BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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	)))))))	**Case No. 12-1924-EL-ORD**

APPLICATION FOR REHEARING OF FIRSTENERGY SOLUTIONS CORP.

Pursuant to Ohio Revised Code §4903.10 and Ohio Administrative Code §4901-1-35, FirstEnergy Solutions Corp. ("FES") seeks rehearing of the Commission's December 18, 2013 Opinion and Order ("Order") in the above-captioned case on the following grounds:

1. Rule 4901:1-21-06 (D)(1)(d) should be amended because it is not necessary to protect consumers, and it places needless burdens upon market participants;
2. Rule 4901:1-21-06 (D)(2)(c) should be modified to make the gas and electric enrollment processes more uniform; and
3. Rule 4901:1-24-14 should be deleted or amended because it is unnecessary and creates unreasonable variation in requirements across the Ohio utility territories.

WHEREFORE, FES respectfully requests that the Commission grant the Application for Rehearing.

Respectfully Submitted,

/s/ *Scott J. Casto*

Mark A. Hayden (0081077)
Associate General Counsel
Scott J. Casto (0085756)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 761-7735
haydenm@firstenergycorp.com
scasto@firstenergycorp.com

Attorneys for FirstEnergy Solutions Corp.

MEMORANDUM IN SUPPORT

1. OAC 4901:1-21-06(D)(1)(d) is unnecessary and unreasonable

When a CRES provider solicits customers through direct mail it must incur the cost of mailing a potential customer an offer. The customer then agrees to the contract by signing it and sends the CRES provider a copy of the signed contract (postage paid by the CRES provider). At which point, under current rules, the CRES provider must make a copy of the signed contract and incur the additional cost of sending that signature back to the customer. FES proposed to modify this burdensome process when it suggested that there is no need to send the customer a signed copy of the contract if a full copy of the contract, for the customer to keep, was included in the enrollment materials initially provided to the customer.[1] The Commission denied FES's suggestion, indicating that it would undermine the intent of the rule, which is to ensure customers have full disclosure at the time of the sale and a hard copy.[2] The position advocated by FES preserves the Commission's intent with this rule. If the Commission adopts FES's position, customers will have full disclosure at the time of the sale with a full hardcopy of their contract that remains in their possession.

Throughout this proceeding, the Commission has indicated a preference to make the rules governing CRES providers consistent with those governing competitive

[1] FES Comments, pages 3-4
[2] Commission Order, December 18, 2013, page 24.

retail natural gas service ("CRNGS") providers.[3] The CRNGS equivalent of this CRES rule was reviewed in Case No. 12-925-GA-ORD. During that proceeding, Staff recommended that OAC 4901:1-29-06 (C)(4) be changed to mirror the language here, which requires mailing the customer a signed copy.[4] The Commission opted to not adopt the changes Staff proposed. Instead, a CRNGS provider is not required to provide a customer a copy of the signed contract so long as the customer received a full copy through the enrollment process.[5]

On the electric side, the issues and considerations are exactly the same. Allowing a CRES providers to provide the full contract up front rather than requiring that they later send a signed copy, undoubtedly maintains the intent of the rule. Moreover, modifying the rule to be consistent with the gas side will further the Commission's goal of better aligning the CRES rules with the CRNGS rules.

2. <u>OAC 4901:1-21-06 (D)(2)(c) is unreasonable because it is inconsistent with other enrollment procedures.</u>

This rule requires a CRES provider, after obtaining proper enrollment consent from a customer, to delay sending the enrollment request to the EDU for at least three business days. In its comments FES suggested a change to the rule, which would require a CRES provider to send an enrollment request to the EDU within five business days.[6] Instead, the Commission stated that customers should have two extra days to review their terms and conditions.[7]

[3] Workshop Transcript, August 6, 2012, page 4; Commission Order, November 7, 2012, page 2 and Attachment B, page 4; Commission Order, December 18, 2013, Attachment B-1, page 8.
[4] Commission Order, Case No. 12-925-GA-ORD, November 7, 2012, Attachment B, page 41
[5] Commission Order, Case No. 12-925-GA-ORD, December 18, 2013, Attachment C, page 11
[6] FES Comments, page 6
[7] Order at pages 30-31

The Commission's Order fails to take into account that customers already have seven days to rescind the contract with a CRES provider, and therefore FES asks the Commission to reconsider.[8] There is no evidence that shows an additional two days provides any incremental benefit to customers who enroll in CRES via telephone or that an extra layer of protection is needed in this instance. Perhaps more importantly, failing to modify this rule would continue inconsistent and confusing treatment of enrollments among the different enrollment methods.

