

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Commission’s</b>	)	
<b>Review of its Rules for Competitive</b>	)	
<b>Retail Electric Service Contained in</b>	)	
<b>Chapters 4901:1-21 and 4901:1-24 of the</b>	)	<b>Case No. 12-1924-EL-ORD</b>
<b>Ohio Administrative Code</b>	)	
	)	
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**MEMORANDUM CONTRA OF FIRSTENERGY SOLUTIONS CORP. TO THE  
APPLICATIONS FOR REHEARING OF THE RETAIL ENERGY SUPPLY  
ASSOCIATION, OHIO PARTNERS FOR AFFORDABLE ENERGY, THE  
OFFICE OF THE OHIO CONSUMERS’ COUNSEL AND THE OHIO POVERTY  
LAW CENTER**

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**I. INTRODUCTION**

Pursuant to Ohio Administrative Code (“OAC”) Rule 4901-1-35(B), FirstEnergy Solutions Corp. (“FES”) submits this memorandum contra to the Applications for Rehearing (“AFR”) filed by Ohio Partners for Affordable Energy (“OPAE”), the Office of the Ohio Consumers’ Counsel and the Ohio Poverty Law Center (collectively, “OCC”), and the Retail Energy Supply Association (“RESA”). None of these parties present evidence that the Commission’s Order is unlawful or unreasonable. As explained below the Commission should deny the applications for the following reasons:

- A. RESA’s attempt to change the definition of a small commercial customer improperly compares Ohio to other states and would result in increased costs for customers;
- B. OPAE’s recommended limitations on contract renewals would increase prices and overlooks important customer protections in the renewal process; and

C. OCC's request for marketing materials creates inefficiencies and places an undue burden on CRES providers.

## **II. RESPONSE TO RESA**

In its AFR, RESA asks the Commission to alter the definition of a small commercial customer from a usage-based threshold to a demand-based threshold, specifically a customer that “has a demand of 25 kilowatts or less.”<sup>1</sup> The Commission rejected RESA's suggestion on the basis that the issue is more appropriately addressed in each electric distribution company's individual tariff.<sup>2</sup> FES respectfully disagrees with RESA's assertion that the existing 700,000 kWh per year threshold, while useful for tax purposes, “is not otherwise accepted by the industry.” RESA's suggestion is also in stark contrast to the Commission's statutory directive to encourage and promote governmental aggregation.<sup>3</sup> As support for changing the rule, RESA cites definitions from Pennsylvania and Illinois. However, Ohio's market is not easily compared to those states in this instance and certain customers would be ineligible to take part in savings opportunities.

Illinois developed the definition of small commercial customer cited by RESA well before the implementation of governmental aggregation in that state. The governmental aggregation statute was created with this in mind and allows small commercial and residential customers to be eligible for governmental aggregation. In Ohio, by contrast, the statute does not specifically define small commercial customer, which has allowed governmental aggregation to evolve such that all non-mercantile customers are eligible for government aggregation. RESA's attempt to revise the

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<sup>1</sup> RESA AFR, page 11.

<sup>2</sup> Commission Order, December 18, 2013, page 6.

<sup>3</sup> R.C. 4928.20(K)

governmental aggregation scheme through this change is inappropriate. Wisely, the Commission's determination to handle this issue through tariff changes avoids changing the expectation of governmental aggregators and members mid-stream.

When compared to Pennsylvania, RESA's proposal and comparison is even more inappropriate. Pennsylvania does not allow customers to take advantage of the savings governmental aggregation offers. The concerns outlined above therefore do not apply because RESA is comparing apples to oranges.

FES supports the Commission's statutory-based 700,000 kWh threshold which ensures adequate information and protections are furnished to the customers that need them. Nothing in RESA's AFR suggests that the Commission's Order was unreasonable or unlawful.

