;
- c. Issue an Order enjoining AEP Ohio from seeking to suspend FES' ability to supply retail electric service to existing and new customers in AEP Ohio's service territory;
- d. Issue an Order declaring that FES need not provide further security to AEP Ohio in connection with FES' services in AEP Ohio's territory until such time as just and reasonable credit requirements are instituted; and/or
- e. Order any other relief that the Commission deems appropriate.

Handwritten signature of Mark A. Hayden in cursive, with the initials 'cws' written at the end of the signature.

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