Changing the rule as FES suggests would not only create consistency among the CRES enrollment methods, it would align with the gas rules too. In the CRNGS rules, CRNGS providers are required to electronically send telephone enrollment requests to a customer's incumbent natural gas company "within three business days after sending the customer the written contract…"[9] This rule remains unchanged in the current 12-925-GA-ORD rulemaking. Therefore, unlike a CRES provider, a CRNGS provider is able to send an enrollment request without having to wait an arbitrary three days, even though the rescission period for both CRNGS and CRES is both seven days. Although the change suggested by FES does not mirror the accompanying natural gas rule precisely, it removes the unnecessary staging period and follows the natural gas rule. If the Commission prefers closer alignment with the CRNGS rules, then modifying the rule here to "within three business days" would satisfy that objective.

[8] OAC 4901:1-21-11(E)
[9] OAC 4901:1-29-06 (E)(4).

3. OAC 4901:1-24-14 is unnecessary because it is vague, unnecessary, and harmful to retail electric competition.

The Commission should reconsider FES's request to strike this section entirely for several important reasons.[10] First, leaving financial security requirements up to each EDU results in inconsistency across the state and excessive estimation of risk by EDUs. Inconsistency and overestimation impose costs on suppliers that harm the competitive retail electric market by raising prices to customers and creating unnecessary barriers to market entry. Second, leaving financial security requirements up to each EDU makes the rule improperly vague and therefore gives EDUs unilateral authority to limit access to the retail electric markets in their territories.

The Commission's Order does not consider the more than adequate existing financial capability requirements of the Commission's CRES licensing procedures, which include the obligation for licensees to notify the Commission of any material changes. These requirements give the Commission more than enough authority to ensure that CRES providers in poor financial health do not harm customers or EDUs. Moreover, the Commission's licensing requirements provide a single workable standard which is easily understood by all suppliers.

The Order also does not account for the minimal financial risk borne by an EDU when a CRES provider defaults. In the unlikely event that a CRES provider defaults, all customers of the defaulting CRES provider will revert back to the standard service

[10] Order at pages 61-62

offer ("SSO"), at which time the EDU will immediately begin to collect revenue from the affected customers.[11]

Standard Service Offer generation rates are established pursuant to a competitive bidding process in the state. 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 leave the standard service offer and return 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 that into their winning bids. If customers pay for that on the retail side, then these customers would be paying twice for the same costs/risks.

All four EDUs in the state have been ordered by the Commission to use competitive auctions to procure generation for SSO customers. Two EDUs are still "transitioning", meaning that a portion of their SSO load is supplied by competitive auctions and the remaining portion is self-supplied by the EDU. Per the Commission's orders, this transition period will end in the near future. Even for those EDUs that are still transitioning from self-supplied SSO to SSO supply auctions, the financial risk is very low. EDUs that partially self-supply SSO still have the right to collect the SSO rate from a defaulting CRES provider's customers when a default occurs. The SSO rate is structured to compensate EDUs that self-supply fully for the

[11] ORC 4928.14 "The failure of a supplier to provide retail electric generation service to customers within the certified territory of an electric distribution utility shall result in the supplier's customers, after reasonable notice, defaulting to the utility's standard service"; also ORC 4928.141, ORC 4928.35(D), OAC 4901:1-10-12(H), OAC 4901:1-10-29(H)(1).

use of their generation, which compensation includes "shopping risk", so there is no additional financial burden. Accordingly, requiring CRES providers to provide financial security for default risk, even to EDUs with a self-supplied portion of SSO load, is unnecessary.

Overestimation of the risk of CRES provider default by an EDU imposes an unnecessary restraint on Ohio's retail electric market and forces CRES providers facing needlessly large EDU financial security requirements to charge customers a higher price to cover the additional financial burden.

If the rule is not stricken, then it should be modified to make clear that the Commission or Staff will establish uniform financial security requirements across all of Ohio's EDUs to accurately account for the financial risk to the EDUs of a CRES provider default. If the Commission decides to set uniform standards across all EDU's, it should consider a minimum posting of cash or letter of credit security for each EDU. Uniformity will create certainty for CRES providers when they seek to become active in the Ohio's various EDU territories. Uniformity will also eliminate the potential for anticompetitive behavior by EDUs by removing their discretion to set security requirements at an excessive level.

III. CONCLUSION

For the reasons stated above, FES urges the Commission to grant rehearing on the issues stated herein.

Respectfully Submitted,

/s/ *Scott J. Casto*

Mark A. Hayden (0081077)
Associate General Counsel
Scott J. Casto (0085756)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 761-7735
haydenm@firstenergycorp.com
scasto@firstenergycorp.com

Attorneys for FirstEnergy Solutions Corp.

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