### **III. RESPONSE TO OPAE**

#### **a. Contract Renewals**

OPAE selectively cites the general policy statements in R.C. 4928.02 as a vehicle to change the renewal rules in 4901:1-21-11 to require *additional* affirmative consent for contract renewals.<sup>4</sup> To the contrary, the statutory sections cited by OPAE support the Commission's decision declining to adopt OPAE's suggestion. The Commission indicated that the rules adequately address the issues presented by OPAE.<sup>5</sup> One of Ohio's policies is to ensure adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.<sup>6</sup> Adding the unnecessary step that OPAE recommends will increase CRES provider costs and create inefficiencies in the renewal process, which in turn will increase prices for customers.

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<sup>4</sup> OPAE AFR, pages 3-6.

<sup>5</sup> Commission Order, December 18, 2013, page 32.

<sup>6</sup> R.C. 4928.02(A).

OPAE's argument that the contract renewal process lacks an "offer" and "acceptance" ignores the fact that this rule applies to contract *renewals*. Again, the rule ensures that upon renewal, a customer has already been presented with terms and conditions that outline the renewal process. This is the "bargain" a customer "accepts" as the "offer" from a CRES provider.<sup>7</sup> Contrary to OPAE's suggestion, there is no fundamental flaw in the current renewal practices, nor is there any violation of contract law. OPAE has failed to demonstrate that the Commission's Order was unreasonable or unlawful, and the Commission should not grant rehearing on this issue.

**b. Changes to Variable Rate Contracts**

FES agrees with the Commission's rejection of OPAE's suggested change to Rule 4901:1-21-05 to require CRES providers to provide customers specific calculations for variable rate contracts demonstrating how the price of the contract would have changed in the past 12 to 24 months if the contract had been in place.<sup>8</sup> As the Commission recognized, such a requirement presents an unnecessary administrative burden which would be inconsistent with common business practices.<sup>9</sup>

OPAE argues that a variable rate contract that does not inform the customer how his or her price might vary is unconscionable.<sup>10</sup> However, the current rules require "a clear and understandable explanation of the factors that will cause the price to vary..."<sup>11</sup> OPAE's argument clearly has no merit. In reality, OPAE's suggestion that CRES providers calculate and disseminate 12 months of usage for potentially many thousands of customers is simply unrealistic, unnecessary and clearly unreasonable. There is no

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<sup>7</sup> See OAC 4901:1-21-11.

<sup>8</sup> OPAE AFR, page 6.

<sup>9</sup> Commission Order, December 18, 2013, pages 13-14.

<sup>10</sup> OPAE Application for Rehearing, page 6.

<sup>11</sup> OAC 4901:1-21-05(A)(2)

evidence for the bald assertion that this additional information will aid or protect customers in any way. OPAE fails to provide sufficient justification for rehearing on this issue, thus the Commission should deny its Application for Rehearing.

#### **IV. RESPONSE TO OCC**

The Commission should deny rehearing on OCC's request to receive marketing materials and offers for existing CRES offers. As justification for rehearing on this previously rejected issue, OCC cites the need to educate and advocate on behalf of consumers in the state about electric choice.<sup>12</sup> The OCC further complains that the Commission did not explain why providing materials related specifically to residential customer service to OCC would be unreasonable.<sup>13</sup>

Currently, Staff's ability in OAC 4901:1-21-05 to review these materials is more than sufficient to protect consumers. Requiring CRES providers to provide an additional set of materials to the OCC is unnecessary and unduly burdensome. Further, if a customer seeks OCC assistance with regard to CRES promotional materials, the OCC can obtain the CRES materials that are the subject of the customer's inquiry from the actual customer. What is more, many CRES providers have offers posted online as well. The Commission's reasoning for rejecting OCC's proposal is firmly grounded in logic, especially after weighing the significant burdens and lack of benefits that such a suggestion entails. Therefore, the Commission should deny this request for rehearing.

#### **V. CONCLUSION**

For the reasons explained above, FES respectfully requests that the Commission deny the Applications for Rehearing of RESA, OPAE and the OCC.

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<sup>12</sup> OCC Application for Rehearing, page 4.

<sup>13</sup> OCC AFR, page 4.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 27<sup>th</sup> day of January, 2014, via e-mail upon the parties below.

/s/ Scott J. Casto

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**1/27/2014 4:57:31 PM**

**in**

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

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