

**BEFORE THE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review of	)	
Chapter 4901:1-25 of the Ohio	)	Case No. 12-2053-EL-ORD
Administrative Code, Regarding Market	)	
Monitoring	)	

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**REPLY COMMENTS OF FIRSTENERGY SOLUTIONS CORP.**

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Pursuant to the Commission's January 29, 2014 Entry, FirstEnergy Solutions Corp. ("FES") submits the following reply comments regarding Ohio Administrative Code ("OAC") 4901:1-25. These comments focus squarely on the Ohio Consumer Counsel's ("OCC") suggestion that the Commission disregard the longstanding confidential treatment of CRES provider information. In its comments, the OCC carelessly and erroneously argues that the information contained in OAC 4901:1-25-02(A)(3) should no longer be given confidential treatment and wrongly asserts that doing so is consistent with Ohio law.<sup>1</sup> As described below, the justifications the OCC offers to support this suggestion are without merit.

The OCC argues that current law supports removing confidential protection of competitively sensitive information. As support, the OCC recites the Ohio Supreme Court's six-factor trade secret test.<sup>2</sup> However, the OCC fails to actually apply the test. The OCC glosses over the fact that CRES providers take numerous precautionary measures to ensure that market share data is not disclosed to competitors because of the

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<sup>1</sup> OCC Comments, pages 3-4.

<sup>2</sup> OCC Comments, page 3.

risks involved. Instead, the OCC makes the incorrect and unsupported assertion that a CRES provider's market share is "often public knowledge."<sup>3</sup> If this statement is true, which it is not, then there would be no need to institute the OCC's suggestion. While the legal realities support rejecting OCC's recommendation, the practical application of its suggestion is equally unsupported.

FES agrees with the OCC that the "rules protecting competition are important to consumers."<sup>4</sup> Yet, the OCC curiously argues for a measure that would harm competition. FES previously explained that divulging confidential information in Ohio retail market will harm the competition.<sup>5</sup> Those facts remain relevant and contrast OCC's suggestion to force CRES providers to divulge competitively sensitive information here. Armed with competitively sensitive data, a sophisticated competitor can make tactical decisions about where and when to compete and against whom. Thus, deterring other potential competitors from entering or marketing in an electric distribution utility's territory based on this information.

Without offering new or novel arguments in support of its suggested change to the rules, the OCC ignores the unique nature of the competitive retail market and compares it to non-regulated markets.<sup>6</sup> The OCC fails to give any examples or analysis comparing Ohio's retail market to other non-regulated markets. Instead, the OCC argues that such information *may* be helpful to consumers.<sup>7</sup> Conspicuously absent, though, is an explanation as to how a single customer would use or benefit from any such information.

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<sup>3</sup> OCC Comments, page 3.

<sup>4</sup> OCC Comments, page 1.

<sup>5</sup> Case No. 12-3151-EL-COI, FES Comments, page 5.

<sup>6</sup> OCC Comments, page 2.

<sup>7</sup> OCC Comments, page 3.

The OCC provides no basis for the Commission to evaluate whether or not market share data should be protected under Ohio law, even though its recitation of what such an evaluation must entail appears to be accurate. FES and other CRES providers in the Retail Market Investigation proceeding and in other Commission dockets have consistently maintained that such information should be protected and provided ample evidence demonstrating how such information meets Ohio's requirements. The OCC completely fails to demonstrate how market share data will be useful to consumers at all. The bald assertion that it will be is insufficient and conclusory. For all of these reasons, FES urges the Commission to reject the OCC's recommendation.

Respectfully Submitted,

/s/ Scott J. Casto

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by electronic mail to the parties listed below on this 13<sup>th</sup> day of March 2014.

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